

DATED 10th July 2024

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

and

WSP UK LIMITED (2)

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

IN RELATION TO

Technical Partner for the SCAH
Programme

THIS AGREEMENT is made on 10th July 2024 BETWEEN:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS acting through the Department for Environment Food and Rural Affairs, (DEFRA) and its executive agencies (the "Client") (which expression shall include any successors in title and assigns); and
- (2) WSP UK LIMITED (company number 01383511) whose registered office WSP House, 70 Chancery Lane, London, WC2A 1AF ("Consultant").

WHEREAS:

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

NOW IT IS AGREED THAT:

1 Interpretation

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

2 Service

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

3 Pri

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

4 Conditions

- 4.1 The terms and conditions of the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) have effect as modified by this Agreement and the Schedules to this Agreement (together referred to as the "Contract"),
- 4.2 Where a reference is made to a clause of the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) contract it shall be read and construed to be a reference to that clause as amended by this Agreement including without limitation Schedule 3 Option Z (additional conditions of contract),
- 4.3 If there is any ambiguity or inconsistency in or between the documents comprising the Contract, the priority of the documents is in accordance with the following sequence:
- 4.3.1 Security Aspects Letter (Schedule 9);
- 4.3.2 this Agreement (conditions 1 to 7);
- 4.3.3 the completed Contract Data part I (Schedule 2);
- 4.3,4 the option Z additional conditions of contract (Schedule 3);
- 1
- 4.3.5 the Defra Conditions of contract (Schedule 4);
- 4.3,6 the Scope (Schedule 5);
- 4.3.7 the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) (Schedule 1);

- 4.3.d the People Rates (Schedule 6);
- 4.3.g the completed Contract Data part 2 (Schedule 2); and
- 4.3.10 any other document forming part of the Contract (Schedule 8).

5 Complete agreement

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

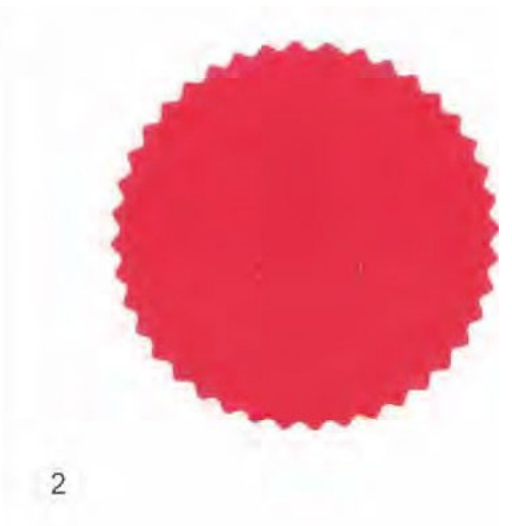
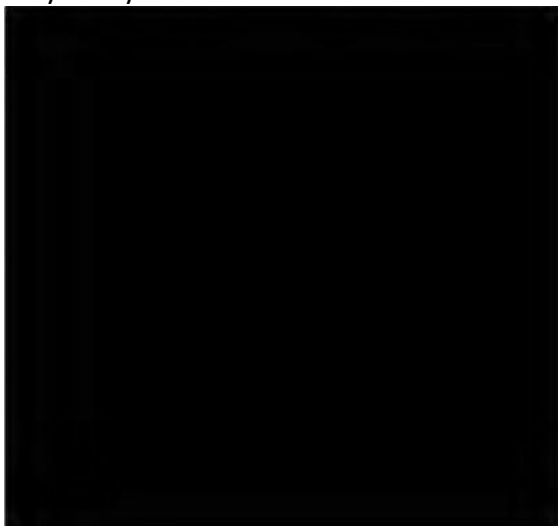
6 Counterparts

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

7 Execution as a deed

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

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





Schedule 1

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

The NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) is incorporated herein and is supplemented and/or (as applicable) amended by the terms of Schedule 2 to Schedule 9 of this Agreement.

Schedule 2

Contract Data

Part one — Data provided by the Client

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

Statements given in all contracts

1.General

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

XI X5, X7, X8, X20, and Y(UK)3

- The service is Technical Partner services
- The Client is The Department for Environment, Food and Rural Affairs (as defined in the Agreement)
- Address for communications: 2 Marsham St, London SW1P 4DF
- Address for electronic communications [REDACTED]
- [REDACTED]
- Address for communications: 2 Marsham St, London SW1P 4DF
- [REDACTED]
- The Scope is in Schedule 5.
- The language of this contract is English.
- The law of the contract is the law of England and Wales,
- The period for reply is 2 weeks
- The period for retention is 12 year(s) following Completion or earlier termination
- The following matters will be included in the Early Warning Register:

0 N/A

- Early warning meeting are to be held at intervals no longer than: One month

6

2. The Consultant's main responsibilities

- The Consultant prepares forecasts of the total Defined Cost plus Fee and expenses at intervals no longer than: One month
- The Consultant prepares resource schedules at intervals no longer than: One month

3. Time

- The starting date is: 10th July 2024
- The Client provides access to the following persons, places and things: N/A
- The Consultant submits revised programmes at intervals no longer than: One month
- The completion date for the whole of the service is: 30th June 2036
- The period after the Contract Date within which the Consultant is to submit a first programme for acceptance is: One month

4 Quality management

- The period after the Contract Date within which the Consultant is to submit a quality policy statement and quality plan is: 2 months
- The period between Completion of the whole of the service and the defects date is: 52 weeks

5 Payment

- The currency of the contract is the: GBP (pounds sterling).
- The assessment interval/a/ is One month.
- The expenses stated by the Client are
- As agreed in advance by the Sewice Manager in accordance with the Defra Expenses Policy
- The interest rate is 2% per annum above the base rate of the Bank of England,
- The locations for which the Consultant provides a charge for the cost of support people and office overhead are: N/A
- The exchange rates are those published on a monthly basis by HM Revenue & Customs

6 Compensation events

- If there are additional compensation events, these are additional compensation events: N/A

8 Liabilities and insurance

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

Event	Minimum Amount of Cover	Period following completion of the whole of the service or termination
Liability of the Consultant for claims made against it arising out of the Consultant's failure to use the Standard of Care.	£2,000,000 (Two Million Pounds) in respect of each claim, without limit to the number of claims	12 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the Consultant) arising from or in connection with the Consultant Providing the Service	Whichever is the greater of £1,000,000 (One Million Pounds) or the amount required by law in respect of each event, without limit to the number of events	12 years
Death of or bodily injury to employees of the Consultant arising out of and in the course of their employment in connection with the contract	Not less than the amount required by law in respect of each event, without limit to the number of events	The period required by law

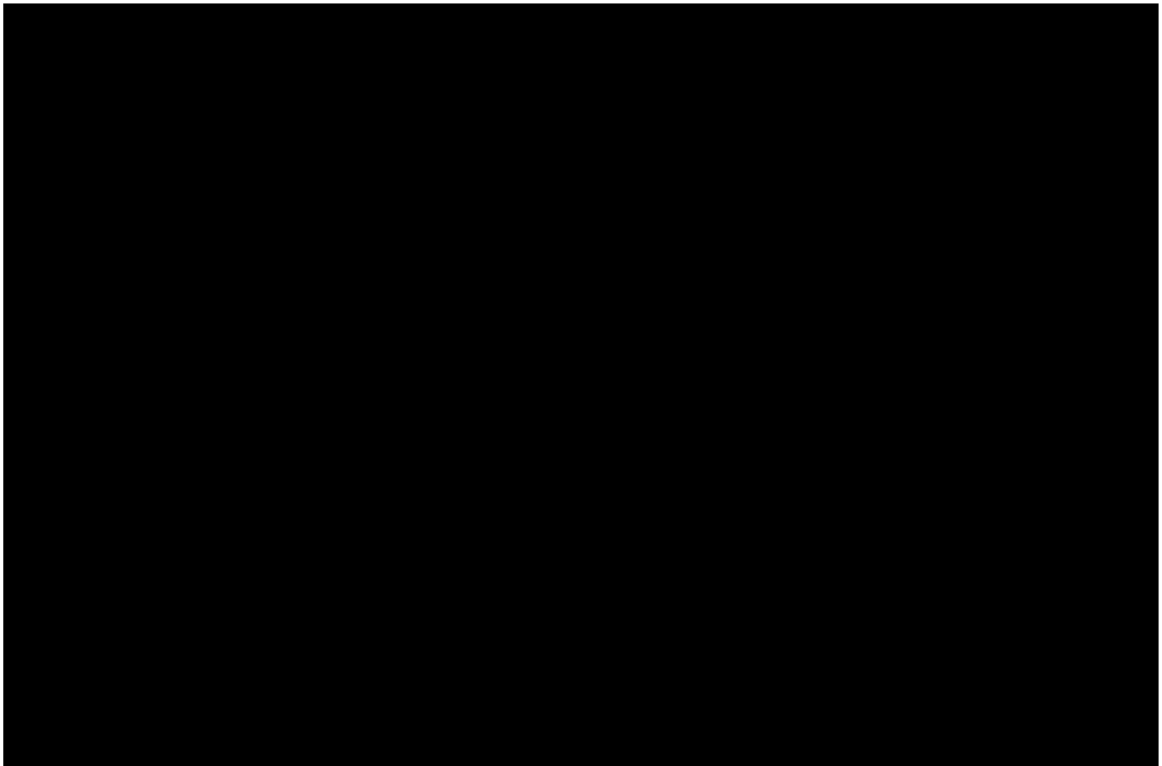
- The Client provides these insurances from the Insurance Table: N/A
- The Client provides these additional insurances: N/A
- The Consultant's total liability to the Client for all matters arising under or in connection with the contract, other than the excluded matters (as amended in this section of the Contract Data Part One) is limited to (Twenty Million Pounds) per claim subject to a total aggregate limit of

£20,000,000 (Twenty Million Pounds)

)))

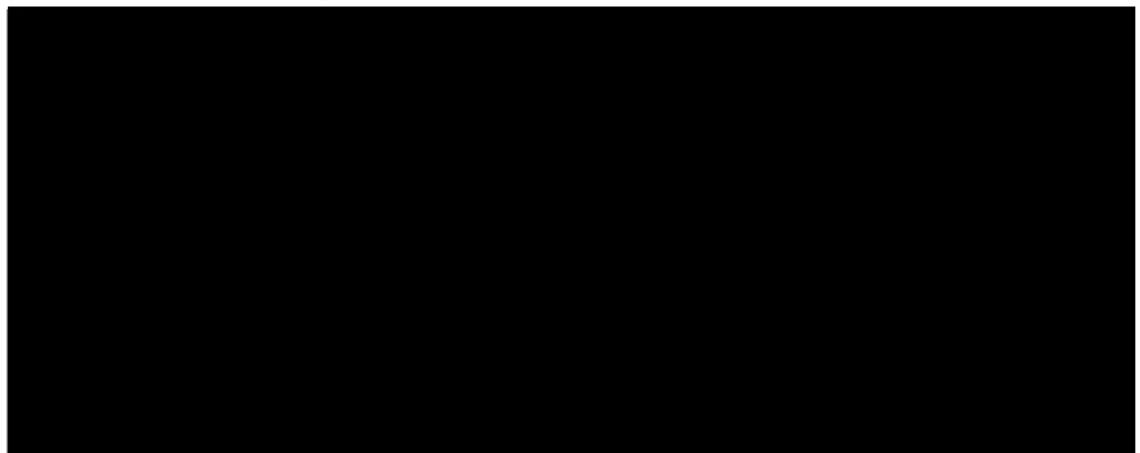
○

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]



Resolving and avoiding disputes:

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



- The Adjudicator nominating body is: Institution of Civil Engineers

Changes in the Law

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


Sectional Completion

- The completion date for each section of the service is

section	Descr i tion	com letion date
	Completion of RIBA 3 design section of Scope	31 st July 2025
(2)	Completion of rest of service	30 th June 2036

Delay Damages

- Delay damages for each section of the service are

section	Descr i tion	Amount er da
	Completion of RIBA 3 design section of Scope	

The delay damages for the remainder of the service are: N/A (but nothing prevents the Client claiming general damages for delay of the remainder of the service).

Undertakings and Novation

- The form of Subcontractor Undertaking to the Client is in: Schedule 7
 - The form of Deed of Novation is in: Schedule 7
- X20 Key Performance Indicators (not used with Option X12)
- The incentive schedule for Key Performance Indicators is in: Schedule 8
 - A report of performance against each Key Performance Indicator is provided at intervals of: One month
- The Housing Grants, Construction and Regeneration Act 1996
- 2: The period for payment is 30 days after the date on which payment becomes due
-

Option Z

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

Part two — Data provided by the Consultant

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

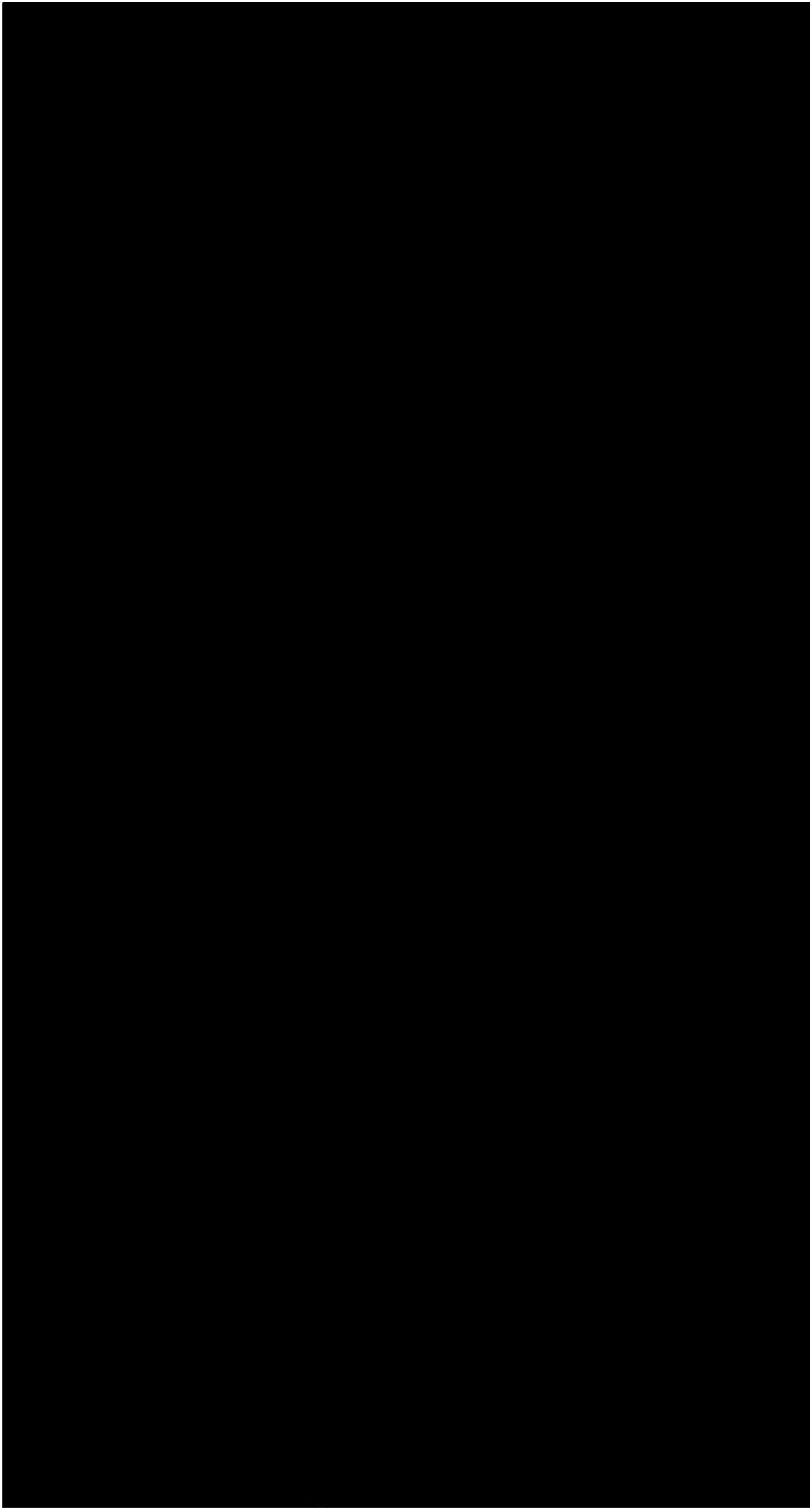
Statements given in all contracts

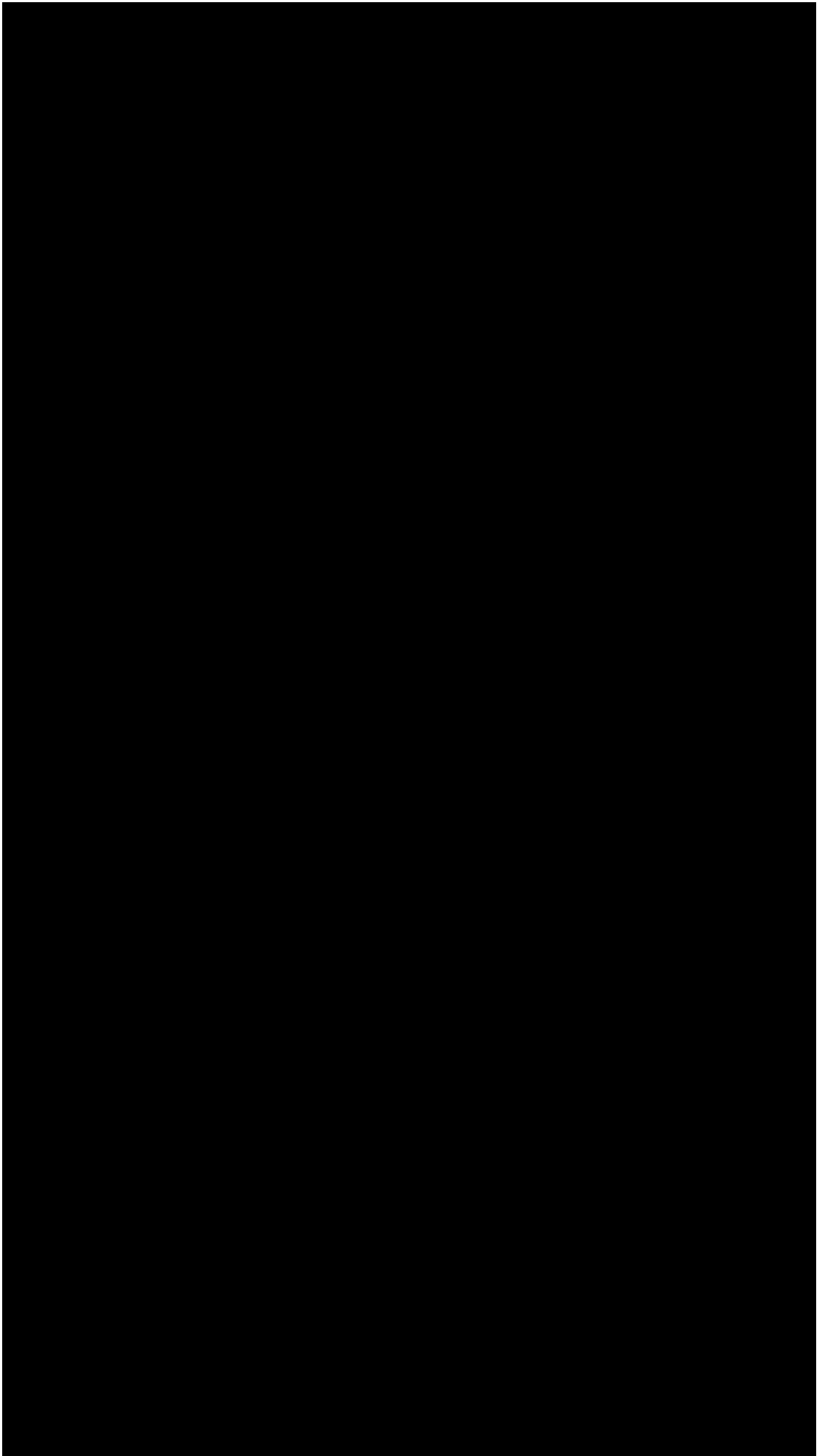
General

- The Consultant is
Name: WSP UK Limited

-

-





- The following matters will be included in the Early Warning Register:

2. The Consultant's main responsibilities

If the Consultant is to provide Scope

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

3. Time

If a programme is to be identified in the Contract Data

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

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

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

5. Payment

If the Consultant states

- The expenses stated by the Consultant are any expenses: As agreed in advance by the Service Manager in accordance with the Defra Expenses Policy

People Rates

- [REDACTED]

Resolving and avoiding disputes:

- The Senior Representatives of the Consultant are

[REDACTED]

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

Schedule 3

Option Z (Additional conditions of contract)

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

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

CORE CLAUSES

1 General

Insen new clause 10.3.

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

In clause 1 1.2(2) in the first bullet point after "Scope" insert "and contract".

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

In clause 11.2(6) after "Scope" insett the contract, the quality plan"

Insert new clauses 1 1 to (31):

" (24) Approved Subcontractors are:

- [REDACTED]
- [REDACTED]
- [REDACTED]

(25) Exit Plan is the exit plan as referred to in the Scope,

(26) Fault means from a fault, act or omission of the Consultant (which includes the fault, act or omission of any Subcontractor or any employee or supplier of the Consultant).

(27) Framework Agreement means CCS RM6165 framework agreement for construction professional services,

(28) Framework Index is the index used to calculate any adjustment to the Framework Prices under Schedule II of the Framework Agreement

(29) Framework Prices are the Consultant's prices under the Framework Agreement as adjusted in accordance with the Framework Agreement,

(30) The People Rates are the people rates unless later changed in accordance with this contract.

(31) Standard of Care means the reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and

carrying out services of a similar scope, nature, complexity and timescale to the service.

Insert new clauses 12.5 to 12.6:

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

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

In clause 14.3 after "Key Date" but before the full stop insert including adding a Key Date and Condition"

In clause 15.1 delete "or" at the end of the fourth bullet point and insert two new bullet points before the last:

- "affect the availability of a key person or its replacement
- affect a Client's liability; or"

Delete clause 16.1 and replace with.

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

Insert at the start of clause 16.2: "Subject to clause 16.3"

Insert new clauses 16.3 and 16.4:

„16.3 Prior to the date of this contract, the Consultant is assumed to have proactively and diligently reviewed and raised all queries (including in relation to any ambiguity, discrepancy, omission, mistake and/or inconsistency) in or between the documents, as would be expected of a competent and experienced consultant exercising the Standard of Care and taking into account the Consultant's experience. Provided that the Consultant has complied with this clause 16.3, any ambiguity, discrepancy, omission, mistake and/or inconsistency in or between the documents may entitle the Consultant to a compensation event in accordance with this contract.

16.4 Where the Service Manager gives any instruction which changes the Scope then, to the extent that there is any ambiguity, discrepancy, omission, mistake and/or inconsistency) in or between the documents and/or the Scope, then the Consultant shall notify the Service Manager as soon as it becomes aware of any such ambiguity, discrepancy, omission, mistake or inconsistency and the Service Manager shall states how the ambiguity, discrepancy, omission, mistake or inconsistency should be resolved."

Delete clause 17 and insert, "Number not used."

2 The Consultants Main Responsibilities

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

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

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

Insert new clause 20.6:

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

Insert new clause 20.7:

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

In clause 21.1 insert at the start of the clause: "The Client and the Consultant acknowledge and agree that the key persons are critical to the successful of delivery of the service " and possess the necessary skills required for the Consultant to Provide the Service.

In clause 22.3 delete the final sentence.

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

In clause 23.2 after "acceptance" and before the full stop insert "save for the Approved Subcontractors who are accepted"

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

In clause 23.3 delete except any pricing information,".

In clause 23.3 delete the first bullet point in the first list of bullet points.

In clause 23.3 before "A reason for not. . ' insert the following.

"Subject always to.

- reasonable consideration and approval by the Service Manager (such approval not to be unreasonably withheld or denied),
- with respect to Approved Subcontractors, the subcontract documents contain the professional indemnity insurance levels and caps on liability as notified in the

tender clarification process and to be agreed by the parties formally in writing following the date of this Contract,

- the Subcontractor demonstrates that it is unable to procure insurance and/or accept a liability cap at the levels stated in this Contract (for reasons other than as a result of the Subcontractor's claims record or other act and/or failure to act), " In the final list of bullet points insert the following third and final bullet point:
- "they include terms which restrict the duty of care owed to the Consultant, restrict the copyright available, restrict the terms of any professional indemnity insurance required and/or include a net contribution clause or cap on liability."

Delete clause 25.1 and replace with.

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

Delete clause 26 and insert, "Number not used."

Insert new clause 27:

27 Deleterious Materials

27.1 Exercising the Standard of Care, the Consultant does not use or permit to be used in the service any materials, substance, building practice or technique which.

- by their nature or application contravene any British Standard, EU equivalent, code of practice or agreement certificate issued by the British Board of Agreement, • contravene the recommendations of the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 201 1"
- are generally considered to be deleterious within the building design professions in the UK or • are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long-term integrity of the service."

Insert new clause 28,

28 Design

28.1 The Consultant is appointed as Principal Designer for the service under The Construction (Design and Management) Regulations 2015 and The Building Regulations 2010 (as amended).

28.2 To the extent the Consultant is responsible for any design as part of the service, the Consultant carries out and completes the design using the Standard of Care

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

28.3 The Consultant submits the particulars of its design to the Client for acceptance in accordance with the Scope. A reason for not accepting the Consultant's design is that it does not comply with the Scope, the contract, the quality plan and/or the Standard of Care.

28.4 The Client's acceptance of design does not change the Consultant's obligation to Provide the Service."

3 Time

Delete clause 30.1 and replace with:

"30.1 The Consultant does the work so that Completion is on or before the Completion Date."

Insert new clause 30.4:

"30.4 "The Service Manager may extend the Completion Date and this is not a compensation event."

4 Quality Management

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

Insert new clause 40.4:

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

Delete clause 41.2 and insert the following:

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

Insen new clause 41.33

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

In clause 42.1 insert the following before the full stop: "but such proposal is subject to the Client's approval"

In clause 42.2 in the first line after "Service Manager," insert "with the Client's approval," After "quotation is accepted" insert "by the Client'.

5 Payment

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

In clause 50.5 insert at the end of the clause before the full stop "and such programme has been accepted by the Service Managedt

In clause 53.2 delete %grees with this assessment" in the third line and insert "notifies in writing that the assessment is agreed".

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

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

6 Compensation Events

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

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

Delete clause 60.1(9) and replace with: "An event expressly referred to in clause 80, I,"

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

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

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

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

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

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

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

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

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

Insert new clause 63.14:

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

Insert new clause 63.15:

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

People Rates. The agreed or assessed rate becomes the People Rate for that category of person,"

7 Rights to Material

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

8 Liabilities and Insurance

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

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

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

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

Liability of the Consultant for claims made against it arising out of the Consultant's failure to use the Standard of Care.	The amount stated in the Contract Data
---	--

9 Termination

In clause 90.1 delete "the Service Manager and' in line 2 and in line 3 replace "the Service Managed' with "the Client'.

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

In clause 90.2 delete the Termination Table and replace with.

Termination Table

Terminating Party	Reason	Procedure	Amount Due
The Client	A reason other than RI-R21 RI-R15 or R18 R17, R20 or R21	PI and P2 PI and P2 PI and P2	AI and A3 AI, and A4 AI
The Consultant	RI-RIOB, R16 or R19 R17 or R20	PI and P2 PI and P2	AI and A3

In clause 90.3 replace "the Service Manager with "the Client' and in the second paragraph replace "IR 18 or R22" with "or R 18".

In clause 90.4 after "the Consultant' insert "complies with the Exit plan but"

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

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

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

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

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

Delete clause 91.8 and insert, "Number not used."

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

Insert at the end of clause 93.2:

'IA4 A deduction of the costs, damages, expenses and losses suffered or incurred by or on behalf of the Client as a result of termination of the contract. Where this clause A4 applies then the second bullet point in AI does not apply"

Insert new clauses 93.3 and 93.4:

"93.3 No other payments are made by the Client in consequence of the termination.

93.4 On termination of the contract, the Client is not liable for any loss of profits, bonuses or incentives.

Secondary Options

Delete XI and replace with:

"Price Adjustment for Inflation

X 1 .1 On each anniversary of the Contract Date, the Client or Consultant may apply to change the People Rates by multiplying the relevant people rates by the percentage increase or decrease in the Framework Index provided always that any increase shall not exceed 2.5%.

XI.2 Where the Framework Index is no longer published, the Client and Consultant may agree a fair and reasonable replacement adjustment to the Framework Index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified.

X1.3The Service Manager notifies the Consultant of any change to the People Rates.'

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

Delete X8 and replace with:

,'Undertakings and Novation

"X8.1 If the Consultant subcontracts any part of the service it arranges for the Subcontractor to provide a Subcontractor Undertaking to the Client. The Subcontractor Undertaking to the Client is in the form set out in the Contract Data.

X8.2 The Client prepares the undertakings and sends them to the Consultant for signature, The Consultant arranges for the Subcontractor to sign them and returns them to the Client within three weeks.

X8.3 If the Consultant or Subcontractor fails to sign and return an undertaking within three weeks the proportion of Price for Service Provided to Date made up of time properly spent and recorded on work on the contract by the Subcontractor and/or of payments made to the Subcontractor is retained in assessments of the amount due until such time as the undertaking has been signed and returned,

X8.4 If requested by the Client, the Consultant executes a Deed of Novation in the form set out in the Contract Data within 2 weeks of the request."

In clause after "is paid the amount" insert, ",if any,'

Delete clause X20.5 and replace with:

"X20.5 If the Client intends to change the Incentive Schedule the Service Manager notifies the Consultant. The Consultant may reply with any proposals for

inclusion. The Client considers any proposals from the Consultant. The Client may add or remove a Key Performance Indicator and may add or remove or reduce a payment stated in the Incentive Schedule. The Service Manager notifies the Consultant of any change to the Incentive Schedule.

Schedule of Cost Components

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

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

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

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

"People The following components of the cost of people who are employed or provided by the Consultant (including its suppliers and Subcontractors and their employees and suppliers) and who are providing part of the service.

11 A cost calculated by multiplying each of the People Rates by the total time appropriate to that rate properly spent and recorded on work in the contract. Time recorded is shown in the Consultant's time recording system."

Schedule 4

Defra Conditions

A1 Interpretation

A 1.1 For the purpose of these Defra Conditions, any terms defined in the Contract shall have the same meaning unless otherwise expressly provided herein

A 1.2 In these Defra Conditions, the following definitions shall apply: Audit

Agents are the Client's internal and external auditors:

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

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

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

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

Change of Control is an event where:

- (a) a single person (or group of persons acting in concert) acquires:
 - iControl of the Consultant; or
 - (ii) a direct or indirect interest in the relevant share capital of the Consultant and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the Consultant;
- (b) there is a material detrimental change in the financial standing and/or the credit rating of the Consultant;
- (c) the Consultant is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety;

Claim has the meaning given in clause A25.19.

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

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

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

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

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

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

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

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

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

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

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

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

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

Data Protection Legislation is:

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

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

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

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

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

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

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

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

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

DPA 2018 is the Data Protection Act 2018.

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

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

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

Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 or by any acts or regulations implemented to enact the Acquired

Rights Directive (ARD 77/187/3C), in each case as amended or redacted from time to time.

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

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

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

General Anti-Abuse Rule is:

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

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

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

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

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

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

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

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

Insolvency Event is:

- (a) where the party is an individual, they have:
 - (i) presented an application for bankruptcy; (ii) had a bankruptcy order made against it; (iii) had a receiver appointed over its assets; or

- (iv) made an arrangement with its creditors;
- (b) where the party is a company or partnership and has:
 - (i) had a winding-up order made against it; (ii) had a provisional liquidator appointed to it;
 - (iii) passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (iv) had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule BI to the 1986 Act);
 - (v) had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
 - (vi) made an arrangement with its creditors;
 - (vii) provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction; or
 - (viii) applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986.

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

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

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

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

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

Occasion of Tax Non-Compliance is:

- (a) any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii the failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (b) any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of the Contract came into effect or to a civil penalty for fraud or evasion.

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

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

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

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

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

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

Prohibited Act is:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Client or other Contracting Body or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity;
 - (ii) reward that person for improper performance of the relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; and/or
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Client; or
 - (iv) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

Protective Measures are appropriate technical and organisational measures designed to ensure compliance with obligations of the parties arising under Data Protection Legislation and the Contract, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it including those outlined in clause A2.18.

Regulations is the Public Contracts Regulations (SI 20151108) as amended, extended, re-enacted or replaced from time to time and 'Regulation' means any one of them or (as the case may be) any specified provision of such regulations,

Relevant Requirements are all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

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

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

Security Aspects Letter means the Consultant's signed security aspects letter in the form out in Schedule 9.

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

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

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

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

Subcontract is any subcontract entered into or to be entered into by the Consultant or any purchase order placed or to be placed by the Consultant in connection with the Contract where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the Consultant under that subcontract or purchase order is or is reasonably estimated to be greater than the sum of E25,000 (twenty five thousand pounds sterling) or such other Subcontract package that the Client consider to be material and Subcontractor' shall be construed accordingly.

Supply Chain is:

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

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

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

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

Transfer Date is 00.01 am on 1 0th July 2024

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

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

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



A2 Data Protection

A2.1 In this clause A2 (Data Protection), "Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply.

A2.2 In connection with the Personal Data received under the Contract, each party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal

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

A2.3 The parties acknowledge that for the purposes of Data Protection Legislation, the Client is the Controller and the Consultant is the Processor. The only processing that the Consultant is authorised to do is listed in clause A2.20 by the Client and may not be determined by the Consultant. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR

A2.4 The Consultant shall notify the Client immediately if it considers that any of the Client's instructions infringe Data Protection Legislation.

A2.5 The Consultant shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include;

A2.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;

A2.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the service;

A2.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

A2.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

A2.6 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

A2.6.1 process that Personal Data only in accordance with clause A2.20 and this clause A2 (Data Protection) unless the Consultant is required to do otherwise by Law, If it is so required the Consultant shall promptly notify the Client before processing the Personal Data unless prohibited by Law;

A2.6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject. In the event of the Client reasonably rejecting Protective Measures put in place by the Consultant, the Consultant must propose alternative Protective Measures to the satisfaction of the Client. Failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures. Protective Measures must take account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and (d) cost of implementing any measures;

A2.6.3 ensure that:

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

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

fulfilled,

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

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

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

- A2.7.1 receives a Data Subject Request (or purported Data Subject Request);
- A2.7.2 receives a request to rectify, block or erase any Personal Data;
- A2.7.3 receives any other request, complaint or communication relating to either party's obligations under Data Protection Legislation;
- A2.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
- A2.7.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- A2.7.6 becomes aware of a Data Loss Event.

A2.8 The Consultant's obligation to notify under clause A2.7 shall include the provision of further information to the Client in phases, as details become available.

A2.9 Taking into account the nature of the processing, the Consultant shall provide the Client with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A2.7 (and

insofar as possible within the timescales reasonably required by the Client) including but not limited to promptly providing:

- A2.9.1 the Client with full details and copies of the complaint, communication or request;
- A2.9.2 such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- A2.9.3 the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- A2.9.4 assistance as requested by the Client following any Data Loss Event; and
- A2.9.5 assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

A2.10 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause A2.

A2.11 The Consultant shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.

A2.12 Each party shall designate its own Data Protection Officer if required by Data Protection Legislation.

A2.13 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Consultant must:

- A2.13.1 notify the Client in writing of the intended Sub-processor and processing;
- A2.13.2 obtain the written consent of the Client;
- A2.13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause A2 such that they apply to the Subprocessor; and
- A2.13.4 provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

A2.14 The Consultant shall remain fully liable for all acts or omissions of any of its Subprocessors.

A2.15 The Client may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part Of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

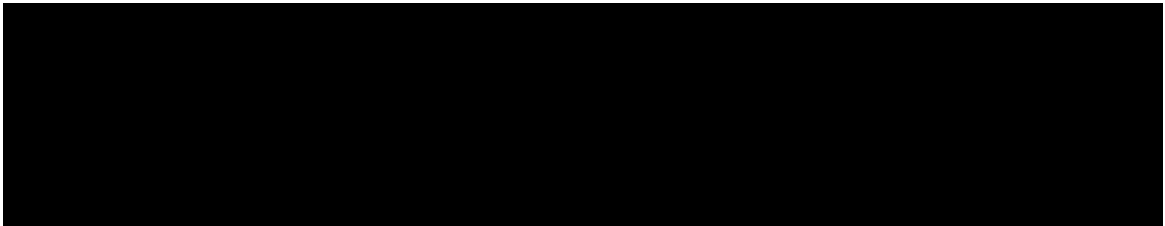
A2.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may upon giving the Consultant not less than thirty

(30) Business Days' notice amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

A2.17 The Consultant indemnifies the Client against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Client arising out of or in connection with any claim or proceedings under any Data Protection Legislation resulting from any act or omission of the Consultant or any Sub-Processor_

A2.18 Within thirty (30) Business Days of the date of termination or expiry of the Contract, the Consultant shall return to the Client any Personal Data that is Processed in connection with the exercise of the parties' rights and obligations under the Contract (unless applicable Law requires storage of the Personal Data) and data belonging to the Client that is in the Consultant's possession, power or control, either in its then current format or in a format nominated by Client, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

A2.19 The contact details of the Data Protection Officers are as follows:



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

Identity of the Controller and Processor	The parties acknowledge that for the purposes of Data Protection Legislation, the Client is the Controller and the Consultant is the Processor in accordance with clause A2.3.
Subject matter of the Processing	The Processing is needed in order to ensure that the Processor can provide the service
	and to exercise and comply with its rights and obligations under the Contract.
Duration of the processing	For the duration of the Contract,

Nature and purposes of processing	the	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of data (whether or not by automated means) of the data. The purpose is: for the exercising and compliance with its rights and obligations under the Contract, including the performance of the service.
Type of Personal Data Processed	being	As per service
Categories of Data Subject		Staff, suppliers and agents of the Client. Other contactors and consultants employed by the Client. Other associated parties of the Client relevant to the exercising and compliance with its rights and obligations under the Contract, including the performance of the service.
International transfers and gateway	legal	No transfers of Personal Data outside of the United Kingdom unless otherwise specified in the Contract.
Plan for return and destruction of the data once the processing is complete		For the duration of the Contract

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

A3 Freedom of Information

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

A3.2 The Consultant:

A3.2.1 transfers to the Client all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;

- A3, 2.2 provides the Client with a copy of all Information relevant to the Request for Information in its possession or power in the form that the Client requires within five (5) Business Days (or such other period as the Client may specify) of the Client's request;
- A3.2,3 provides all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the ERs; and
- A3,2,4 procures that its Subcontractors do likewise.
- A3.3 The Client is responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs.
- A3.4 The Consultant does not respond directly to a Request for Information unless authorised to do so by the Client
- A3.5 The Consultant ensures that all Information is retained for disclosure throughout the period for retention and permits the Client to inspect such records as and when reasonably requested from time to time.

A4

Confidentiality provisions

- A4_1 Subject to clause A4.4:
 - A4.1.1 the Consultant shall, and shall procure that each Subcontractor shall, keep confidential and shall not use for any purpose, other than for the purposes of providing the service, all information relating to the Client, relevant third parties, the service, any contracts, the Contract and any customer information which is required to be protected under the Data Protection Legislation; and
 - A4, 1.2 the Client shall keep confidential all matters relating to the terms of the Contract and the performance by the Consultant of its obligations under the Contract.
- A4.2 The Consultant shall not:
 - A4.2.1 publish or contribute to any article or utilise for any public presentation, seminars, lectures or other form of dissemination any information or knowledge resulting from its involvement in the Contract;
 - A4.2.2 make any statement on behalf of the Client outside the Consultant's responsibility for providing the service; or
 - A4.2.3 take any photograph or video of the service or publish the same, without the prior written consent of the Client
- A4_3 The Consultant shall inform the Client immediately if it comes to the notice of the Consultant that any Confidential Information has been improperly disclosed or misused.

A4.4 The Consultant shall, at its own cost, take such steps necessary (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information. The Consultant shall promptly notify the Client of the Consultant's proposed steps (including legal proceedings) for the approval of the Client. The Consultant shall, at its own cost, take such additional steps (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information as the Client may reasonably require.

A5 Security Measures

A5.1 The Consultant will at the Contract Date have in place the signed and executed Security Aspects Letter and have delivered it to the Client. The Consultant will comply with all requirements in the Security Aspects Letter. Failure to comply with this clause A5.1 shall constitute a substantial failure by the Consultant to comply with its obligations.

A5.2 The Official Secrets Acts 1911 to 1989 apply to the Contract.

A5.3 The Consultant shall notify all Personnel engaged on any work in connection with the Contract of their duties under the Official Secrets Acts 1911 to 1989 and that these acts will continue so to apply after the completion or termination of the Contract.

A5.4 Unless they have the written authorisation of the Client to do otherwise, neither the Consultant nor any of their Personnel shall either before or after the completion or termination of the Contracts do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

A5.4.1 who does not hold the appropriate authority for access to the protected matter;

A5.4.2 in respect of whom the Client has notified the Consultant in writing that the Secret Matter shall not be disclosed to or acquired by that person; or

A5.4.3 who is a Personnel of the Consultant and has no need to know the information for the proper performance of the contract.

A5.5 Unless they have the written authorisation of the Client to do otherwise, the Consultant and their Personnel shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

A5.5.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract; and

A5.5.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request, is delivered up to the Client who shall be entitled to retain it.

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

A5.6 The Consultant shall:

A5.6.1 provide to the Client:

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

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

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

Subcontracts

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

A5.8.1 submit for approval of the Client the name of the proposed Subcontractor, a statement of the work to be carried out and any other details known to the Consultant which the Client shall reasonably require;

A5.8.2 incorporate into the Subcontract such secrecy and security obligations as the Client shall direct; and

A5.8.3 inform the Client immediately if they become aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the Client, terminate the Subcontract,

A6 Cyber Essentials Scheme

A6.1 The Consultant shall, and shall procure that any Subcontractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the "Cyber Essentials Certificate") in relation to the service. The Cyber Essentials Certificate shall be provided by the Consultant to the Client annually on the dates as agreed by the parties.

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

A7 Transparency

A7.1 Notwithstanding any other term of the Contract or these Defra Conditions where applicable, the Consultant understands that the Client may publish the Transparency Information to the general public. The Consultant shall assist and co-operate with the Client to enable the Client to publish the Transparency Information.

A7.2 Before publishing the Transparency Information to the general public in accordance with clause A7.1 above the Client shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIRs, including the Consultant's Confidential Information.

A7.3 The Client may consult with the Consultant before redacting any information from the Transparency Information in accordance with clause A7.2 above. The Consultant acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Client shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.

A7.4 For the avoidance of doubt, nothing in this clause A7 shall affect the Consultant's rights at law.

A8 Intellectual Property Rights

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

Foreground IPR

A8.2 The Consultant shall assign to the Client the Intellectual Property Rights in all Foreground IPR prepared by or on behalf of the Consultant under the Contract (which may also be by way of future assignment) and the Client shall have the right to make use at its absolute discretion of such Foreground IPR for any purpose whatsoever without payment to the Consultant,

AR 3 Where the Consultant is for any reason unable to assign the Intellectual Property Rights in any Foreground IPR under clause A8.2, the Consultant shall grant an exclusive, irrevocable and royalty free licence for any such Intellectual Property Rights to the Client, and the Client shall have the right to make use at its absolute discretion of such Foreground IPR for any purpose whatsoever without payment to the Consultant.

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

Background IPR

- A8.8 Background IPR owned or controlled by a party shall remain vested in and the property of that party or, where applicable, the third party from whom the right to use the Background IPR has derived.
- A8.9 The Consultant hereby grants to the Client a non-exclusive, perpetual, irrevocable, royalty-free, transferable licence to use Background IPR:
- A8.9.1 where such Background IPR is necessary for the Client to fully exploit its rights under any Foreground IPR in connection with the Contract; and
- A8.9.2 for any purpose relating to the Contract, together with the right to grant sub-licences in the same terms as such licence.
- A8.10 The Consultant warrants to the Client that:
- AB. 10.1 it has and will have the legal capacity, right, power and authority to enter into such transfer, assignment or licence of the rights granted in the Contract;
- AB. 10.2 it is the legal and beneficial owner of the Background IPR and Foreground IPR created by or on behalf of the Consultant and/or has the right to grant the rights granted in the Contract relating to Background IPR and Foreground IPR (and each part thereof);
- A8.10.3 the rights granted by the Consultant under the Contract do not infringe (and no part thereof infringes) any Intellectual Property Rights of any third party in any jurisdiction; and
- 0.4 it has not entered into any agreement or arrangement (whether or not legally enforceable) for the assignment or licensing or other use of the Intellectual Property Rights granted by it under the Contract (or any part thereof)

which would in any way prevent restrict or otherwise inhibit the Client's use and exploitation of such Intellectual Property Rights or the Documents (or any part thereof).

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

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

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

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

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

A9

Modern Slavery Act

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

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

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

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

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

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

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

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

A9.3,2 if requested by the Client, a report setting out the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its supply chains or in any part of its business,

A9.4

The Consultant shall notify the Client immediately as it becomes aware of:

A9.4.1 any breach, or potential breach, of any anti-slavery policy of the Client from time to time; or A9.4.2 any actual or suspected slavery, human trafficking, forced or coerced labour in a supply chain that has a connection with the Contract or any breach, or potential breach, of any of the requirements of this clause A9.

A9.5 If the Client identifies or becomes aware of any potential or actual breach of this clause A9, the Client shall raise this with the Consultant and the Consultant will immediately implement a remedial plan to ensure that there are no further breaches of this clause A9. Notwithstanding this, it is acknowledged and agreed that the Client may, at its option and in its absolute discretion, terminate the with immediate effect by giving written notice to the Consultant

AIO Prevention of fraud and bribery

A 10.1 The Consultant represents and warrants that neither it, nor to the best of its knowledge any of its Personnel, have at any time prior to the Contract Date:

AIO.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

AIO.1.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.

A 10.2 Throughout the duration of the Contract the Consultant does not.

AIO.2.1 commit a Prohibited Act; and/or

AI 0.2.2 do or suffer anything to be done which would cause the Client or any of the Client's Personnel consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements-

AI 0.3 In providing the service, the Consultant:

AIO.3,1 establishes, maintains and enforces, and requires that its Subcontractor establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

AIO.3,2 keeps appropriate records of its compliance with the Contract and make such records available to the Client on request; and/or

- AIO.3,3 provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Consultant's Personnel or any person acting on the Consultant's behalf from committing a Prohibited Act.
- AIO.4 The Consultant immediately notifies the Client in writing if it becomes aware of any breach of clauses AIO.1, A 10.2 and/or AIO.3 or has reason to believe that it has or any of the its Personnel or Subcontractors have:
- AIO,4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- .4.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- AI 0.43 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- AI 0.5 If the Consultant makes a notification to the Client pursuant to clause AIO.4, the Consultant responds promptly to the Client's enquiries, co-operates with any investigation, and allows the Client to audit any books, records and/or any other relevant documentation in accordance with these Defra Conditions and the Contract.
- A 10.6 Without prejudice to clause AIO.3 if the Consultant breaches clause AIO.3, the Client may instruct the Consultant to remove a person employed by the Consultant who has caused the Consultant breach and the Consultant shall immediately ensure that person has no further connection with the work included in the Contract.

All Tax Compliance and VAT reverse charge

- AI 1.1 The Consultant represents and warrants that at the Contract Date, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance,
- AI 1.2 If, at any point prior to the Completion Date, an Occasion of Tax Non-Compliance occurs, the Consultant shall.
- All .2.1 notify the Client in writing of such fact within five (5) Business Days of its occurrence; and
- AI 1.2.2 promptly provide to the Client:
- (a) details of the steps which the Consultant is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax NonCompliance as the Client may reasonably require.

AI Pursuant to paragraph (IA) of Article 8 of The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the "Order"), the Client hereby confirms to the Consultant that the requirements specified in paragraph (I)(b) of Article 8 of the Order are satisfied in respect of any supply of "specified services" by the Consultant to the Client under the Contract. Accordingly, any such supplies will be "excepted supplies" due to the Client being an 'end user' for the purposes of the Order. The Client confirms that it will not account for the reverse charge,

AI 2 The Public Contracts Regulations 2015 (also known as PCR 2015)

Award of Contracts

A 12.1 In addition to and without prejudice to the operation of Regulation 71 of the Regulations, the Consultant shall:

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

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

A 12.2 The Consultant's obligations provided in clauses A 12.1. 1 to A 12, 1.2 (inclusive) shall not apply where any of the following applies in relation to a Subcontract:

A 12.2, 1 if that Subcontract shall have been notified by the Consultant to the Client as part of the Consultant's tender submission; or

AI 22.2 if the Client agrees in writing that clauses A12, to A12.1.2 (inclusive) shall not apply in connection with that Subcontract.

AI 2.3 The Consultant shall not advertise or publicise in any manner the subject matter and/or any provision or provisions of any Subcontract and/or the Contract where the Client notifies the Consultant in writing directing the Consultant not to do so.

Termination under Regulation 73

AI 2.4 The occurrence of the following event is deemed to be a substantial failure of the Consultant to comply with its obligations:

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

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

A126 If such a modification or infringement was due to a default by the Consultant, this is treated as a termination because of a substantial failure of the Consultant to comply with its obligations.

A13 Equality

A 13.1 The Consultant shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, races or religion or belief.

A 13.2 Without prejudice to the generality of the obligation in clause A13.1 above, the Consultant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.

AI 3.3 The Consultant agrees to take reasonable efforts to secure the observance of the provisions of this clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.

AI 3.4 The Consultant agrees to take reasonable efforts to reflect this clause in any Subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this clause in their subcontracts that they enter into to satisfy the requirements of the Contract.

AI 4 Fair payment

AI 4.1 The Consultant assesses the amount due to a Subcontractor without taking into account the amount assessed under the Contract.

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

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

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

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

A 14.3 The Consultant notifies the Client of any non-compliance with the timescales for payment. The Consultant includes this provision in each Subcontract and requires Subcontractors to include the same provision in each subcontract,

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

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

A 15 Double Counting

Al 5.1 There shall be no double counting in or under the Contract.

Al 5.2 Where there is double counting, the Consultant shall pay or allow to the Client the relevant amount as a debt on demand.

A 16 Change of Control

A16.1 A Change of Control does not happen without the prior agreement of the Client, and if a Change of Control occurs without the Client's prior agreement, then the Client may treat the Change of Control as a substantial failure by the Consultant to comply with its obligations.

A16.2 The Consultant notifies the Client immediately if a Change of Control has occurred or is expected to occur.

A16.3 If the Change of Control will not allow the Consultant to perform its obligations under the Contract, the Client may treat the Change of Control as a substantial failure by the Consultant to comply with its obligations.

Al 6.4 The Consultant notifies the Client immediately of any material change in the:

Al 6.4.1 direct or indirect legal or beneficial ownership of any shareholding in the Consultant. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the Consultant; or

A 16.4.2 composition of the Consultant Without limitation a change is material if it directly or indirectly affects the performance of the Contract by the Consultant.

A16.5 The Consultant notifies the Client immediately of any change or proposed change in the name or status of the Consultant.

A 16.6 If the Consultant does not provide a notification required by clause A16.4 or A 16.5, the Client may treat that failure as a substantial failure by the Consultant to comply with its obligations.

A 16.7 Where the Client consents to a change or proposed change notified pursuant to this clause A16, such consent may be conditional on, without limitation, the provision of an Ultimate Holding Company Guarantee.

A16.8 Where the Client requests an Ultimate Holding Company Guarantee pursuant to Clal-ISe Al 6.'

- A16.8.1 the Consultant procures the provision of such Ultimate Holding Company Guarantee no later than 2 weeks immediately following the date on which the relevant change comes into effect (or such later date as is agreed with the Client in writing);
- A16.8.2 the Client may treat a failure of the Consultant to provide such Ultimate Holding Company Guarantee in accordance with clause A16.8.1 as a substantial failure of the Consultant to comply with its obligations; and
- A16.8.3 the counterparties to the Ultimate Holding Company Guarantee shall be required to execute and deliver to the Client a signed security aspects letter in a form as the Client may request.

A 17 Conflicts of Interest

AI 7.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any Consultant Related Party is placed in a position where, in the reasonable opinion of the Client:

AI 7.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under the provisions of the Contract and/or these Defra Conditions; or

AI 7, 1.2 the behaviour of the Consultant or the Consultant Related Party is not in the Client's best interest or might adversely affect the Client's reputation.

A 17.2 The Consultant shall, as soon as reasonably practicable, disclose to the Client full particulars of any behaviour which might give rise to an actual or potential conflict,

AI 7.3 In exercising its rights or remedies under this clause AI 7, the Client shall:

AI 73.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the nature of the interests that is or may be an actual conflict or potential conflict; give all due consideration to and,

A17.3.2 where appropriate, require the

Consultant to:

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

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

AI 8 Records and Audit Access

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

AI 8.2 The Consultant permits the Client and any Audit Agent to examine Documents held or controlled by the Consultant or any Subcontractor.

AI 8.3 The Consultant provides such oral or written explanations as the Client and any Audit Agent considers necessary,

AI 8.4 The Consultant acknowledges that, for the purpose of examining and certifying the Client's accounts or any examination pursuant to section 6(1) of the National Audit Act 1983, and any Audit Agent may examine Documents held or controlled by the Consultant or any Subcontractor and may require the Consultant to provide such oral or written explanations as they consider necessary. The Consultant promptly complies with any such requirements at their own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Consultant

and the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the Consultant is not a function exercisable under the Contract.

A 19 Retention and supply of records and data

AI 9.1 The Consultant shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Client when requested on reasonable notice.

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

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

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

A 19.3 With regard to the records made available to the Client under clause A19.1 of this clause, and subject to the provisions of clause A3 (Freedom of Information), the Consultant shall permit records to be examined and if necessary copied, by the Client, as the Client may require.

A 19.4 Unless the Contract specifies otherwise the records referred to in this clause shall be retained for a period of at least 6 years from the:

AI 9.4.1 end of the Contract;

AI 9.4.2 termination of the Contract;
or

AI 9.4.3 final payment,
whichever occurs latest.

AI 9.5 The Consultant agrees to respond within five (5) Business Days to written requests from the Client for copies of all documents related to the delivery of the service under the Contract submitted to the Client' together with suitable identifying documentation for validation against the prices in the People Rates and Prices.

A20 Waiver

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

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

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

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

A21 Severability

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

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

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

A22 Assignment

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

(a) any Contracting Authority;

(a) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or

- (b) any private sector body which substantially performs the functions of the Client,
- (c) any private sector body connected with the SCAH Programme including but not limited to any future building contractor,

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

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

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

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

A23 Continuous Improvement

A23.1 The Consultant shall, throughout the Contract, adopt a policy of continuous improvement in relation to the service pursuant to which it will regularly review with the Client the service and the manner in which it is providing the services with a view to reducing the Client's costs (including the People Rates) and/or improving the quality and efficiency of the service. The Consultant and the Client will provide to each other any information which may be relevant to assisting in fulfilling these objectives,

A23.2 Without limiting paragraph A23.1 and if the Client so requires at any point before the Completion Date, the Consultant shall produce a Continuous Improvement Plan.

A23.3 The Continuous Improvement Plan shall be in the format agreed between the Parties and shall contain, as a minimum, proposals in respect of the following:

- A23.3.1 identifying the emergence of relevant new and evolving technologies;
- A23.3.2 changes in business processes of the Consultant or the Client and ways of working that would provide cost savings and/or enhanced benefits to the Client (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
- A23.3.3 new or potential improvements to the provision of the service and/or service including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Client support services in relation to the service; and

- A 23.3.4 measuring and reducing the sustainability impacts of the Consultant's operations and supply-chains pertaining to the service and identifying opportunities to assist the Client in meeting their sustainability objectives.
- A23.4 As and when required, but at least once every three months, the Consultant shall review the Continuous Improvement Plan and submit any updates or changes to the Client for the Client's approval.
- A23.5 Within two weeks of the Consultant submitting a Continuous Improvement Plan for acceptance, the Client notifies the Consultant of the acceptance of the Continuous Improvement Plan or the reasons for not accepting.
- A23.6 If a proposed Continuous Improvement Plan submitted by the Consultant is rejected then the Consultant shall, within one week of receipt of notice under clause A23.5, submit a revised Continuous Improvement Plan reflecting the changes required.
- A23.7 If it is rejected then the Consultant shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required.
- A23.8 The Consultant shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Consultant shall provide any further information as requested.
- A23.9 Once the proposed Continuous Improvement Plan has been approved by the Client, this shall become the Continuous Improvement Plan for the purposes of the Contract and the Consultant shall effect any resultant changes in its practices or procedures as may be necessary. Any such change is at the Consultant's expense.
- A23.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement shall be deemed to be included in the Fee.
- A23.1 1 Should the Consultant's costs in providing the service to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Client by way of a consequential and immediate reduction in the Prices, Defined Cost and if applicable the People Rates.

A 24 Business Continuity

- A24.1 Within sixty (60) Business Days of the commencement of the Contract, the Consultant shall prepare and submit to the Client for the Client's approval the BCDR Plan.
- A24.2 The BCDR Plan shall be divided into three sections:
- A24.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - A24.2.2 Section 2 which shall relate to business continuity; and
 - A24.2.3 Section 3 which shall relate to Disaster recovery.
- A24.3 Within two weeks of the Consultant submitting a BCDR Plan for acceptance, the Client notifies the Consultant of the acceptance of the BCDR Plan or the reasons for not accepting it.

A24.4 If a proposed BCDR Plan submitted by the Consultant is rejected then the Consultant shall, within one week of receipt of notice under clause A24.3, submit a revised BCDR Plan reflecting the changes required,

A24.5 If the revised BCDR Plan is rejected then the Consultant shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised BCDR Plan reflecting the further changes required.

A24.6 The Consultant shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Consultant shall provide any further information as requested.

A24.7 All costs relating to the compilation or updating of the BCDR Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall be deemed to be included in the Fee.

A24.8 Should the Consultant's costs in providing the service to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the

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

Review and Amendment of the BCDR Plan

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

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

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

Testing the BCDR Plan

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

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

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

Invocation of the BCDR Plan

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

Compensation Events

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

Section 1 of the BCDR Plan — General Principles

A24.17 Section 1 of the BCDR Plan:

- A24.17.1 sets out how the business continuity and Disaster recovery elements of the BCDR Plan link to each other;
- A24.17.2 provides details of how the invocation of any element of the BCDR Plan may impact upon the provision of the service provided to the Client by Others;
- A24.17.3 contains an obligation upon the Consultant to liaise with the Client and Others with respect to business continuity and Disaster recovery;
- A24, 17.4 contains a communication strategy including details of an incident and problem management service;
- A24.17,5 contains a risk analysis, including.
 - (i) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (ii) identification of risks arising from the interaction of the provision of the service provided by Others; and
 - (iii) a business impact analysis of different anticipated failures or disruptions;
- A24, 17.6 identifies the procedures for reverting to "normal service"; and
 - 17.7 sets out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss.
- A24.18.1 the service is provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- A24.18.2 the adverse impact of any Disaster is minimised as far as reasonably possible;

A24.18.3 it complies with the relevant industry standards from time to time in force; and

A24.18.4 it details a process for the management of Disaster recovery testing.

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

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

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

Section 2 of the BCDR Plan — Business Continuity

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

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

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

Section 3 of the BCDR Plan — Disaster Recovery

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

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

A24.23.1 loss of access to any property owned or occupied by the Client;

A24.23.2 loss of utilities to any property owned or occupied by the Client;

A24.23.3 loss of a Subcontractor;

A24.23.4 emergency notification and escalation process;

A24.23.5 post implementation review process;

A24.23.6 any applicable Key Performance Indicators;

A24.23.7 details of how the Consultant shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the BCDR Plan is invoked; and

A24.23.8 testing and management arrangements.

A25 TUPE

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

- A25.1 The parties acknowledge that, pursuant to the Employment Regulations, the employment of the Employees will transfer from the Existing Providers to the Consultant (or as appropriate, the relevant Subcontractor) with effect from the Transfer Date subject to the right to object to the transfer under regulation 4(7) of the Employment Regulations.
- A25.2 The Client shall use its reasonable endeavours to procure the assistance and cooperation of the Existing Providers to assist the Consultant to effect the smooth transfer(s) of the employment of the Employees.
- A25.3 The Client shall seek to procure from the Existing Providers such information about the Employees as it is contractually entitled to obtain from the Existing Providers or that the Consultant reasonably requests.
- A25.4 The Consultant shall indemnify the Client (for its benefit and the benefit of any Existing Provider) in full for and against all Employment Liabilities in relation to the following•
- A25.4.1 any failure by the Consultant or any Subcontractor to comply with its obligations pursuant to the Employment Regulations, save where this
arises from a failure of an Existing Provider to comply with its or their duties under regulation 13 of the Employment Regulations; or
 - A25.4.2 anything done or omitted to be done by the Consultant or any Subcontractor in respect of the Employees.

Provisions during the term

- A25.5 During the term of this Contract, the Consultant shall provide to the Client any information the Client may reasonably require relating to any individual employed, assigned or engaged in providing the service under this Contract (subject to the Data Protection Legislation).
- A25.6 During the term of this Contract, the Consultant shall not and shall procure any Subcontractor will not, without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed):

- A25.6.1 introduce or increase the sums payable under any contractual scheme or arrangement under which any member of Consultant Personnel who is wholly or mainly assigned to the provision of the service would be entitled to a payment upon redundancy in excess of the statutory scheme provided under the Employment Rights Act 1996 (ERA);
- A25.6.2 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Consultant Personnel;
- A25.6.3 introduce, or increase the sums payable under, any contractual bonus or other incentive scheme which a member of the Consultant's Personnel is contractually entitled to participate in or receive payments or awards under; or
- A25.6.4 introduce into any pension scheme in which any member of the Consultant Personnel who is wholly or mainly assigned to the provision of the service participates or increase any enhanced rights in respect of early or deferred retirement or any rights which do not relate to benefits for old age, invalidity or survivors.

Exit Provisions

- A25.7 If the identity of the provider of the service (or any part of the service) changes (whether because of termination or expiry of the Contract) this may result in a transfer of the service in whole or in part (a "Service Transfer").
- A25.8 If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations, then the employment of the Transferring Employees will transfer to the Client or any New Consultant with effect from the Service Transfer Date subject to the right to object to the transfer under regulation 4(7) of the Employment Regulations.
- A25.9 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Employment Regulations, the parties shall co-operate in agreeing a list of Transferring Employees prior to the Service Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the Client and/or any New Consultant.
- A25.10 The Consultant will, to the extent it is compliant with the Data Protection Legislation:
 - A25.10.1 Within twenty (20) days of the earliest of:
 - (i) receipt of a notification from the Client of a Service Transfer or intended Service Transfer; (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
 - (iii) the date which is six (6) months before the expiry of Contract,
 and, in any event, on receipt of a written request of the Client at any time, provide the Consultant's Provisional Staff List and the Personnel Information to the Client or, at the direction of the Client, to a New Consultant.

- A25.10.2 At least 28 days before the Service Transfer Date, the Consultant shall prepare and provide to the Client and/or, at the direction of the Client, to the New Consultant, the Consultant's Final Staff List. The Consultant's Final Staff List shall identify which of the Consultant's Personnel named are Transferring Employees.
- A25.10.3 The Client shall be permitted to use and disclose the Consultant's Provisional Staff List, the Consultant's Final Staff List and the Personnel Information for informing any tenderer or other prospective New Consultant for any services which are substantially the same type of services (or any part thereof) as the service, provided that such information is only disclosed by the Client after the tenderer or prospective New Consultant has entered into a suitably worded confidentiality agreement with the Client warranting to keep the information confidential.
- A25.11.1 From the date of the earliest event referred to in clause A25.10, the Consultant agrees that it shall not, and will procure any Subcontractor will not, without the prior written consent of the Client assign any person to the provision of the service (or the relevant part) which is the subject of a Service Transfer who is not listed in the Consultant's Provisional Staff List and shall not without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed):
- A25.11.1.1 make, propose, or permit any changes to the terms and conditions of employment of any employees listed on the Consultant's Provisional Staff List;
 - A25.11.1.2 increase the proportion of working time spent on the service (or the relevant part) by any of the Consultant's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Client';
 - A25.11.3 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Consultant's Provisional Staff List; and
 - 11.4 replace any of the Consultant's Personnel listed on the Consultant's Provisional Staff List or deploy any other person to provide the service (or the relevant part) or increase the number of employees on the Consultant's Provisional Staff List; or
 - A25.11.5 terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Staff List save where this is by reason of conduct or capability (performance).
- A25.12 From the date of the earliest event referred to in clause A25.10, the Consultant will promptly notify the Client or, at the direction of the Client, the New Consultant of any notice to terminate employment received from any persons listed on the Consultant's Provisional Staff List regardless of when such notice takes effect.
- A25.13 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that the Consultant shall, or shall procure that any Subcontractor shall, perform and discharge all its obligations pursuant to the Employment Regulations in

respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date.

A25.14 The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer in accordance with the Employment Regulations will be fulfilled. The Consultant agrees that it will consent to, and co-operate with, pre-transfer consultation by any New Consultant under Part IV of TULRCA, provided that the New Consultant acts fairly and reasonably and complies with its collective consultation obligations and provided that the Client agrees that any disruption to the provisions of the service caused by such pre-transfer consultation would not constitute a breach of this Contract.

A25.15 The Consultant shall indemnify the Client (for its benefit and the benefit of any New Consultant) in full for and against all Employment Liabilities in relation to the following:

- A25.15.1 the termination by the Consultant or any Subcontractor of the employment of any of the Transferring Employees at any time before the Service Transfer Date;
- A25.15.2 any emoluments payable to the Consultant's Personnel (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date, or if there is no Subsequent Transfer Date, the date with effect from which this Contract is terminated;
- A25.15.3 anything done or omitted to be done by the Consultant or any Subcontractor in respect of the Transferring Employees on or before the Service Transfer Date which is deemed to be done by the Client or New Consultant by virtue of the Employment Regulations;
- A25.15.4 any failure by the Consultant or any Subcontractor to comply with its or their obligations under regulations 13 and 14 of the Employment Regulations, or any award of compensation under regulation 15 of the Employment Regulations, save where such failure arises from the failure of the Client or any New Consultant to comply with its or their duties under regulation 13 of the Employment Regulations; or
- A25.15.5 a claim by any person who transfers or alleges that they have transferred to the Client or the New Consultant but who is not a Transferring Employee identified on the Consultant's Final Staff List.

A25.16 The Client shall assume (or, if the Transferring Employees' employment transfers to a New Consultant, the Client shall use reasonable endeavours to ensure that the New Consultant shall assume) the outstanding obligations of the Consultant or any Subcontractor in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.

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

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

Conduct of Claims

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

A25.19.1 take such action in connection with the Claim, as the Indemnifying Party shall from time to time reasonably request;

A25.19.2 provide free of charge all such assistance and information as the Indemnifying Party may reasonably request relating to the Claim to enable the Claim to be pursued,

A25.19.3 subject to any restriction imposed by Law, provide the Indemnifying Party, its legal and other advisers with access to all documents, records or other information held by it relating to the Claim;

A25.19.4 provide the Indemnifying Party and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Indemnifying Party with the preparation of its cases in relation to the Claim;

A25.19.5 permit and require such employees as the Indemnifying Party and/or its professional advisers may reasonably request to meet with the Indemnifying Party and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claim for so long and as frequently as the Indemnifying Party and/or its legal or other professional advisers may reasonably require;

A25.19.6

provide such other assistance as the Indemnifying Party may reasonably request in order to ensure the due and timely prosecution of the Claim;

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

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

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

Schedule 5

Scope

Annex A — Scope of Services

Department for
Environment
Food & Rural Affairs

Science Capability in Animal Health (SCAH) Programme

Technical Partner Services

Scope of Services

Contents

Annex A— Scope of Services... ..	1
1.Introduction.....	4
1 .1 Purpose of Document.....	4
1 .2, SCAH Programme Objectives.....	4
1 .3. Context of Services.....	5
2. Outcome Specification.....	7
2.1 . Service Requirement.....	7
2,2. Mobilisation and Transition from RIBA Stage 2,.....	8
2.3. Science Hub(s) and selected auxiliary building(s) and enabling project(s) 10	
2.3.1 . RIBA Stage 3 (Spatial Coordination) Design Services	10
2.3.2. Mock-Ups Specification and Delivery Services	13
2.3.3. Technical review services to maintain design intent (RIBA 4+).	13
2.4. Infrastructure.....	14
2.5. Principal Designer Services.....	15
2.5.1 . CDM Principal Designer.....	15
2.5.2. BR Principal Designer	16
2.6. Town and Country Planning Support.....	17
2.7. Advisory Services.....	17
2.8. Design Services for Enabling and other sitewide projects.....	17
3. Requirements.....	18
3.1 . Service Delivery	18
3.2 Communication and Reporting.....	19

3.3	SCAH Programme Governance and Assurance	20
3.4	Work Breakdown Structure.....	22
3.5	Existing Information	23
3.6	Specifications and Standards.....	23
3.7,	Collaboration and Ways of Working	23
3.8.	Quality Management System.....	24
3.9.	Health and Safety Requirements.....	24
3.1 0.	Statutory Requirements....	24
3.1 1 .	Social Value and Sustainability	25
3.12.	Information Management.....	25
3.1 3.	Information Security.....	25
3, 1 4.	Location ,.....	25
3.1 5.	APHA - nature of the work.....	26
Appendix A. 1:	SCAH Programme Science Hub Mock Ups	27

1 . Introduction

1 .1 . Purpose of Document

The purpose of this document is to provide a Scope of Services to form part of the NEC4 Professional Services Contract for a Consultant (the multi-disciplinary Technical Partner) for the Science Capability in Animal Health (SCAH) Programme.

1.2. SCAH Programme Objectives

The SCAH Programme is a 15-year Government Major Projects Portfolio (GMPP) programme delivering an ambitious set of complex construction and transformation outcomes in a highcontainment environment, transforming the animal science facility at Weybridge, with a commitment to:

- Safeguard and enhance the UK's capability to respond to the threat from zoonotic diseases
- Underpin the UK's trade capability and food supply
- Protect public health

The Animal and Plant Health Agency's (APHA) Weybridge site is the UK's primary capability for managing continuously evolving threats posed by the spread of high-risk diseases carried by animals — which can have significant impacts on public health, the environment, and the economy. The Weybridge estate was established in 1917 and has been developed in a piecemeal fashion ever since. Weybridge's high-containment laboratories and other facilities are an integrated system but are not currently designed as one.

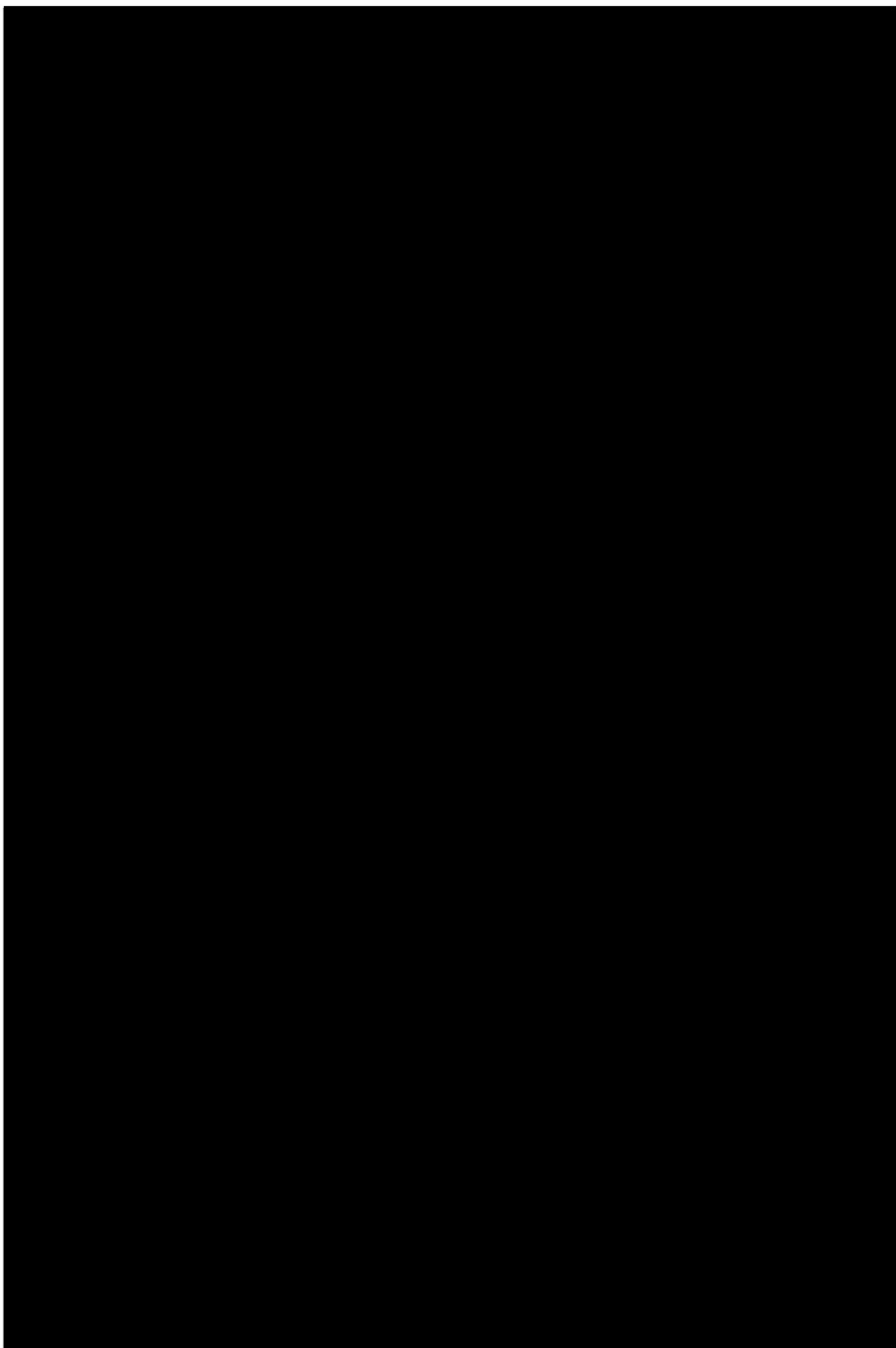
The SCAH Programme proposes to replace and consolidate all the main high containment facilities at Weybridge into a single Science Hub complex, which has both the highest-level of containment for zoonotic diseases and sufficient laboratory capacity to run preventative research and manage future outbreaks.

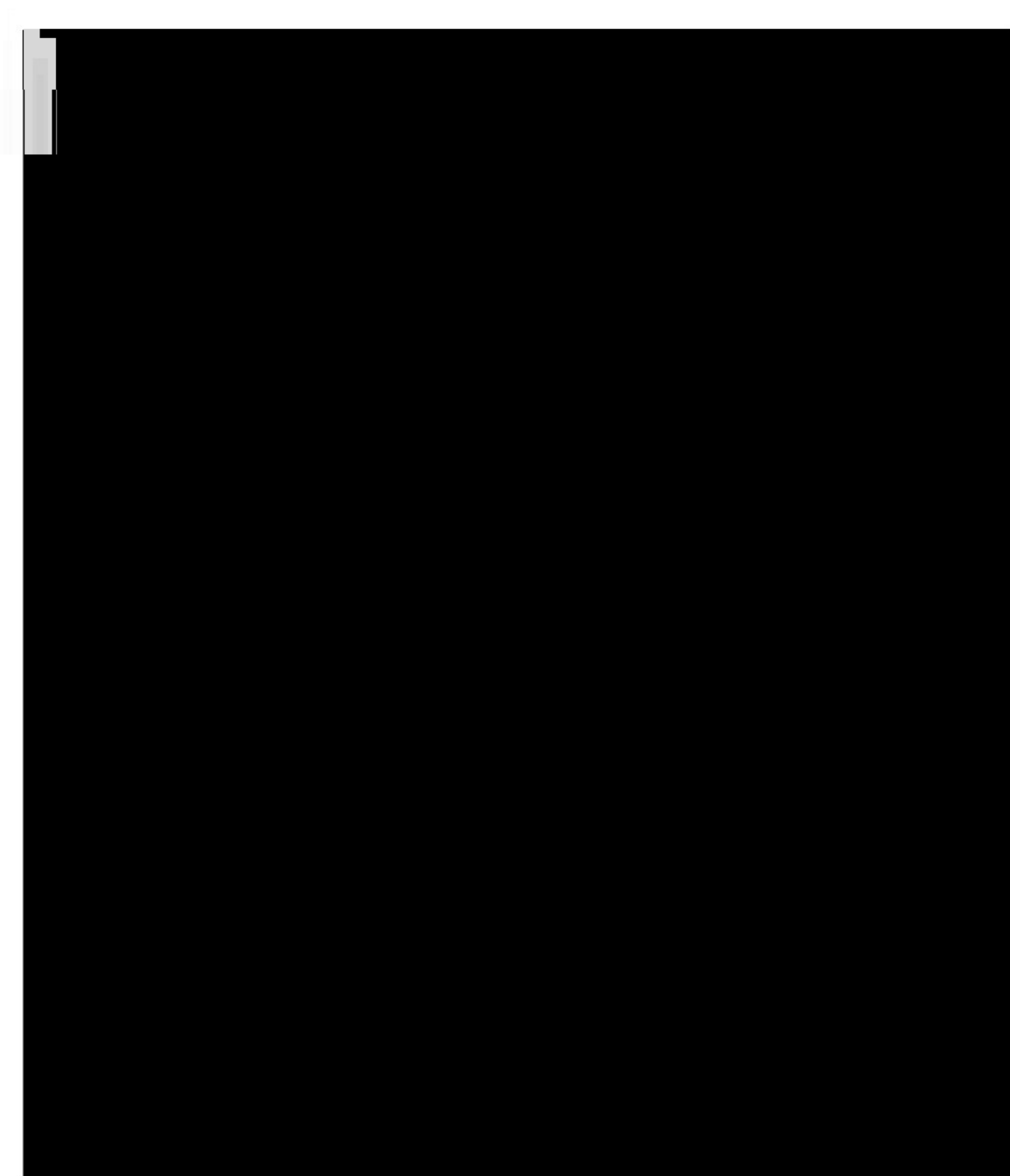


Figure 1: High level schematic of the site's footprint

The SCAH Programme will secure the future of this critical national asset and the world class science it delivers. A plan for the proposed scheme at Weybridge has been developed

to define the scope, costs, and schedule. An indicative 15-year schedule has been developed, which sets out how the programme will be delivered in Tranches.





2. Outcome Specification

2.1. Service Requirement

The Consultant (the Technical Partner) is required to deliver multi-disciplinary design services for the SCAH Programme across the Science Hub buildings, selected auxiliary building(s), the sitewide infrastructure, and selected enabling project(s), within the scope of the SCAH Programme and including the integration and interfaces of the overall scheme design to the Client.

The SCAH Programme is looking for an experienced consultant to provide specialist design and technical input for the duration of the Programme. The Consultant shall have experience of delivering the services required within a similar programme of comparable scope, scale, and criticality, with experience of high containment, biosecurity, and complex science. The Consultant shall utilise lessons learned from their experience of similar programmes to add value and implement best practice on the SCAH Programme.

The Consultant shall provide a multi-disciplinary design services team of suitably qualified personnel with experience and expertise relevant to the SCAH Programme, including, but not limited to:

- Lead Designer Services
- Architecture
- Mechanical Engineering ● Electrical Engineering
- Public Health Engineering
- Civil and Structural Engineering
- Technology Engineering
- High Containment Facility Design
- Laboratory Specialist Design ● Security Engineering
- Fire Engineering
- Principal Designer (CDM 2015 and BR 2010 (amended))
- Building Information Management (BIM) and Digital Information Management
- Environmental and Energy Engineering
- Ecology and Biodiversity Advisory Services
- Town and Country Planning Support

The incumbent multi-disciplinary Technical Partner has worked with the SCAH Programme and APHA to complete the Project Brief and develop the design to the end of RIBA Stage 2. The Architectural and Engineering Concepts are to be signed off, and the project will proceed to RIBA Stage 3 with the spatial requirements and room adjacencies concluded.

The Consultant shall develop the signed off concept design and provide to the Client the Architectural and Engineering information completed in accordance with RIBA Stage 3

Spatial Coordination. The Consultant should consider all relevant guidance and legislation and work closely with the Client and other Partners to deliver an affordable, licensable and deliverable design. The Consultant shall develop the RIBA Stage 3 design such that the cost and quality of the scheme represents value for money and can be constructed within the approved budget and to other programme constraints.

The Consultant shall be responsible for ensuring the design is acceptable to the Client, is designed to planning constraints and any other associated approvals and is acceptable to statutory and key stakeholders. The completed design, and all associated and agreed upon deliverables, will then go through a RIBA Stage 3 sign off process, to a standard which supports a structured handover of the design to the Works Contractor(s) and their design consultant(s), permitting an effective mobilisation of the Work Contractor(s) at RIBA Stage 4.

The Consultant is required to take on the role of CDM Principal Designer as defined under the Construction (Design and Management) Regulations 2015 (CDM 2015) and the role of BR Principal Designer under the Building Safety Act 2022 (BSA 2022) and the Building Regulations 2010 (BR 2010) as amended by the Building etc. (Amendment) (England) Regulations 2023 (BR 2023). The Consultant shall retain the Principal Designer dutyholder roles from RIBA Stage 3 to Completion of the Consultant's contract. The Consultant is required to meet the services of a CDM Principal Designer as defined by the Health and Safety Executive (HSE) by planning, managing, monitoring, and coordinating health and safety in the pre-construction phase in support of the Client and other designers, which may include Critical Works projects for DgP outside of the SCAH Programme if instructed by the Service Manager.

The Client submitted a Master Outline Planning Application (MOPA) in February 2024 with the support of a Town Planning Consultant appointed for the duration of the SCAH Programme and anticipates a decision in June 2024. The Consultant shall prepare materials for applications covering the proposed construction works to the Local Planning Authority for the approval of reserved matters, the discharge of conditions and other applications which may be required under the MOPA. The Consultant shall work with the Town Planning Consultant to identify the applications and the associated materials required and provide support for submission and consultation as required.

Following a successful handover of the design to the Works Contractor(s), the Consultant shall provide continued support to the Client through the remaining stages of the projects to provide technical review services. The Consultant shall protect the design intent of the scheme, provide technical assurance, input into the change control and risk procedures, and in any other activities which support the SCAH Programme in the licensing process postcommissioning and validation.



Schedule 7

part I — Subcontractor Undertaking to the Client

DATED

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

and

WSP UK LIMITED (2)

and

[SUB-CONSULTANT] (3)

Warranty relating to [INSERT
PROJECT
DESCRIPTION]

747387416 6

THIS WARRANTY is made on

BETWEEN:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at 2 Marsham St, London SW1 P 4DF ("Client" which expression shall include its successors in title and assigns); and
- (2) WSP UK LIMITED of WSP House, 70 Chancery Lane, London, WC2A 1AF (Registered in England No 01383511) ("Consultant"); and
- (3) [SUB-CONSULTANT] of [INSERT] (Registered in England No. [INSERT]) ("Sub-Consultant").

BACKGROUND:

- (A) The Client has entered into a contract with the Consultant dated [INSERT DATE] (the "Appointment") for the performance of the services described in the Appointment ("Service") [INSERT DETAILS OF THE WORKS] ("Project").
- (B) The Consultant has entered into a sub-consultancy appointment dated [INSERT DATE] (the "Sub Consultant's Appointment") with the Sub-Consultant for the performance of the services described in the Sub-Consultant's Appointment (the "Sub-Consultant's Services").
- (C) It is a condition of the Appointment and of the Sub Consultant's Appointment that the Sub-Consultant gives, and the Consultant is a party to, this Warranty to the Client.

In consideration of the payment of £1 (a pound) by the Client to the Sub-Consultant (receipt of which the Sub-Consultant acknowledges) IT IS AGREED

1 The Sub-Consultant's Services

1.1 The Sub-Consultant undertakes and warrants to the Client that:

- 1.1.1 the Sub-Consultant has complied and shall comply with the Sub-Consultant's obligations under and in connection with the Sub-Consultant Appointment in accordance with it; and
- 1.1.2 the Sub-Consultant has used and shall use, in the performance of the Sub-Consultant's Services, reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and carrying out services of a similar scope, nature, complexity and timescale to the Sub-Consultant's Services.

2 Materials and building practices

2.1 Subject to clause 1.1.2, the Sub-Consultant undertakes and warrants to the Client that it shall not use or permit to be used in the Works any materials, substance, building practice or technique which.

- a) by their nature or application contravene any British Standard, EU equivalent, code of practice or agrément certificate issued by the British Board of Agrément;
- b) contravene the recommendations of the British Council for Offices' publication:
"Good Practice in the Selection of Construction Materials 201 1";
- c) are generally considered to be deleterious within the building design professions in the UK; or
- d) are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long term integrity of the Project.

3 Documents

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

3.2 To the extent not already granted or licensed to the Client, the Sub-Consultant grants to the Client an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding the completion of the Sub-Consultant's Services or the termination of the Sub-Consultant's engagement under the Sub-Consultant's Appointment, to copy and use the Documents and to reproduce the designs and contents of them for:

32.1 any purpose relating to the Project and/or the Client's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment reinstatement, repair, sale and use of the Project and/or the Client's interest in the Project; and

3.2.2 the extension of the Works or the Project, so that the Client can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project,

3.3 The Client shall be entitled to grant sub-licences under the Client's licence and both the Client's licence and any sub-licences shall be transferable to others.

3.4 The Sub-Consultant undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Client and it shall include any sub-licensees and assignees under clause 3.3,

747387416_6

any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Consultant's Appointment and any successors in title to the Client's business.

3.5 Notwithstanding the completion of the Sub-Consultant's Services or the termination of the Sub-Consultant's engagement under the Sub-Consultant's Appointment, the SubConsultant shall give to the Client any paper copies and electronic copies of the Documents that the Client reasonably requests. The Sub-Consultant shall give these copies to the Client within seven days of any request, and the Client shall pay the Sub Consultant's reasonable copying costs. The Sub-Consultant shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Consultant gives to the Client.

3.6 The Sub-Consultant shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared or provided for.

4 Insurance2

4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Consultant shall take out and maintain [professional indemnity] [product liability] insurance [that will cover all of the Sub-Consultant's Services] from the date of the Sub-Consultant's engagement under the Sub Consultant's Appointment until the date that is 12 years after the date of practical completion of the Project,

4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom; and

41.2 with a limit of indemnity of not less than E£ 0,000,000 (Cten million pounds)) [for each claim or series of claims arising from the same originating or underlying cause][in the aggregate with automatic reinstatements in any one period of insurance][, and ([five million pounds]) in the aggregate for all claims in the period of insurance relating to pollution or contamination], and £[5,000,000] ([five million pounds]) in the aggregate for all claims in the period of insurance relating to asbestos],

4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the SubConsultant's

claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty;

4.3 As and when it is reasonably required to do so by the Client, the Sub-Consultant shall make available for inspection by the Client documentary evidence that the insurance is being maintained in accordance with this Warranty;

4.4 Subject to clause 4.12, the Sub-Consultant shall inform the Client as soon as reasonably practicable if this insurance ceases to be available to the Sub-Consultant at reasonable premium rates or on reasonable commercial terms. If this happens:

4.4.1 the Client and the Sub-Consultant shall discuss and agree on the best means of protecting themselves; and

² This clause should reflect the insurance requirements of the respective sub-contract.

4.4.2 the Client may require the Sub-Consultant to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Consultant. If the Client exercises this right, subject to clause 4.2, it shall reimburse to the Sub-Consultant the difference between (the premium paid and the premium that would have been reasonable)

4.5 If required by the terms of its Insurance policy, the Sub-Consultant undertakes and warrants that;

4.5.1 prior to the execution of this Warranty, it has,

disclosed the contents of this Warranty to its insurers and brokers, and

received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy and

4.5.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance,

5 Termination and suspension by Sub-Consultant

5.1 For the purposes of this Warranty, "Another Person" means any Ministerial department, Non-ministerial department or executive agency with an interest in the

5.2 The Sub-Consultant shall not exercise any right which the Sub-Consultant has to rescind or terminate the Sub-Consultant's Appointment or its engagement under the Sub-Consultant's Appointment, or to suspend or discontinue the Sub-Consultant's Services, unless the Sub-Consultant has given at least 31 days' prior written notice to the Consultant and the Client specifying,

5.2.1 the breach of the Sub-Consultant's Appointment which the Sub-Consultant considers entitles it to rescind or terminate the Sub-Consultant's Appointment or its engagement under the Sub-Consultant's Appointment, or to suspend or discontinue the Sub-Consultant's Services; and

5.2.2 full details of any amounts owed by and due from the Consultant to the SubConsultant under the Sub-Consultant's Appointment for the last three outstanding invoices covering the three invoicing periods before that in which the notice is given.

5.3 Within 31 days of receipt of a notice under clause 5.2, if the Client notifies the SubConsultant that it or Another Person wishes to enter into a new agreement with the Sub-Consultant on the same terms and conditions as the Sub Consultant's Appointment to complete the Sub-Consultant's Services under the Sub Consultant's Appointment in accordance with it:

5.3.1 the Sub-Consultant shall enter into a new agreement with the Client or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Consultant's Appointment and, if this happens, the Sub-Consultant's Appointment shall terminate but, subject to clause 5 3.2, without prejudice to the accrued rights of the parties;

747387416_6

5.3.2 if the Sub-Consultant's Appointment is terminated in accordance with clause 5.3.1, the Sub-Consultant shall not have a claim against the Consultant arising solely out of the termination; and

5.33 subject to clause 5.2, if the Sub-Consultant's Appointment has been terminated in accordance with clause 5.3. 1, pending entry into the new agreement, the Sub-Consultant shall comply with the instructions of the Client (or Another Person) under the Sub-Consultant's Appointment as if it had not been terminated, and the Client shall pay (or shall procure that Another Person shall pay) to the Sub-Consultant all sums owed and due to it for the Sub-Consultant's Services it has performed pursuant to those instructions.

54 The Client shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Consultant for the Sub-Consultant's Services it performs from the date of the new agreement, but it shall have no other liability in respect of the Sub-Consultant's Appointment except that the Client shall pay (or shall procure that Another Person shall pay) to the Sub-Consultant:

5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and

54.2 any amounts accrued and unpaid that are owed by and due from the Consultant to the Sub-Consultant for the period from the date of the last invoice referred to in clause 5.2.2 until the date of the new agreement.

5.5 If the breach of the Sub-Consultant's Appointment referred to in clause 5.2.1 has been remedied and the Sub-Consultant has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Consultant, the rights of the SubConsultant and the Client to enter into (and the right of the Client to appoint Another Person to enter into) a new agreement shall cease.

5.6 If the Sub-Consultant has given rights relating to the Sub-Consultant's Appointment similar to those in clause 5 to more than one person, and more than one person notifies the Sub-Consultant that it wishes to enter into a new agreement with the SubConsultant in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):

5.6.1 a notice served by the Client; and

5.6.2 a notice served by any other beneficiary;

all notices that the Sub-Consultant receives shall take effect in accordance with this order of priority.

6 Termination of the Appointment

6.1 If the Client gives written notice to the Consultant and the Sub-Consultant that the Appointment has been rescinded or terminated, at any time within 31 days of giving the notice, the Client may either:

6.1 .1 comply with the obligations of the Consultant under the Sub-Consultant's Appointment and, if this happens, the Sub-Consultant shall comply with its obligations and perform the Sub-Consultant's Services under the SubConsultant's Appointment, and the Client shall comply with the obligations

of the Consultant under the Sub-Consultant's Appointment, as though the Client was and always had been the employer under the Sub-Consultant's Appointment in the place of the Consultant; or

6.1.2 enter into (or appoint Another Person to enter into), and require the SubConsultant to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.

6.2 After it has received the notice given under clause 6.1, the Sub-Consultant shall comply with the instructions of the Client (or Another Person), and the Sub-Consultant shall enter into a new agreement at the Client's written request as described in clause 6.1.2.

6.3 The Sub-Consultant may treat the Client's notice under clause 6.1 that the Appointment has been rescinded or terminated as sufficient evidence that this has happened.

6.4 The Consultant shall not have a claim against the Sub-Consultant arising solely out of the Sub-Consultant's compliance with the instructions of the Client (or Another Person) in accordance with clause 6.

7 Conflict

7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Consultant's Appointment, the terms and conditions of this Warranty shall have priority.

8 Limitation

8.1 In any action, claim or proceedings brought against the Sub-Consultant by the Client, the Sub-Consultant may rely on the same limitations as are in the Sub-Consultant's Appointment and raise the equivalent rights in defence of liability as it would have if the Client were named as joint employer in the Sub-Consultant's Appointment, provided that the Sub-Consultant shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Client is of a different kind or type from that which would have been suffered by the Consultant.

8.2 No action or proceeding for any breach of this Warranty shall be commenced by either party against the other after the date that is 12 years after the date of practical completion of the Project.

9 Assignment

9.1 At any time, the Client may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Consultant to:

9.1.1 a mortgagee of the Client; or

9.1 .2 any holding, subsidiary or associated company of the Client within the meaning of sections 1159 or 1 162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

9.2 At any time, the Client may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Consultant⁶ on two occasions only. The consent of the Sub-Consultant, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers,

10 Contracts (Rights of Third Parties) Act 1999

10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

1 1 , 1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Client, any of the other consultants, the Consultant or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Consultant's obligations or liability under the Sub-Consultant's Appointment or this Warranty.

1 1 .2 The failure or delay of a party to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by a party shall be effective unless it is in writing,

12 Severability

12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

13.1 This Warranty may be executed in one or more counterparts, Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at

the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.

14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

15.1 This Warranty shall be governed by, and construed and interpreted in accordance with English law.

15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts,

except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

16.1 This Warranty is executed as a deed and it was delivered when it was dated.

[insert DEFRA execution block] (CAPITAL LETTERS)

Executed as a deed by UNSERT CONSULTANTj
acting by either two directors or one director
and the company secretary :

Director's name (CAPITAL LETTERS)

Director's name (CAPITAL LETTERS)

Executed as a deed by [INSERT
SUBCONSULTANT] acting by either two
directors or one director and the company
secretary:

Director's name (CAPITAL LETTERS)

Director's/Companysecretary's name

6

Director's signature

Director's signature

Director's signature

Director's/Company
signature

secretary's

Part 2 - Deed of Novation of Consultant's Appointment

DATED

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

and

WSP UK LIMITED (2)

and

[NAME OF CONTRACTOR] (3)

DEED OF NOVATION for
[PROJECT DESCRIPTION]

THIS NOVATION is made on

BETWEEN:

- 1 THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at 2 Marsham St, London SW1 P 4DF ("Client" which expression shall include its successors in title and assigns);
- (2) WSP UK LIMITED (company number 01383511) whose registered office is at WSP House, 70 Chancery Lane, London WC2A IAF ("Consultant"); and
- (3) [NAME OF CONTRACTOR] (company number [number]) whose registered office is at [address] ("Contract").

BACKGROUND,

- (A) The Client has entered into a contract with the Contractor dated [DATE] ("Contract") for the carrying out of the work described in the Contract for [DESCRIPTION] ("Project").
- (B) The Client has entered into a contract with the Consultant dated [DATE] ("Appointment") for the performance of the services described in the Appointment ("service") for the Project.
- (C) It is a condition of the Appointment and of the Contract that the Consultant and the Contractor enter into this Novation with the Client and that, at the same time, the Consultant gives, and the Contractor is a party to, a deed of collateral warranty to the Client in the form set out in Schedule 1 to this Novation.

In consideration of the payment of £1 (a pound) by the Client to both the Consultant and the Contractor (receipt of which both the Consultant and the Contractor acknowledge) IT IS AGREED.

1 Agreement to novation

- 1.1 The Client, the Consultant and the Contractor agree that the Appointment shall be novated from the Client and the Consultant to the Contractor and the Consultant by this Novation.

2 Effect of novation

- 2.1 The Client, the Consultant and the Contractor agree that the Appointment shall be made, and shall be deemed to have been made, between the Contractor and the Consultant instead of between the Client and the Consultant from the date of the Appointment, or from the date on which the Consultant began to perform the service or any additional services, whichever is the earlier, for all purposes and in respect of all benefits, rights, obligations and liabilities under or in connection with the Appointment, whether they have been performed or are to be performed, and that the Appointment shall be read and construed accordingly.

3 Binding and compliance of Contractor

3.1 The Contractor undertakes and warrants that it shall be bound by the Appointment and comply with it as if it had been a party to the Appointment instead of the Client, and that it shall comply with and accept the Client's obligations and liabilities under the Appointment, in both cases from the date of the Appointment or from the date on which

the Consultant began to perform the service or any additional services, whichever is the earlier.

4 Contractor's non-compliance

4.1 If the Contractor does not comply with clause 3.1, the Contractor shall indemnify the Client for all costs, expenses, liabilities and losses that the Client incurs or suffers under or in connection with the Appointment as a result of the Contractor's non-compliance.

5 Consultant's release of Client

5.1 The Consultant discharges and releases the Client from compliance with, and from claims, demands and liability under or in connection with, the Appointment and waives all rights it may have against the Client under or in connection with the Appointment, and the Consultant accepts this liability from the Contractor instead of from the Client.

6 Consultant's compliance

6.1 The Consultant undertakes and warrants to the Contractor that:

6.1.1 the Consultant has complied and shall comply with the Consultant's obligations under and in connection with the Appointment in accordance with it; and

6.1.2 the Consultant has used and shall use, in the performance of the service, reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and carrying out services of a similar scope, nature, complexity and timescale to the service.

7 Contractor's reliance on Consultant

7.1 The Contractor shall rely on the Consultant's compliance with the Consultant's obligations under and in connection with, and its performance of the service in accordance with, the Appointment including, but not limited to, any designs prepared by or on behalf of the Consultant in connection with the Project.

8 Contractor's recovery from Consultant

8.1 The Contractor may recover from the Consultant any costs, expenses and losses that it incurs or suffers in so far as these result from any breach of the Appointment by the Consultant, notwithstanding that these costs, expenses and losses were not, and could not have been, incurred or suffered by the Client, and notwithstanding that the acts and/or failures to act causing and/or contributing to the breach occurred before the date of this Novation.

9 Changes to Appointment

- 9.1 The Contractor and the Consultant shall not change the Appointment or any benefits, rights, obligations or liabilities arising under or in connection with it in any way that would or might prejudice any interests of the Client or any beneficiary of a warranty collateral to the Appointment given or to be given by the Consultant, Subject to this, the Contractor and the Consultant shall not change the Appointment or any benefits, rights, obligations or liabilities arising under or in connection with it, without the prior written consent of the Client, which shall not be delayed or withheld unreasonably.

10 Conflict

- 10.1 if there is any conflict between the terms and conditions of this Novation and the terms and conditions of the Appointment, the terms and conditions of this Novation shall have priority.

11 Assignment and sub-contracting

- 11.1 At any time, the Client may create a security interest in this Novation, whether by mortgage, charge, assignment or otherwise, in favour of a person who is to provide funding for the Project, without the consent of the Consultant or the Contractor

- 1 1.2 At any time, the Client may assign or transfer all or any of its benefit under this Novation without the consent of the Consultant or the Contractor.

- 1 1.3 Neither the Consultant nor the Contractor shall assign or transfer any of their benefit or burden under this Novation, or sub-contract or delegate any of their obligations under this Novation, to any person without the prior written consent of the Client and the other party. If the Client and the other party give consent, the Consultant and the Contractor shall each remain liable for their obligations under this Novation notwithstanding any assignment, transfer, sub-contracting or delegation.

12 Contracts (Rights of Third Parties) Act 1999

- 12.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Novation and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

13 Severability

- 13.1 If any provision of this Novation is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Novation and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Novation.

14 Counterparts

- 14.1 This Novation may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Novation for all purposes.

15 Notices

- 15.1 Any written notice or communication given under this Novation shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address

at the beginning of this Novation or another address which a party may specify by written notice to the other parties from time to time.

15.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery,

16 Governing law, dispute resolution and jurisdiction

16.1 This Novation shall be governed by, and construed and interpreted in accordance with, English law.

16.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Novation to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

17 Limitation

17.1 No action or proceeding for any breach of this Novation shall be commenced by either party against the other after the date that is 12 years after the date of practical completion of the Project.

18 Execution as a deed

18.1 This Novation is executed as a deed and it was delivered when it was dated,

[insert DEFRA execution block]

Executed as a deed by [NAME OF CONSULTANT] acting by either two directors or one director and the company secretary.

Director's name (CAPITAL LETTERS)

Director's signature

Director's name (CAPITAL LETTERS)

Director's signature

Executed as a deed by _____
[NAME OF CONTRACTOR] acting by either two directors
or one director and the company secretary:

Director's name (CAPITAL LETTERS)

Director's signature

Director's name (CAPITAL LETTERS)

Director's signature

Schedule 1

Deed of Warranty from Novated Consultant to Client

DATED

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

and

WSP UK LIMITED (2)

and

[NAME OF CONTRACTOR] (3)

DEED OF WARRANTY for
[PROJECT DESCRIPTION]

THIS WARRANTY is made on

BETWEEN:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at 2 Marsham St, London SW1P 4DF ('Client' which expression shall include its successors in title and assigns);
- (2) WSP UK LIMITED (company number 01383511) whose registered office is at WSP House, 70 Chancery Lane, London, WC2A 1AF ('Consultant'); and

- (3) [NAME OF CONTRACTOR] (company number tnumber)) whose registered office is at [address] ("Contractor"),

BACKGROUND,

- A The Client has entered into a contract with the Contractor dated ("Contract") for the carrying out of the work described in the Contract ("Works") for [DESCRIPTION] ("Project").
- (B) The Client has entered into a contract with the Consultant dated [.....][[DATE]] ("Appointment") for the performance of the services described in the Appointment ("service") for the Project.
- (C) The Client, the Consultant and the Contractor have entered into a contract dated novating the Appointment from the Client and the Consultant to the Contractor and the Consultant ("Novation"),
- (D) It is a condition of the Novation that the Consultant gives, and the Contractor is a party to, this Warranty to the Client.

In consideration of the payment of £1 (a pound) by the Client to the Consultant (receipt of which the Consultant acknowledges) IT IS AGREED.

1 Services

- 1.1 The Consultant undertakes and warrants to the Client that:
- 1.1.1 the Consultant has complied and shall comply with the Consultant's obligations under and in connection with the Appointment in accordance with it; and
- 1.1.2 the Consultant has used and shall use, in the performance of both the novated service and any service set out in the Schedule to the Novation, reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and carrying out services of a similar scope, nature, complexity and timescale to the service.

2 Materials and building practices

- 2.1 Subject to clause 1.1.2, the Consultant undertakes and warrants to the Client that (unless otherwise instructed or authorised by or on behalf of the Client):
- 2.1.1 the Consultant has not and shall not specify, select and/or approve for use; and

2.1.2 consistent with the service, the Consultant has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (a) prohibited by the Appointment;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the Consultant's profession at the time of specification, selection, approval or use (as the case may be) to:
 - i be deleterious; (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

3.1 For the purposes of this Warranty, "Documents" means any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computergenerated format or on any magnetic or optical storage medium prepared by or on behalf of the Consultant (whether in existence or to be created) in connection with the Works and/or the Project.

3.2 To the extent not already granted or licensed to the Client, the Consultant grants to the Client an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding the completion of the service or the termination of the Consultant's engagement under the Appointment, to copy and use the Documents and to reproduce the designs and contents of them for:

- 3.2.1 any purpose relating to the Project and/or the Client's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting,

maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Client's interest in the Project; and

3.2.2 the extension of the Works or the Project, so that the Client can interface any extension of the Works or the Project with the existing Works or Project but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.

3.3 The Client shall be entitled to grant sub-licences under the Client's licence and both the Client's licence and any sub-licences shall be transferable to others.

3.4 The Consultant undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Client and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Appointment and any successors in title to the Client's business.

3.5 Notwithstanding the completion of the service or the termination of the Consultant's engagement under the Appointment, the Consultant shall give to the Client any paper copies and electronic copies of the Documents that the Client reasonably requests. The Consultant shall give these copies to the Client within seven days of any request. The Consultant shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Consultant gives to the Client.

3.6 The Consultant shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared or provided for.

4 Insurance

4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Consultant shall take out and maintain professional indemnity insurance that will cover all of the service from the date of the Consultant's engagement under the Appointment until the date that is 12 years after the date of completion of the service:

4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;

4, 1.2 with a limit of indemnity of not less than £25,000,000 (twenty-five million pounds) for each claim, without limit to the number of claims; and

4.1.3 on terms that:

(i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

(ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.

4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Consultant's claims record or other act, failure to act or circumstance particular to it,

this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.

4.3 Without the Client's prior written consent the Consultant shall not:

4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Client against the Consultant; or

4.3.2 by any act or omission lose or affect the Consultant's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Client against the Consultant.

4.4 As and when it is reasonably required to do so by the Client, the Consultant shall make available for inspection by the Client documentary evidence that the insurance is being maintained in accordance with this Warranty.

45 Subject to clause 4.2, the Consultant shall inform the Client immediately if this insurance ceases to be available to the Consultant at reasonable premium rates or on reasonable commercial terms, if this happens:

45.1 the Client and the Consultant shall discuss and agree on the best means of protecting themselves; and

45.2 the Client may require the Consultant to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Consultant. If the Client exercises this right, subject to clause 4.2, it shall reimburse to the Consultant the difference between the premium paid and the premium that would have been reasonable.

4.6 If required by the terms of its insurance policy, the Consultant undertakes and warrants that:

4.6.1 prior to the execution of this Warranty, it has:

(i) disclosed the contents of this Warranty to its insurers and brokers; and

ii received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and

46.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.

5 Termination and suspension by Consultant

5.1 For the purposes of this Warranty, 'Another Person' means any Ministerial department, Non-ministerial department or executive agency with an interest in the Project.

5.2 The Consultant shall not exercise any right which the Consultant has to rescind or terminate the Appointment or its engagement under the Appointment, or to suspend or discontinue the service, unless the Consultant has given at least 31 days' prior written notice to the Contractor and the Client specifying,

5.2.1 the breach of the Appointment which the Consultant considers entitles it to rescind or terminate the Appointment or its engagement under the Appointment, or to suspend or discontinue the service; and

5.2.2 full details of any amounts owed by and due from the Contractor to the Consultant under the Appointment for the last three outstanding invoices covering the three invoicing periods before that in which the notice is given.

5.3 Within 31 days of receipt of a notice under clause 5.2, if the Client notifies the Consultant that it or Another Person wishes to enter into a new agreement with the Consultant on the same terms and conditions as the Appointment to complete the Consultant's obligations under the Appointment in accordance with it:

5.3.1 the Consultant shall enter into a new agreement with the Client or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Appointment and, if this happens, the Appointment shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;

5.3.2 if the Appointment is terminated in accordance with clause 5.3.1, the Consultant shall not have a claim against the Contractor arising solely out of the termination; and

5.3.3 subject to clause 5.2, if the Appointment has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Consultant shall comply with the instructions of the Client (or Another Person) under the Appointment as if it had not been terminated, and the Client shall pay (or shall procure that Another Person shall pay) to the Consultant all sums owed and due to it for the service it has performed pursuant to those instructions.

5.4 The Client shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Consultant for the service

it performs from the date of the new agreement, but it shall have no other liability in respect of the Appointment except that the Client shall pay (or shall procure that Another Person shall pay) to the Consultant:

- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Consultant for the period from the date of the last invoice referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Appointment referred to in clause 5.2.1 has been remedied and the Consultant has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Consultant and the Client to enter into (and the right of the Client to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Consultant has given rights relating to the Appointment similar to those in clause 5 to more than one person, and more than one person notifies the Consultant

that it wishes to enter into a new agreement with the Consultant in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):

5.6.1 a notice served by the Client;

5.6.2 a notice served by any other beneficiary,

and all notices that the Consultant receives shall take effect in accordance with this order of priority.

6 Termination of the Contract

6.1 If the Client gives written notice to the Contractor and the Consultant that the Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Client may either:

6.1.1 comply with the obligations of the Contractor under the Appointment and, if this happens, the Consultant shall comply with its obligations and perform the service under the Appointment, and the Client shall comply with the obligations of the Contractor under the Appointment, as though the Client was and always had been the employer under the Appointment in the place of the Contractor, or

6.1.2 enter into (or appoint Another Person to enter into), and require the Consultant to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.

6.2 After it has received the notice given under clause 6.1, the Consultant shall comply with the instructions of the Client (or Another Person), and the Consultant shall enter into a new agreement at the Client's written request as described in clause 6.1.2.

6.3 The Consultant may treat the Client's notice under clause 6.1 that the Contract has been rescinded or terminated as sufficient evidence that this has happened.

6.4 The Contractor shall not have a claim against the Consultant arising solely out of the Consultant's compliance with the instructions of the Client (or Another Person) in accordance with clause 6.

7 Conflict

7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Appointment, the terms and conditions of this Warranty shall have priority.

8 Limitation

8.1 In any action, claim or proceedings brought against the Consultant by the Client, the Consultant may rely on the same limitations as are in the Appointment and raise the equivalent rights in defence of liability as it would have if the Client were named as

joint employer in the Appointment, provided that the Consultant shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a

loss suffered by the Client is of a different kind or type from that which would have been suffered by the Contractor.

8.2 No action or proceeding for any breach of this Warranty shall be commenced by either party against the other after the date that is 12 years after the date of practical completion of the Project.

9 Assignment

9.1 At any time, the Client may assign or transfer all or any of its benefit under this Warranty without the consent of the Consultant to:

9.1 .1 a mortgagee of the Client; or

9.1 9 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

9.2 At any time, the Client may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Consultant on two occasions only. The consent of the Consultant, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

1 0. 1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

1 1.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Client, any other consultants, the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Consultant's obligations or liability under the Appointment or this Warranty.

1 1.2 The failure or delay of the Client to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by the Client shall be effective unless it is in writing,

12 Severability

12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty,

13 Counterparts

13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

14.6 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.

14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

15.1 This Warranty shall be governed by, and construed and interpreted in accordance with, English law.

15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

16.1 This Warranty is executed as a deed and it was delivered when it was dated.

[insert DEFRA execution block]

Executed as a deed by [NAME OF
CONSULTANT] acting by either two directors
or one director and the company
secretary;

Director's name (CAPITAL LETTERS)

Director's signature

Director's name (CAPITAL LETTERS)

Director's signature

Executed as a deed by (NAME OF
CONTRACTOR] acting by either two directors
or one director and the company secretary:

Director's name (CAPITAL LETTERS)

Director's signature

Director's name (CAPITAL LETTERS)

Director's signature

