Crown Commercial Service

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Project management and full design team services framework schedule 4 – template call off agreement (INCORPORATING THE nec3 professional services contract APRIL 2013), contract data and z clauses

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**Date: 16th October 2020**

## FORM OF AGREEMENT

**Incorporating the NEC3 Professional Services Contract April 2013**

**Between**

**The Department for Work and Pensions**

**And**

**McBains Limited**

**For the provision of operational design support**

**THIS AGREEMENT is made the 16th day of October 2020.**

**PARTIES:**

1. **THE DEPARTMENT FOR WORK AND PENSIONS** acting as part of the Crown (the "***Employer***"); and

2. **MCBAINS LIMITED** which is a company incorporated in and in accordance with the laws of **England** (Company No. 03094139 whose registered office address is at **5th Floor, 26 Finsbury Square, London, EC2A 1DS**(the "***Consultant***").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated 03 May 2017 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

This Call Off Contract is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.

Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.

The Contract Schedules are:

1. Contract Schedule 1 - Annex G
2. Contract Schedule 2 - DWP Statement of Requirements
3. Contract Schedule 3 - McBains proposal dated 24th June 2020
4. Contract Schedule 4 - Government Commercial Function Supplier Code of Conduct
5. Contract Schedule 5 - DWP Security Policy

**Executed under hand**

The Consultant

Signed by [REDACTED] for and on behalf of McBains Ltd.

Director

The Employer

Signed by [REDACTED] for and on behalf of The Secretary of State for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA

Authorised signatory

**Professional Services Contract**

**Contract Data**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Part one – Data provided by the *Employer* | | | | |
| 1 General | * The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W1 and secondary Options X2 and X18, Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013). * The *Employer* is Department for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA. * The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicator*s published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement. | | | |
|  | * The servicesare as set out in DWP’s Statement of Requirements appended to this agreement. | | | |
|  | * The Scope is as set out in DWP’s Statement of Requirements appended to this agreement. | | | |
|  | * The *language of this contract* is English. * *The* *law of the contract* is the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts. * The *period for reply* is two weeks. * The *period for retention* is 6 years following Completion or earlier termination. | | | |
|  | * The *Adjudicator nominating body* is the *Royal Institution of Chartered Surveyors.* * The *tribunal* is arbitration. | | | |
|  | * The following matters will be included in the Risk Register:   n/a | | | |
| 2 The Parties' main responsibilities | * The *Employer* provides access to the following persons, places and things * access to DWP premises as necessary. | | | |
| 3 Time | * *The starting date* is 24th June 2020. * The *Consultant* submits revised programmes at intervals no longer than one week. | | | |
| 4 Quality | * The quality policy statement and quality plan are provided within 2 weeks of the Contract Date. * The *d*e*fects date* is 52 weeks after Completion of the whole of the *services.* | | | |
| 5 Payment | * The *assessment interval* is monthly. * The *currency of this contract* is the pound sterling (£). * The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time. | | | |
| 8 Indemnity, insurance and liability | * The amounts of insurance and the periods for which the *Consultant* maintains insurance are | | | |
|  | **event** | **cover** | | **Period** |
| failure of the *Consultant* to use the skill and care normally used by professionals providing services similar to the *services* | £10,000,000 in respect of each claim, without limit to the number of claims except for claims arising out of pollution, contamination or fire safety notifications where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate. | | from the *starting date* until 6 years following completion of the whole of the *services* or earlier termination |
|  | death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | As required under Framework Schedule 14 (Annex 1 - Part A) | | from the *starting date* until all notified Defects have been corrected or earlier termination |
|  | death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | As required under Framework Schedule 14 (Annex 1 - Part C) | | from the *starting date* until all notified Defects have been corrected or earlier termination |
| Optional Statements |  | | | |
|  | **If the *Employer* has decided the *completion date* for the whole of the *services***   * The *completion date* for the whole of the *services* is 11th September 2020.   **If no programme is identified in part two of the Contract Data**   * The *Consultant* is to submit a first programme for acceptance within two weeks of the Contract Date. | | | |
|  | **If the *Employer* has identified work which is to meet a *stated condition* by a *key date***   * The *key dates* and *conditions* to be met are | | | |
| * *condition to be met* * 1: Materials prepared for Executive Team Meeting. * 2. Delivery of initial design guide and Ashton-under-Lyne layouts. | | * *key date* * 1: 01/07/2020 * 2: 10/07/2020 | |
|  | **If the period in which payments are made is not three weeks and Y(UK)2 is not used**   * The period within which payments are made is 30 days. | | | |
|  | **If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due**   * Y(UK)2 is not used. | | | |
|  | **If the *Employer* states any *expenses***   * The *Employer* does not state any expenses. | | | |
|  | **If the *tribunal* is arbitration**   * The *arbitration procedure* is the London Court of International Arbitration Rules; * The number of arbitrators shall be agreed by the parties before the commencement of arbitration proceedings. * The place where arbitration is to be held will be agreed by the parties before the commencement of arbitration proceedings. * The language to be used in the arbitration proceedings shall be English. * If the parties cannot agree the identity of the arbitrator then the nominating body shall be Chartered Institute of Arbitrators. | | | |
|  | **If Option A is used:**   * The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks. | | | |
| Option X1 | **Option X1 is not used** | | | |
| Option X2 | **If Option X2 is used**   * *The* *law of the project* is the law of England and Wales. | | | |
| Option X3 | **Option X3 is not used** | | | |
| Option X5 | **Option X5 is not used** | | | |
| Option X6 | **Options X6 is not used** | | | |
| Option X7 | **Option X7 is not used** | | | |
| Option X8 | **Option X8 is not used** | | | |
| Option X10 | **Option X10 is not used** | | | |
| Option X12 | **Option X12 is not used** | | | |
| Option X18 | **Option X18 is used**   * The *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to [REDACTED]. * The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with the contract, other than excluded matters, is limited to [REDACTED]. * The *end of liability* date is 6 years after Completion of the whole of the *services*. | | | |
|  |  | | | |
| Option X20 | **If Option X20 is used (but not if Option X12 is also used)**   * *The* *incentive schedule* for Key Performance Indicators is in Annex A of the Employer’s Scope of Requirements * A report of performance against each Key Performance Indicator is provided at monthly intervals. * Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule.* | | | |
| Option Y(UK)1 | **Option Y(UK)1 is not used.** | | | |
| Option Y(UK)3 | **Option Y(UK)3 is not used** | | | |
| Option Z | * The *additional conditions of contract* are clauses Z1 to Z48 set out with this contract save for:   *Z9, Z19, Z35, Z36, Z37, Z41 and Z48.* | | | |

|  |  |
| --- | --- |
| Clause Z15 | * Z15.1 (1) delete “Data Protection Act 1998” and add “Data Protection Act 2018” * Delete Z15.1(2) and add: The parties agree that the only personal data to be processed by either party in relation to this Call Off Contract will be the business contact details of the staff of each party working on this Call Off Contract. |
|  |  |

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| --- | --- |
| Contract Data relating to Z clauses |  |
| Clause Z39 | **Financial Distress**  If Clause Z39 applies, the *credit ratings* at the Contract Date and the rating agencies issuing them are:   |  |  |  | | --- | --- | --- | | party | rating agency | *credit rating* | | *Consultant* | Fame | Secure | |
| Clause Z42 | **Off Shoring of Data**  **The Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with the [Offshoring Policy for DWP Contractors](https://www.gov.uk/government/publications/guide-for-dwp-contractors-dwp-offshoring-policy) or any later revision or replacement. |

|  |  |
| --- | --- |
| Part two – Data provided by the *Consultant* | |
| 1 Statements given in all contracts | * The *Consultant* is   Name McBains Ltd  Address 26 Finsbury Square, London EC2A 1DS |
|  | * The *key people* are:  |  |  |  | | --- | --- | --- | | **Name** | **Job** | **Responsibilities** | | [REDACTED] | [REDACTED] | Design Team Lead | | [REDACTED] | [REDACTED] | Lead Architect | | [REDACTED] | [REDACTED] | Lead Quantity Surveyor | | [REDACTED] | [REDACTED] | MEHP Lead | |
|  | * The *staff rates* are:  |  |  | | --- | --- | | **Name/Job Title** | **Day Rate** | | Partner or Director | [REDACTED] | | Senior Professional | [REDACTED] | | Professional | [REDACTED] | | Senior Technician | [REDACTED] | | Technician | [REDACTED] | | Admin/ Junior Technician/ Apprentice | [REDACTED] | |
|  | * The following matters will be included in the Risk Register   N/A |
| Optional statements | **If the *Consultant* is to decide the *completion date* for the whole of the *services***   * The *completion date* for the whole of the *services* is n/a. |
|  |  |
|  | **If the programme is to be identified in the Contract Data**   * The programme identified in the Contract Data is   N/A |
|  | **The *Consultant* does not state any *expenses.*** |
|  | **If the *Consultant* requires additional access**  The *Employer* provides access to all persons, places and things as deemed relevant and necessary for the Contract. |
|  | **If Option A or C is used**   * The *activity schedule* is [Contract Schedule 3 - McBains proposal dated 24th June 2020](#_Contract_Schedule_3). * The tendered total of the Prices is [REDACTED} |

|  |  |  |  |
| --- | --- | --- | --- |
| Additional conditions of contract - clauses Z1 to Z48 | | | |
| **Clause Z1** | | **Interpretation and the law**  Z1.1 In this contract, except where the context shows otherwise:   * references to a document include any revision made to it in accordance with this contract; * references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it; * references to a British, European or International standard include any current relevant standard that replaces it; * references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and * the words “includes” or “including” are construed without limitation.   Z1.2 Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.  **Acquired Rights Directive** is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time  **Authority** means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP  **Confidential Information** is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential.  **Consultant Personnel** is all persons employed or engaged by the *Consultant* together with the *Consultant’s* servants, agents, suppliers, consultants and Subconsultants (and all persons employed by any Subconsultant together with the Subconsultant’s servants, consultants, agents, suppliers and sub-subconsultants);  **Contracting Authorities** means the bodies listed in the contract notice 2016/S 180-323830 on 14/09/2016 in the Official Journal of the European Union and “Contracting Authority” shall be construed accordingly;  **Employment Regulations** are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive  **Environmental Information Regulations** is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.  **FOIA** is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;  **Former Consultant** is the *Consultant* supplying services to the *Employer* before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant)  **Information** has the meaning given under section 84 of the Freedom of Information Act 2000  A **Prohibited Act** is:   * to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority or any other public body a financial or other advantage to:   + induce that person to perform improperly a relevant function or activity; or   + reward that person for improper performance of a relevant function or activity; * to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; and /or * committing any offence:   + under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)   + under legislation or common law concerning fraudulent acts; or   + defrauding, attempting to defraud or conspiring to defraud the *Employer*; or   + 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.   **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.  **Material** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this contract.  **Relevant Transfer** is a transfer of employment to which the Employment Regulations applies  **Relevant Transfer Date** is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place  **Request for Information** is a request for information or an apparent request under the FOIA or the Environmental Information Regulations  **Security Policy** means the *Employer’s* security policy attached as a Contract Schedule as may be updated from time to time  **Transferring Employer Employees** are those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date  **Transferring Former Consultant Employees** are, in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date  **Working Day** is any day other than a Saturday or Sunday or public holiday in England and Wales. | |
| **Clause Z2** | | **Prevention of fraud and bribery**  Insert new clauses:  Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:   * 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 * 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.   Z2.2. Throughout the period in which the *services* are performed the *Consultant* does not:   * commit a Prohibited Act; and/or * do or suffer anything to be done which would cause the *Employer* or any of the *Employer’s* employees, consultants, contractors, sub-consultants or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements   Z2.3 Throughout the period in which the *services* are performed the *Consultant*:   * establishes, maintains and enforces, and requires that its Subconsultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; * keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request; * provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant’s* employees or any person acting on the *Consultant’s* behalf from committing a Prohibited Act.   Z.2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or has reason to believe that it has or any of the its employees or Subconsultants have:   * been subject to an investigation or prosecution which relates to an alleged Prohibited Act; * been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or * received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.   Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.  Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant’s* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract. | |
| **Clause Z3** | | **Recovery of sums due from *Consultant***  Where the Employer is a Crown Body, then Z3.1 applies to the exclusion of Z3.2. Otherwise, Z3.2 applies to the exclusion of Z3.1.  Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of Her Majesty's Government.  Z3.2 Where under this contract or any other contract between the *Consultant* and the *Employe*r any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Employer*. | |
| **Clause Z4** | | **Assignment and Novation**  Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:   * any Contracting Authority; or * any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.   Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Employer’s* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.  Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof to:   * any Contracting Authority; or * any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;   upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. According a new clause 60.1(13) shall be added that reads “A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant*  pursuant to this contract”.  Z4.5 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.  Z4.6 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*. | |
| **Clause Z5** | | **Discrimination**  Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “Discrimination Acts”).  Z5.2 In connection with the *services* the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.  Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer*’s employees, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer*’s employment policies and codes of practice relating to discrimination and equal opportunities.  Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and   * provides any information requested by the investigating body, court or tribunal in the timescale allotted, * attends (and permits a representative from the *Employer* to attend) any associated meetings, * promptly allows access to any relevant documents and information and * cooperates fully and promptly with the investigatory body, court or tribunal.   Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.  Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above. | |
| **Clause Z6** | | **Conflict of interest**  Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.  Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.  Z6.3 The Consultant must take positive steps to mitigate any conflict of interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a conflict of interest under Z6.2.  Z6.4 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level, *the* *Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination. | |
| **Clause Z7** | | **Merger, take-over or change of control**  Z7.1 In clauses Z7, Z30 (Consortia), Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)   * **Change of Control** is an event where a single person (or group of persons acting in concert) * acquires Control of the *Consultant* or * acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*, * **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company, * **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010, * **Controller** is the single person (or group of persons acting in concert) that * has Control of the *Consultant* or a Consortium Member or * holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member, * **Credit Rating Threshold** means the minimum credit rating for the Consultant, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement, * **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into * **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and * **Parent Company Guarantee** is a guarantee of the *Consultant*’s performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.   Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer’s* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.  Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.  Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.  Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in   * the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or * the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.   Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.  Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.  Z7.8 In this clause Z7 a Change of Control in relation to   * material change in the ownership of shares in, or * change in the name or status of   a Consortium Member is treated as a change relating to the *Consultant*. | |
| **Clause Z8** | | **Appointment of *Adjudicator***  Z8.1 The *Adjudicator*’s appointment under the NEC Adjudicator’s Contract current at the *starting date* includes the following additional conditions of contract  “The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement.” | |
| **Clause Z9** | | **Clause Z9 is not used.** | |
| **Clause Z10** | | ***Employer*’s Codes of Conduct**  Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer*’s code of conduct to the extent one is included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.  Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z11** | | **Fair payment**  Z11.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.  Z11.2 The *Consultant* includes in the contract with each Subconsultant   * a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract, * a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and * a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.   Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.  Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z12** | | **Confidentiality**  Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:   * treat the other party's Confidential Information as confidential and safeguard it accordingly; and * not disclose the other party's Confidential Information to any other person without that other party’s prior written consent.   Z12.2 Clause Z12.1 shall not apply to the extent that:   * such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information); * such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure; * such information was obtained from a third party without obligation of confidentiality; * such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or * it is independently developed without access to the other party's Confidential Information.   Z12.3 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Employer’s* Confidential Information received otherwise than for the purposes of this contract.  Z12.4 The *Consultant* may only disclose the *Employer’s* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.  Z12.5 At the written request of the *Employer*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.  Z12.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant’s* Confidential Information:   * to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority; * to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review; * for the purpose of the examination and certification of the *Employer* 's accounts; or * for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.   and for the purposes of the foregoing, disclosure of the *Consultant’s* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause Z12.6.  Z12.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Subconsultant to whom the *Consultant’s* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.  Z12.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights. | |
| **Clause Z13** | | **Security Requirements**  Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:   * the Security Policy; * the Security Management Plan produced pursuant to the Security Provisions; and * the Security Provisions contained within the Security Policy or the Scope.   Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy. | |
| **Clause Z14** | | **Official Secrets Act**  Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.  Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.  Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.  Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any. | |
| **Clause Z15** | | **Data Protection**  Z15.1  (1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.  (2) The parties agree that the only personal data to be processed by either party in relation to this Call Off Contract will be the business contact details of the staff of each party working on this Call Off Contract.  Z15.2 For the purposes of this contract and the Data Protection Acts   * the *Employer* is the Data Controller and * the *Consultant* is the Data Processor.   Z15.3 The *Consultant* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.  Z15.4 The *Consultant* has in place for as long as it holds the Personal Data   * appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and * adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.   Z15.5 The *Consultant* immediately notifies the *Employer* if it receives   * a request from any person whose Personal Data it holds to access his Personal Data or * a complaint or request relating to the *Employer*’s obligations under the Data Protection Acts.   Z15.6 The *Consultant* assists and co-operates with the *Employer* in relation to any complaint or request received, including   * providing full details of the complaint or request, * complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and * promptly providing the *Employer* with any Personal Data and other information requested by him.   Z15.7 The *Consultant* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.  Z15.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.  Z15**.**9 The *Consultant* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Employer*.  Z15.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Consultant* sends the *Employer* details of:   * + the Personal Data which will be processed outside the EEA;   + the countries where the Personal Data will be processed;   + any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and   + proposals to ensure the *Consultant* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.   Z15.11 Where the *Employer* agrees to the *Consultant* processing or transferring Personal Data outside the EEA the *Consultant* complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts. | |
| **Clause Z16** | | **Freedom of Information**  Z16.1.The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.  Z16.2 The *Consultant*:   * transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information; * provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer’s* request; * provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and * procures that its Subconsultants do likewise.   Z16.3 The *Employer* 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 Environmental Information Regulations.  Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.  Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.  Z16.6 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Employer* to inspect such records as and when reasonably requested from time to time. | |
| **Clause Z17** | | **Records and Audit Access**  Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with this contract for the *period for retention.*  Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.  Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.  Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer’*s accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract. | |
| **Clause Z18** | | **Reporting: Small and Medium Enterprises**  Z18.1 In this clause “SME” is   * a Subconsultant or * a subconsultant to a Subconsultant   that also:   * is autonomous, * is a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company, * for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros, * for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and * for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.   Z18.2 For each SME employed in connection with the *services*, the *Consultant* reports to the *Employer* on a monthly basis from the *starting date* until Completion and at the *defects date*   * the name of the SME, * the class of SME (medium, small or micro), * the value and percentage of the contract undertaken by the SME, * the amounts paid to the SME and * the aggregated value paid to the SME since the *starting date*.   Z18.3 The *Consultant* acknowledges that the *Employer* may   * publish the information supplied under clause Z18.2, along with the *Consultant*’s name and this contract name and * pass the information supplied under this clause Z18 to any government department who may then publish it along with the names of the SMEs, the *Consultant*’s name and this contract name.   Z18.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include   * a term allowing the *Employer* to publish the information supplied under Z18.2 and * obligations substantially similar to those set out in this clause Z18.   Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z218.4. | |
| **Clause Z19** | | **Clause Z19 is not used.** | |
| **Clause Z20** | | **Tax Non-Compliance**  Z20.1   1. Tax Non-Compliance is where a tax return submitted by the *Consultant* 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:  * a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or * the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or * 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 Contract Date or to a civil penalty for fraud or evasion.   (2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).  (3) General Anti-Abuse Rule is   * the legislation in Part 5 of the Finance Act 2013 and * any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.   (4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.  (5) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.  Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.  Z25.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of   * the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence, * any mitigating factors that it considers relevant and * any other information requested by the *Employer*.   Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if   * the warranty given by the *Consultant* under clause Z20.2 is untrue, * the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or * the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable. | |
| **Clause Z21** | | **Quality Management Points**  Z21.1 Quality Management Points are points accrued by the *Consultant* in accordance with the Quality Table set out below. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Consultant*, the *Employer* or the relevant accreditation body  Z21.2 If the *Consultant* fails to comply with his quality management system, the *Consultant* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table.  Z21.3 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.  Z21.4 If the number of Quality Management Points in effect at any time is more than 25 points, the *Consultant* and the *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Consultant* submits a report to the *Employer* within one week of the meeting setting out   * the actions agreed at the meeting and * any other actions which the *Consultant* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.   Z21.5 If the *Employer* does not accept the *Consultant*’s proposals or the *Consultant* does not take the agreed actions, the *Employer* serves a quality warning notice on the *Consultant*. Within one week of receipt of the quality warning notice, the *Consultant* submits a report to the *Employer* setting out the actions which the *Consultant* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.  Z21.6 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Consultant* takes the actions detailed in his reports and submits weekly up date reports to the *Employer* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.  Z21.7 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as a substantial failure by the *Consultant* to comply with his obligations.  **Quality Table**   | Failure | Quality Management Points | Period of effect | | --- | --- | --- | | Failure to have a complete Quality Plan in place and operating | 25 | Until audit confirms that Quality Plan complete and operating | | The Quality Plan does not comply with the requirements of this contract | 10 per failure | Until audit confirms that Quality Plan complies | | Failure to raise a Non-Conformity report | 5 per [Non-Conformity] | 6 months | | Failure to raise a corrective action report | 5 per [Non-Conformity] | 6 months | | Failure to correct Quality Plan in manner set out in a corrective action report  (see note 1 below) | 10 per failure | Until failure corrected | | Failure to implement recommendations in audit report  (see note 1 below) | 5 per recommendation | Until audit confirms that recommendation implemented | | Failure to carry out internal audit | 25 per audit | Until audit carried out | | Carrying out work without release of hold point | 10 per item | 6 months | | Failure to make records available for inspection by the *Employer* | 10 per failure | Until the records are made available | | Failure to allow access for *Employer* audits | 10 per failure | Until *Employer* audit is carried out | | Failure by *Consultant* to accrue Quality Management Points that should have been accrued | The number of Quality Management Points that should have been accrued | Applicable to the failure that should have accrued Quality Management Points | | plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued | 6 months | | Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place. | | | | |
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| **Clause Z22** | | **Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**  Z22.1 The Parties agree that:   * where the commencement of the provision of the *service* or any part thereof results in one or more Relevant Transfers, Contract Schedule 1 shall apply as follows: * where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of Contract Schedule 1 shall apply; * where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Contract Schedule 1 shall apply; * where the Relevant Transfer involves the transfer of Transferring Employer Employees and Transferring Former Consultant Employees, Parts A and B of Contract Schedule 1; and * Part C of Contract Schedule 1 shall not apply; * where commencement of the provision of the *service* or a part of thereof does not result in a Relevant Transfer, Part C of Contract Schedule 1 shall apply and Parts A and B of Contract Schedule 1 shall not apply; and * Part D of Contract Schedule 1 shall apply on the expiry or termination of the *service* or any part of thereof. | |
| **Clause Z23** | | **Changes to *staff rates* and Subconsultants**  Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the *Consultant’s* (or if appropriate Consortium Member’s – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal   * is accurate and not misleading, * has been prepared in conformity with generally accepted accounting principles within the United Kingdom, * is a true and fair reflection of the information included within the *Consultant’s* books, management and statutory accounts and other documents and records and * complies with this contract.   Z23.2 If a Subconsultant wishes to propose revisions to an existing staff rate or a new staff rate and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant’s* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant’s* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.  Z23.3 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Subconsultant to provide   * records of any Time Charge and expenses incurred by it or * a certificate that its invoice and records of any Time Charge and expenses incurred by it are accurate and not misleading   and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant’s* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant’s* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.  Z23.4 The *Consultant* includes in the conditions of contract for each Subconsultant   * provisions substantially similar to those set out in clause Z23.1, * a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z23, * an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant, * a right for the *Consultant* to recover from the Subconsultant (or to deduct from any amount that would otherwise be due to the Subconsultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the Subconsultant and * an acknowledgment from the Subconsultant that the *Employer* may enforce these provisions directly against the Subconsultant under the Contracts (Rights of Third Parties) Act 1999. | |
| **Clause Z24** | | **Insurance cover**  Z24.1 All insurances required to be effected and maintained under this contract by the *Consultant* are placed with reputable insurers, to whom the *Employer* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  Z24.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract. | |
| **Clause Z25** | | **Professional indemnity insurance**  Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant*’s right to make or proceed with such a claim against the insurers.  Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant*’s own claims record or other acts, omissions, matters or things particular to the *Consultant*  is deemed to be within commercially reasonable rates.  Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.  Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant*’s employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer.* | |
| **Clause Z26** | | * **Termination and omission of work: NOT USED** | |
| **Clause Z27** | | **Termination – PCRs, Regulation 73**  Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* tocomply with his obligations:   * one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.   Z27.2 The *Employer* may terminate the *Consultant*‘s obligation to Provide the Services by notifying the *Consultant* if   * this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or * the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.   If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations. | |
| **Clause Z28** | | **Value Added Tax (VAT) Recovery**  Z28.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment. | |
| **Clause Z29** | | **Tax Arrangements of Public Appointees**  Z29.1   For the purposes of this clause   * **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*.  The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity. * **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.   Z29.2   Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.  Z29.3   Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.  Z29.4    The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it.  Z29.5  If the *Consultant* fails to provide information in response to a request under clause Z29.4   * within the *period for reply* or * which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it   the *Employer* may   * treat such failure as a substantial failure by the *Consultant* to comply with his obligations or * instruct the *Consultant* to replace the relevant member of Staff   Z29.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z29.2 and Z29.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.  Z29.7   The *Consultant* acknowledges that the *Employer* may   * supply any information which it receives under clauses Z29.4 or Z29.6 or * advise the non-supply of information   to the Commissioners of Her Majesty’s Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible. | |
| **Clause Z30** | | **Consortia**  Z30.1 Where two or more Consortium Members comprise the *Consultant,* each Consortium Member is jointly and severally liable to the Employer for the performance of the *Consultant’s* obligations under this contract.  Z30.2 If the joint venture arrangement between any Consortium Members which comprise the *Consultant* is terminated for any reason, the *Employer* may  • terminate this contract with immediate effect and  • treat the termination of this contract as a substantial failure by the *Consultant* to comply with his obligations.  Z30.3 Clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” in each of the second, third and fourth places where it appears the words “(or, in the case of the *Consultant,* any Consortium Member)”. | |
| **Clause Z31** | | **Subconsulting**  Z31.1 Before:   * appointing a proposed Subconsultant or * allowing a Subconsultant to appoint a proposed subsubconsultant   the *Consultant* submits to the *Employer* for acceptance   * a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subconsultant or subsubconsultant or * other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.   Z31.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.  Z31.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.  Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to   * replace the Subconsultant or * require the Subconsultant to replace the subsubconsultant. | |
| **Clause Z32** | | **Energy Efficiency Directive**  Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Subconsultant and subsubconsultant obligations substantially similar to those set out in the Scope for   * compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and * demonstrating to the *Employer* how in Providing the Services how the Subconsultant and subsubconsultant complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”. | |
| **Clause Z33** | | **Compliance with statutory requirements**  The *Consultant* Provides the Services in compliance with all relevant:   * acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them; * European Directives or Regulations legally enforceable in England and Wales; * rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and * permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*. | |
| **Clause Z34** | | **Negotiation and mediation**  Z34.1 Without prejudice to either Party’s right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.  Z34.2 If any dispute is not resolved within ten working days after it has been referred to the Parties’ representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.  Z34.3 If any dispute cannot be resolved within ten working days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute to mediation. | |
| **Clause Z35** | | **Clause Z35 is not used.** | |
| **Clause Z36** | | **Clause Z36 is not used.**. | |
| **Clause Z37** | | **Clause Z37 is not used.** | |
|  | |  | |
| **Clause Z38** | | **Intellectual Property Rights**  Z38.1   In this clause Z38:   * “**Intellectual Property Rights**” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and * “**Material**” means all Material prepared by or on behalf of the *Consultant*.   Z38.2 The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Employer* and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes connected with the *services*. Such licence entitles the *Employer* and the Authority to grant sub-licences to third parties in the same terms as this licence.  Z38.3 The *Consultant* shall not be liable to any licencee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.  Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* 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 to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.  Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.  Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer’s* expense, to institute proceedings for infringement of the moral rights.  Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.  Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer’s* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.  Z38.9 After the termination or conclusion of the *Consultant’s* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the Consultant’s reasonable costs for producing such copies or discs.  Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party. | |
| **Clause Z39** | | **Financial Distress**  Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any *Guarantor*.  Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a *Guarantor:*  • its Credit Rating falls below the relevant *credit rating*,  • a further fall in its Credit Rating below the relevant credit rating,  • it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,  • it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,  • it commits a material breach of its covenants to its lenders or  • its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.  Z39.3 If any of the events listed in clause Z39.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z39.2 has occurred.  Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z39.3 if the *Consultant* gives to the Employer an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer‘s* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.  Z39.5 If  • the *Consultant* fails to notify the *Employer* that an event listed in clause Z39.2 has occurred,  • neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z39.3,  • the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or  • the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z39.3 within 18 months of the *Employer‘s* acceptance  the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z40** | | **Change of Control – new guarantee**  Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*   * certified copies of the audited consolidated accounts of the Controller for the last three financial years, * a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).   Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.  Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.  Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer‘s* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.  Z40.5 If  • neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,  • the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the Employer to do so or  • the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer‘s* acceptance  the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.  Z40.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is  • qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and  • accepted by the *Employer*.  The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Employer*.  The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope. | |
| **Clause Z41** | | **Clause Z41 is not used.** | |
| **Clause Z42** | | **Offshoring of data** | |
|  | | Z42.1 In this clause  **Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with the document stated in the Contract Data | |
|  | | Z42.2 The Consultant does not store any of the *Employer*‘s data that is classified as Official or higher in accordance with “Government Security Classifications” dated April 2014 (or any later revision or replacement)   * offshore or * in any way that it could be accessed from an offshore location   until the *Employer* has confirmedto the *Consultant* thateither   * the *Employer* has gained approval for such storage in accordance with “*Offshoring information assets classified at OFFICIAL” dated November 2015* (or any later revision or replacement) *or* * such approval is not required. | |
|  | | Z42.3 The *Consultant* ensures that no premises are used to Provide the Services until   * such premises have passed a risk assessment or * the *Employer* confirms to the *Consultant* that no risk assessment is required. | |
|  | | Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to   * gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or * conduct a risk assessment for any premises for the purpose of Z42.3. | |
|  | | Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause. | |
|  | | Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations. | |

**Clause Z43 Payment forecast**

Z43.1 Prior to the submission of the *Consultant’s* first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant’s* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due at each assessment until Completion of the whole of the services.

Z43.2 Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme.

**Clause Z44 Responsibility for documents**

Z44.1 The *Employer* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this contract, but no such examination relieves the *Consultant* of any responsibility to Provide the Services.

**Clause Z45 Apprenticeships**

Z45.1 The *Consultant* is required to take all reasonable steps to employ apprentices, and report to the *Employer* on a monthly basis the numbers of apprentices employed and the wider skills training provided, in Providing the Services.

Z45.2 The *Consultant* is required to take all reasonable steps to ensure that no less than the percentage of its employees stated in the Contract Data (the “Apprenticeship Percentage”) are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Services, (which may include support staff and Subconsultants) are provided by employees on formal apprenticeship programmes.

Z45.3 The *Consultant i*s required to make available to its employees and Subconsultants working on this contract, information about the Government’s Apprenticeship programme and wider skills opportunities.

Z45.4 The *Consultant* is to provide any further skills training opportunities that are appropriate for its employees engaged in the *services*.

Z45.5 The *Consultant* is to provide a monthly written report detailing the following measures and be prepared to discuss apprenticeships at its regular meetings with the *Employer:*

* the number of people during the reporting period employed on this contract, including support staff and Subconsultants,
* the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process,
* the percentage of all employees taking part in an apprenticeship programme,
* if applicable, an explanation from the *Consultant* as to why it is not managing to meet the specified percentage target
* actions being taken to improve the take up of apprenticeships and
* other training/skills development being undertaken by employees in relation to this contract, including
  + work experience placements for 14 to 16 year olds,
  + work experience /work trial placements for other ages,
  + student sandwich/gap year placements,
  + graduate placements,
  + vocational training,
  + basic skills training and
  + on site training provision/ facilities.

**Clause Z46 Termination following prolonged suspension**

Z46.1 The *Consultant* may terminate his obligation to Provide the Services by notifying the Employer if

* the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
* the *Consultant* has given the *Employer* a request for an instruction that the *services* be resumed; and
* the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed.

**Clause Z47 Employer’s Property**

Z47.1 If the *Consultant* is permitted to use equipment or other such property belonging to the *Employer* (the “Employer’s Property”) the following provisions apply.

* All Employer’s Property remains the property of the *Employer*.
* Any failure of the Employer’s Property shall not be a compensation event unless the *Consultant* demonstrates that the failure was caused by the *Employer’s* undue delay in its repair or replacement.

**Clause Z48 Clause Z48 is not used.**

## Contract Schedule 1 - Annex G

STAFF TRANSFER

1. Definitions
   1. In this Annex G, the following definitions shall apply:

|  |  |
| --- | --- |
|  |  |
| **“Consultant’s Final Personnel List”** | means a list provided by the *Consultant* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| **“Consultant’s Provisional Personnel List”** | means a list prepared and updated by the *Consultant* of all staff who are engaged in or wholly or mainly assigned to the provision of the *service* or any relevant part of the *service* which it is envisaged as at the date of such list will no longer be provided by the *Consultant* |
| **“Employee Liabilities”** | 1. means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;    2. unfair, wrongful or constructive dismissal compensation;    3. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay;    4. compensation for less favourable treatment of part-time workers or fixed term employees;    5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the *Employer* or the Replacement Consultant to a Transferring Consultant Employee which would have been payable by the *Consultant* or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;    6. claims whether in tort, contract or statute or otherwise;    7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| **"New Fair Deal"** | the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013; |
| **"Notified Sub-Consultant"** | means a Sub-Consultant identified in Annex 1 of this Contract Annex G to whom Transferring Employer’s Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date; |
| **"Principles of Good Employment Practice"** | means the guidance published by the Cabinet Office and found at ; |
| **“Replacement Consultant”** | means any third party provider of Replacement Services appointed by or at the direction of the *Employer* from time to time or where the *Employer* is providing Replacement Services for its own account, shall also include the *Employer* |
| **“Replacement Services”** | means any services which are substantially similar to any of the *service* and which the *Employer* receives in substitution for any of the *service* following the end of the *service period* or earlier termination, whether those services are provided by the *Employer* internally and/or by any third party; |
| **“Replacement Sub-Consultant”** | means a Subconsultant of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer Date (or any sub-Consultant of any such sub-Consultant); |
| **“Service Transfer”** | any transfer of the *service* (or any part of the *service*), for whatever reason, from the *Consultant* or any Subconsultant to a Replacement Consultant or a Replacement Sub-Consultant |
| **“Service Transfer Date”** | means the date of a Service Transfer; |
| **"Staffing Information"** | means, in relation to all persons identified on the Consultant's Provisional Personnel List or Consultant's Final Personnel List, as the case may be, such information as the *Employer* may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:  their ages, dates of commencement of employment or engagement and gender;  details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;  details of contracted working hours;  the identity of the employer or relevant contracting party;  their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;  their wages, salaries and profit sharing arrangements as applicable;  details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;  any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);  details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;  copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and  any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| **“Transferring Consultant Employees”** | means those employees of the *Consultant* and/or the Sub-Consultants to whom the Employment Regulations will apply on the Service Transfer Date |
| **"Transferring Employer Employees"** | means those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date; |

**Interpretation**

Where a provision in this Annex imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Sub-Consultants shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Consultant, Replacement Consultant or Replacement Sub-Consultant, as the case may be.

**PART A**

**Transferring Employer Employees at commencement of the provision of Services**

1. RelevantTransfers
   1. The *Employer* and the *Consultant* agree that:
      1. the commencement of the provision of the *service* or of each relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Employer Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between the *Employer* and the Transferring Employer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or any Notified Sub-Consultant and each such Transferring Employer Employee.
   2. The *Employer* shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Employer*; and (ii) the *Consultant* and/or any Notified Sub-Consultant (as appropriate).
2. *Employer* Indemnities
   1. Subject to paragraph 1 of Part A of this Annex G, the *Employer* shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;
      2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.
      3. any claim by any trade union or other body or person representing the Transferring Employer Employees arising from or connected with any failure by the *Employer* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Employer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
      5. a failure of the *Employer* to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees arising before the Relevant Transfer Date;
      6. any claim made by or in respect of any person employed or formerly employed by the *Employer* other than a Transferring Employer Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
      7. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Employer* in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in paragraph 2.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant (whether or not a Notified Sub-Consultant) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
      1. arising out of the resignation of any Transferring Employer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* and/or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
      2. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
   3. If any person who is not identified by the *Employer* as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Employer Employee, that his/her contract of employment has been transferred from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer*; and
      2. the *Employer* may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Consultant* and/or any Notified Sub-Consultant, or take such other reasonable steps as the *Employer* considers appropriate to deal with the matter provided always that such steps are in compliance with *law of the contract*.
   4. If an offer referred to in paragraph 2.3.2 of Part A of this Annex G is accepted, or if the situation has otherwise been resolved by the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Annex G:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved,

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall indemnify the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Annex G provided that the *Consultant* takes, or procures that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.6 of Part A of this Annex G
     1. shall not apply to:
        1. any claim for

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant;

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Annex G is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* within six (6) months of the Contract Date.
  1. If any such person as is referred to in paragraph 2.3 of Part A of this Annex G is neither re-employed by the *Employer* nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part A of this Annex G such person shall be treated as having transferred to the *Consultant* and/or any Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

1. *Consultant* Indemnities and Obligations
   1. Subject to paragraph 3.2 of Part A of this Annex G, the *Consultant* shall indemnify the *Employer* against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Employer Employees arising from or connected with any failure by the *Consultant* or any Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the *Consultant* or a Sub-Consultant made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Employer Employees on or after their transfer to the *Consultant* or the relevant Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the *Consultant* or any Sub-Consultant to, or in respect of, any Transferring Employer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Employer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees in respect of the period from (and including) the Relevant Transfer Date; and
      8. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Employer*'s failure to comply with its obligations under regulation 13 of the Employment Regulations.
   2. The indemnities in paragraph 3.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Employer* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Employer*’s failure to comply with its obligations under the Employment Regulations.
   3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Employer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Employer* and the *Consultant*.
2. Information
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* in writing such information as is necessary to enable the *Employer* to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
   1. The Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Consultant* of employees whose employment begins after the Relevant Transfer Date, and the *Consultant* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
   2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Employer Employee as set down in:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
      3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
      4. The New Fair Deal.
4. Pensions
   1. The *Consultant* shall, and shall procure that each of its Sub-Consultants shall, comply with the pensions provisions set out in the following Annex.

**ANNEX TO PART A: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
      3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and
      4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.
   3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.
2. Future Service Benefits
   1. The *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   2. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
   3. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
3. Funding
   1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
   2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.
4. Provision of Information
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

1. Indemnities
   1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
      2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.
      3. for the period either:
         1. after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
         2. after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

12/08/2013

**PART B**

**Transferring Former Consultant Employees at commencement of the provision of Services**

1. Relevant Transfers
   1. The parties agree that:
      1. the commencement of the provision of the *service* or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or Notified Sub-Consultant and each such Transferring Former Consultant Employee.
   2. The *Employer* shall procure that each Former Consultant shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Consultant Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Consultant* shall make, and the *Employer* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.
2. Former Consultant Indemnities
   1. Subject to paragraph 1.2 of Part B of this Annex G, the *Employer* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
      2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employees; and/or
         2. any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.
      3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Consultant Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
      4. a failure of the Former Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
      5. any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
      6. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in paragraph 2.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
      1. arising out of the resignation of any Transferring Former Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
      2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
   3. If any person who is not identified by the *Employer* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Consultant Employee, that his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, to the Former Consultant; and
      2. the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* and/or the Notified Sub-Consultant or take such other reasonable steps as the Former Consultant considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   4. If an offer referred to in paragraph 2.3.2 of Part B of this Annex G is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved;

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.6 of Part B of this Annex G
     1. shall not apply to:
        1. any claim for

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this Annex G is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.
  1. If any such person as is described in paragraph 2.3 of Part B of this Annex G is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part B of this Annex G, such person shall be treated as having transferred to the *Consultant* or Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

1. Consultant Indemnities and Obligations
   1. Subject to paragraph 3.2  of Part B of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employee; and/or
         2. any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the *Consultant* or a Sub-Consultant prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees on or after their transfer to the *Consultant* or a Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the *Consultant* or a Sub-Consultant to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* and/or the Former Consultant in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period from (and including) the Relevant Transfer Date; and
      8. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations.
   2. The indemnities in paragraph 3.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant’s failure to comply with its obligations under the Employment Regulations.
   3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Consultant* and the Former Consultant.
2. Information
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and/or at the *Employer*’s direction, the Former Consultant, in writing such information as is necessary to enable the *Employer* and/or the Former Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Former Consultant shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Former Consultant Employee as set down in:
   2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
   3. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
   4. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
   5. the New Fair Deal.
4. Procurement Obligations
   1. Notwithstanding any other provisions of this Part B of this Annex G, where in this Part B the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer*'s contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.
5. Pensions
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

12/08/2013

**ANNEX TO PART B: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
      3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and
      4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.
   3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.
2. Future Service Benefits
   1. If the *Consultant* is rejoining the Schemes for the first time, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   2. If staff have already been readmitted to the Schemes, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   3. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
   4. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
3. Funding
   1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
   2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.
4. Provision of Information
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

1. Indemnities
   1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
      2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.
      3. for the period either:
         1. after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
         2. after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

**PART C**

**No transfer of employees at commencement of the provision of Services**

1. Procedure in the Event of Transfer
   1. The *Employer* and the *Consultant* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or any Former Consultant.
   2. If any employee of the *Employer* and/or a Former Consultant claims, or it is determined in relation to any employee of the *Employer* and/or a Former Consultant, that his/her contract of employment has been transferred from the *Employer* and/or the Former Consultant to the *Consultant* and/or any Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, and shall procure that the relevant Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, give notice to the Former Consultant; and
      2. the *Employer* and/or the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* or the Sub-Consultant (as appropriate) or take such other reasonable steps as the *Employer* or Former *Consultant* (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   3. If an offer referred to in paragraph 8.2.2 of Part C of this Annex G is accepted (or if the situation has otherwise been resolved by the *Employer* and/or the Former Consultant), the *Consultant* shall, or shall procure that the Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   4. If by the end of the fifteen (15) Working Day period specified in paragraph 8.2.2
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved,

the *Consultant* and/or the Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

1. Indemnities
   1. Subject to the *Consultant* and/or the relevant Notified Sub-Consultant acting in accordance with the provisions of paragraphs 8.2 to 8.4 of Part C of this Annex G and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 8.4 of Part C of this Annex G, the *Employer* shall:
      1. indemnify the *Consultant* and/or the relevant Notified Sub-Consultant against all Employee Liabilities arising out of the termination of the employment of any employees of the *Employer* referred to in paragraph 8.2 of Part C of this Annex G made pursuant to the provisions of paragraph 8.4 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities; and
      2. procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant against all Employee Liabilities arising out of termination of the employment of the employees of the Former Consultant made pursuant to the provisions of paragraph 8.2 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the relevant Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
   2. If any such person as is described in paragraph 8.2 of Part C of this Annex G is neither re employed by the *Employer* and/or the Former Consultant as appropriate nor dismissed by the *Consultant* and/or any Sub-Consultant within the fifteen (15) Working Day period referred to in paragraph 8.4 of Part C of this Annex G such person shall be treated as having transferred to the *Consultant* and/or the Sub-Consultant (as appropriate) and the *Consultant* shall, or shall procure that the Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
   3. Where any person remains employed by the *Consultant* and/or any Sub-Consultant pursuant to paragraph 8.2 of Part C of this Annex G, all Employee Liabilities in relation to such employee shall remain with the *Consultant* and/or the Sub-Consultant and the *Consultant* shall indemnify the *Employer* and any Former Consultant, and shall procure that the Sub-Consultant shall indemnify the *Employer* and any Former Consultant, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Consultant* and/or employees of the Sub-Consultant.
   4. The indemnities in paragraph 9.1 of Part C of this Annex G
      1. shall not apply to:
         1. any claim for

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, or

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 8.2.1 of Part C of this Annex G is made by the *Consultant* and/or any Sub-Consultant to the *Employer* and, if applicable, Former Consultant within six (6) months of the Contract Date.

1. Procurement Obligations
   1. Where in this Part C of this Annex G the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer*'s contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

12/08/2013

**PART D**

**Employment Exit Provisions**

1. Pre-service Transfer Obligations
   1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any partial termination of this contract;
      3. the date which is twelve (12) months before the end of the *service period*; and
      4. receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Consultant's Provisional Personnel List, together with the Staffing Information in relation to the Consultant's Provisional Personnel List and it shall provide an updated Consultant's Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

* 1. At least twenty (20) Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement Consultant and/or any Replacement Sub-Consultant:
     1. the Consultant's Final Personnel List, which shall identify which of the Staff are Transferring Consultant Employees; and
     2. the Staffing Information in relation to the Consultant’s Final Personnel List (insofar as such information has not previously been provided).
  2. The *Employer* shall be permitted to use and disclose information provided by the *Consultant* under paragraphs 1.1 and 1.2 of Part D of this Annex G for the purpose of informing any prospective Replacement Consultant and/or Replacement Sub-Consultant.
  3. The *Consultant* warrants, for the benefit of the *Employer*, any Replacement Consultant, and any Replacement Sub-Consultant that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Annex G shall be true and accurate in all material respects.
  4. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this Annex G, the *Consultant* agrees, that it shall not, and agrees to procure that each Sub-Consultant shall not, assign any person to the provision of the Services who is not listed on the Consultant’s Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Staff listed on the Consultant’s Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
     4. 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 Personnel List;
     5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
     6. terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Consultant shall promptly notify, the *Employer* or, at the direction of the *Employer*, any Replacement Consultant and any Replacement Sub-Consultant of any notice to terminate employment given by the *Consultant* or relevant Sub-Consultant or received from any persons listed on the Consultant's Provisional Personnel List regardless of when such notice takes effect.

* 1. During the *service period*, the *Consultant* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Consultant and/or any Replacement Sub-Consultant with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer*’s direction, the Replacement Consultant and/or any Replacement Sub-Consultant to have copies of any such documents.
  2. The *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Consultant and/or any Replacement Sub-Consultant to ensure the smooth transfer of the Transferring Consultant Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Consultant Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer*, to any Replacement Consultant and/or any Replacement Sub-Consultant (as appropriate), in respect of each person on the Consultant's Final Personnel List who is a Transferring Consultant Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

1. Employment Regulations Exit Provisions
   1. The *Employer* and the *Consultant* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Consultant and/or a Replacement Sub-Consultant. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Consultant and/or a Replacement Sub-Consultant (as the case may be) and each such Transferring Consultant Employee.
   2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with all its obligations in respect of the Transferring Consultant Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Consultant Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Consultant* and/or the Sub-Consultant (as appropriate); and (ii) the Replacement Consultant and/or Replacement Sub-Consultant.
   3. Subject to paragraph 2.4 of Part D of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
         1. any collective agreement applicable to the Transferring Consultant Employees; and/or
         2. any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
         2. in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* to the *Employer* and/or Replacement Consultant and/or any Replacement Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
      5. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period up to (and including) the Service Transfer Date);
      6. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Sub-Consultant other than a Transferring Consultant Employee for whom it is alleged the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
      7. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or Replacement Consultant to comply with regulation 13(4) of the Employment Regulations.
   4. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Consultant and/or any Replacement Sub-Consultant whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
      1. arising out of the resignation of any Transferring Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Sub-Consultant to occur in the period on or after the Service Transfer Date); or
      2. arising from the Replacement Consultant’s failure, and/or Replacement Sub-Consultant’s failure, to comply with its obligations under the Employment Regulations.
   5. If any person who is not a Transferring Consultant Employee claims, or it is determined in relation to any person who is not a Transferring Consultant Employee, that his/her contract of employment has been transferred from the *Consultant* or any Sub-Consultant to the Replacement Consultant and/or Replacement Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive, then:
      1. the *Employer* shall procure that the Replacement Consultant shall, or any Replacement Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Consultant*; and
      2. the *Consultant* may offer (or may procure that a Sub-Consultant may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or Replacement Sub-Consultant or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   6. If such offer is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Sub-Consultant, the *Employer* shall procure that the Replacement Consultant shall, or procure that the Replacement Sub-Consultant shall, immediately release or procure the release of the person from his/her employment or alleged employment.
   7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved;

the *Employer* shall advise the Replacement Consultant and/or Replacement Sub-Consultant, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Consultant and/or Replacement Sub-Consultant acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Sub-Consultant against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D of this Annex G provided that the Replacement Consultant takes, or shall procure that the Replacement Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.8 of Part D of this Annex G
     1. shall not apply to:
        1. any claim for

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Consultant and/or Replacement Sub-Consultant; or

* + - 1. any claim that the termination of employment was unfair because the Replacement Consultant and/or Replacement Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Annex G is made by the Replacement Consultant and/or Replacement Sub-Consultant to the *Consultant* within six (6) months of the Service Transfer Date.
  1. If any such person as is described in paragraph 2.5 of Part D of this Annex G is neither re-employed by the *Consultant* or any Sub-Consultant nor dismissed by the Replacement Consultant and/or Replacement Sub-Consultant within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Annex G, such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Sub-Consultant shall comply with such obligations as may be imposed upon it under the *law of the contract*.
  2. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Consultant Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the *Consultant* and/or any Sub-Consultant; and
     2. the Replacement Consultant and/or the Replacement Sub-Consultant.
  3. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and any Replacement Consultant and/or Replacement Sub-Consultant, in writing such information as is necessary to enable the *Employer*, the Replacement Consultant and/or Replacement Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Consultant and/or Replacement Sub-Consultant shall promptly provide to the *Consultant* and each Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
  4. Subject to paragraph 2.14 of Part D of this Annex G, the *Employer* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Sub-Consultant and its sub-Consultants against any Employee Liabilities in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:
     1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;
     2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Consultant Employees; and/or
        2. any custom or practice in respect of any Transferring Consultant Employees which the Replacement Consultant and/or Replacement Sub-Consultant is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the Replacement Consultant and/or Replacement Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
     4. any proposal by the Replacement Consultant and/or Replacement Sub-Consultant to change the terms and conditions of employment or working conditions of any Transferring Consultant Employees on or after their transfer to the Replacement Consultant or Replacement Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
     5. any statement communicated to or action undertaken by the Replacement Consultant or Replacement Sub-Consultant to, or in respect of, any Transferring Consultant Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
     6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        1. in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
        2. in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* or Sub-Consultant, to the Replacement Consultant or Replacement Sub-Consultant to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
     7. a failure of the Replacement Consultant or Replacement Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period from (and including) the Service Transfer Date; and
     8. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations.
  5. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* and/or any Sub-Consultant (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Sub-Consultant (as applicable) to comply with its obligations under the Employment Regulations.

12/08/2013

## Contract Schedule 2 - DWP Statement of Requirements

1. **Background**

The Department for Work & Pensions (DWP) has a diverse estate of c.850 buildings located across the UK. As a result of Covid-19, an urgent requirement has been identified to change the layout and use of the estate to meet evolving health and safety requirements and allow vital face to face services to DWP’s customers, such as Jobcentre Plus, to continue. Due to the economic downturn and increased demand for the Department’s face to face services, there is an imminent and urgent demand for expansion of the DWP estate. This expanded estate will also need to be compliant with health and safety requirements related to Covid-19.

As a result of this urgent requirement for increased, health and safety compliant estate, DWP seeks to appoint a multidisciplinary team to provide immediate specialist support in the field of workplace design, including:

* COVID-19 implications (social distancing and future flexibility);
* ICT implications;
* Lessons learned from approach to co-locations; and
* Opportunities to reduce cost, reduce programme and vacate quickly with limited dilapidation exposure.

This multidisciplinary team must be fully attuned to DWP’s business environment and must be able to demonstrate functional empathy and understanding of diverse DWP staff needs, customer needs, building access provisions, and security requirements.

Functional emphasis on accommodating the needs of DWP’s staff and customers is essential in DWP’s busy, sensitive and sometimes volatile environments.

1. **Project Objectives**

The services required are:

|  |  |
| --- | --- |
| * **Discipline/s:** | * **RIBA Stages** |
| * Project Manager * Cost Consultant * Architect * Lead Designer * Building Services Engineer | * 2 and 3 |

The multidisciplinary team will develop a concept design and design standards document for the provision of new Jobcentres across the UK by 10th July 2020, covering:

* design approach and principals;
* movement of staff and visitors;
* back of house facilities (including defining anticipated scope and extent in relation to existing properties);
* physical security;
* IT infrastructure;
* furniture provision;
* interior finishes;
* signage; and
* implications on mechanical infrastructure and strategies in respect of Covid-19.

The multidisciplinary team will develop materials to be presented to DWP’s Executive Team on 13th July 2020. The material will be required for 1st July 2020.

An outline cost plan will be developed for a generic DWP facility, with allowance for potential upgrades to existing infrastructure within the unit.

Space standards and requirements provided by the Department will be further developed in workshops to be organised and attended by the supplier.

The developed concept design and design standards document will be used to create lay-outs of a property in Ashton Under Lyne, including the development of a project-specific cost plan, equivalent of a BAR report.

The multidisciplinary team shall provide regular reports and information relating to these services as required by the Department. Reports may be required to:

* illustrate progress against agreed deliverables;
* demonstrate whether the approved budget and cash-flow is being maintained; and
* identify those matters which require a decision from the Department and where necessary, provide assistance for DWP to make an informed decision on all such matters.

This is a new service. For the purposes of Z22, the commencement of the provision of the *service* or a part of thereof is not expected to result in a Relevant Transfer. The Employer confirms that is has not identified any person to be a Transferring Former Consultant Employee or Transferring Employer Employee.

The multidisciplinary team will provide an effective handover to colleagues in DWP operations, and provide any assistance required to exit the contract and tender for any ongoing support.

Annex A: Key performance indicators

[REDACTED]

## Contract Schedule 3 - McBains Proposal dated 24th June 2020

[REDACTED]

## Contract Schedule 4 - Government Commercial Function Supplier Code of Conduct

You can find the latest version of the Supplier Code of Conduct published on: [https://www.gov.uk/government/publications/supplier-code-of-conduct](https://www.gov.uk/government/publications/supplier-code-of-conduct%20) unless specified otherwise.

## Contract Schedule 5 - DWP Security Policy

The policies listed below form DWP’s Security Policy for the purposes of this Call-Off Contract

1. Acceptable Use Policy
2. Information Security Policy
3. Physical Security Policy
4. Information Management Policy
5. Email Policy
6. Social Media Policy
7. Security Classification Policy

You can find all policies published on: <https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise.