

**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.....

**FORM OF AGREEMENT**

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

**Between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**And**

**McBains Ltd**

**For the provision of**

**Cost Management Professional Services to support DWP Life Cycle Works and Business as Usual Projects in  
FY21/22 and FY22/23**

**THIS AGREEMENT BY DEED is made the [.....] day of [.....]**

**PARTIES:**

1. **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the "**Employer**"); and
2. **MCBAINS LTD** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 3094139 whose registered office address is at 26 Finsbury Square, London, EC2A 1DS. (the "**Consultant**").

**BACKGROUND**

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) 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".
- (C) On the 17<sup>th</sup> February 2021 the *Employer*, acting as part of the Crown, and in the Framework Agreement is identified as a "Contracting Authority" invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 12<sup>th</sup> March 2021 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the *Services* in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. 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.
2. The *Consultant* will Provide the *Services* in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. 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.
4. 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.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.

6. The Contract Schedules are
  1. Invitation to Tender for Cost Management Professional Services to support DWP Life Cycle Works and Business as Usual Projects in FY21/22 and FY22/23 dated 17th February 2021, as amended.
  2. McBains Ltd Proposal dated 12<sup>th</sup> March 2021
  3. Price List
  4. TUPE Schedules (Annex G) and list of Notified Sub-consultants
  5. Not Used
  6. Personal Data and Data Subjects
  7. Form of Task Order
  8. Security Policy
  9. *Employer's* Code of Conduct
  10. Key Performance Indicators

**Executed as a deed**

This Call Off Contract is EXECUTED AS A DEED by the Parties and is delivered on the date which first appears in this Deed.

The corporate seal of Secretary of State for )  
 Work and Pensions is hereunto )  
 affixed and authenticated by: )  
 )  
 )  
 )  
 )

**SEAL OF SECRETARY OF STATE FOR WORK AND PENSIONS**

Signed as a deed by **MCBAINS LTD**  
acting by a Director and the Company  
Secretary/two Directors

.....

Director

.....

Director/Company Secretary

# 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 and/or main Option E (as specified in the relevant Task Order), dispute resolution Option W2 and secondary Options X2, X10, X11, X18, X19, X20, Y(UK)2, Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013).
  - The *Employer* is The Secretary of State for Work and Pensions, Caxton House, Tothill Street, London, SW1H 9NA.
  - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement.
  - The *services* are as set out in DWP's Statement of Requirements and Scope in Schedule 1 to this agreement.
  - The *Scope* is in as set out in DWP's Statement of Requirements and Scope in Schedule 1 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 the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this contract 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 12 years following Completion or earlier termination.
  - The *Service Manager* is:  
Name: Sodexo Limited (company number: 00842846)  
Address: One Southampton Row, Holborn, London, WC1B 5HA
  - 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

## 1. Covid-19

### 2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things:
  - a) access to DWP premises as necessary; and
  - b) such additional access as is set out in the relevant Task Order.

### 3 Time

- The *starting date* is 19/04/2021.
- The *service period* is the period of 1 years, 11 months and 2 weeks commencing on the *starting date* (the ***initial service period***), provided that the *Employer* may extend the *service period* by up to two periods of 6 months (each an ***extension period***), each *extension period* commencing on the day following the last day of the *initial service period* or the previous *extension period*, as appropriate, by giving not less than 8 weeks' written notice to the *Consultant* prior to the commencement of the relevant *extension period*.
- The *Consultant* submits revised programmes at intervals no longer than two weeks.

### 4 Quality

- The quality policy statement and quality plan are provided within 2 weeks of the *starting date*.
- The *defects 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 <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£REDACTED in respect of each claim, without limit to the number of claims except for claims arising out of pollution or 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 <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Schedule 14 (Annex 1 - Part A)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As required under Framework Schedule 14 (Annex 1 - Part C)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
<ul style="list-style-type: none"> <li>• <i>The Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £REDACTED for each and every claim except for claims arising out of pollution, contamination, asbestos or fire safety notifications, where the total liability is in the aggregate in any one period of insurance.</li> </ul>		

### Optional Statements

#### **If the *Employer* has decided the *completion date* for the whole of the *services***

- The *completion date* for the *services* is without prejudice the initial service period and any extension period of this contract, the Task Completion Date as specified in each Task Order.

**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
  - 1: The management and evaluation of Contractor tenders, followed by production of Tender Reports, which shall be correct and in accordance with the Statement of Requirements and Scope at the first attempt, will be completed and issued to the *Employer* and the *Employer's Agent*.
    - 1: Within timescales communicated in writing (which may include email) by the *Employer's Agent* to the Consultant, provided that the Consultant shall not be provided with less than 5 Working Days' notice to complete the Tender Report.
  - 2: Applications for payment from other organisations contracted by the *Employer*, which are free from errors, will be reviewed and processed by the Consultant.
    - 2: Within 5 Working Days of the application for payment being submitted to the Consultant, or where the Consultant requests additional time from the *Employer's Agent* on the grounds the application for payment is significantly large, the *Employer's Agent* may increase this to 7 Working Days.
  - 3: Responses to requests for information and/or input or review from the Professional and Technical Support Team (PTST) defined in the Statement of Requirements and Scope will be provided and issued to the PTST.
    - 3: Within 2 Working Days of the request for information and/or input or review being submitted to the Consultant in writing (which may include email).

**If the period in which payments are made is not three weeks and Y(UK)2 is not used**

- Not applicable

**If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due**

- The period for payment is 30 days after the date when payment is due.

**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 X2 Option X2 is used:**

- *The law of the project* is the law of England and Wales.

**Option X8 Not used**

**Option X10 Option X10 is used**

- The *Employer's Agent* is
- Name: Sodexo Limited (company number 00842846)
- Address: One Southampton Row, Holborn, London WC1B 5HA

The authority of the *Employer's Agent* is as set out in clause Z51.

**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* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to **£REDACTED** for each and every claim.
- The *end of liability* date is 12 years after Completion of the whole of the *services*.

**Option X19 Option X19 is used**

- The *Consultant* submits a Task Order programme to the *Service Manager* within 5 Working Days of receiving the Task Order.

**Option X20 Option X20 is used:**

- The *incentive schedule* for Key Performance Indicators (**KPIs**) is in Contract Schedule 10.
- During the first 6 months of the contract (the **KPI Benchmarking Period**), the KPIs in the incentive schedule will be monitored and measured, but Red, Amber and Green ratings and the Fee Impact on KPI 2 will not be applied in respect of the KPI Benchmarking Period.
- Within 10 Working Days following the end of the KPI Benchmarking Period, the Consultant shall provide a proposal to the Employer of values for Red, Amber and Green ratings, and any other amendments to the KPIs, that it reasonably considers would incentivise good and effective performance of the contract by the Consultant (the **RAG Proposal**).
- Following receipt of the RAG Proposal (or at any time if the RAG Proposal is not provided within the applicable period), the *Employer* may by written notice amend any part of the incentive schedule, including the criteria for Red, Amber and Green ratings, based on the reported performance of the *Consultant* in the KPI Benchmarking Period. The *Employer* shall have regard to the RAG Proposal and shall consult with the *Consultant* when determining such amendments. The *Employer* does not intend to introduce a Fee Impact for any other KPI other than KPI 2. The *Consultant* shall co-operate with and provide reasonable assistance to the *Employer* and the Employer's Agent to identify such amendments as are required to effect an effective incentive schedule.
- A report detailing performance against each KPI is provided at intervals of 3 months.
- The Parties shall meet within 5 Working Days following each KPI performance report being provided at a quarterly performance meeting. Without prejudice to the Improvement Plan Process set out below, actions and associated timescales will be agreed to share best practice and/or agree how improvements to performance will be implemented.
- The performance of the Consultant in the preceding quarter is classified as 'Good' if KPIs 1 to 4 are marked as Green, and KPIs 5 and 6 are marked as either Green or Amber.
- The performance of the Consultant in the preceding quarter is classified as 'Poor' if two or more of the KPIs are marked as Red.
- The performance of the Consultant in the preceding quarter is classified as 'Requiring Improvement' if the Key Performance Indicators are neither classified as 'Good' or 'Poor.'
- Without prejudice to any other right or remedy of the *Employer*, where the performance of the *Consultant* in three or more consecutive quarters is classified as 'Poor' the *Consultant* shall be deemed to have substantially failed to comply with his obligations

and such default shall be deemed not to be capable of being put right. Accordingly, the *Employer* shall have the right to terminate the *Consultant's* obligation to Provide the Services upon written notice.

- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.
- The Employer reserves the right to disapply the *incentive schedule* where the Employer considers that mitigating circumstances apply.

### **Improvement Plan Process**

- An **Improvement Plan** is the plan to address the impact of and prevent the reoccurrence of performance by the *Consultant* which is 'Poor' or 'Requiring Improvement'.
- Where the performance of the *Consultant* is 'Poor' or 'Requiring Improvement' in the previous quarter, the *Employer* may serve notice (an **Improvement Notice**) on the *Consultant* setting out sufficient detail to make it clear what the *Consultant* has to rectify.
- Where an Improvement Notice is served the *Consultant* submits to the *Employer* a draft Improvement Plan and the *Employer* reviews it as soon as possible and in any event within 10 Working Days (or such other period as the Parties agree) of the quarterly performance meeting or, if later, the date of service of the Improvement Notice. The *Consultant* submits a draft Improvement Plan even if it disputes the performance rating in the previous quarter.
- The draft Improvement Plan sets out:
  1. full details of the performance rating in the previous quarter and which KPIs were rated as Red or Amber to achieve this rating; and
  2. the steps the *Consultant* proposes to take to rectify and improve the performance of these KPIs and to prevent any issues from recurring, including timescales for such steps.
- The *Consultant* provides the *Employer* with such additional information or documentation as the *Employer* reasonably requires.
- The *Employer* notifies the *Consultant* that:
  1. it agrees the draft Improvement Plan; or
  2. it rejects the draft Improvement Plan because it is inadequate, for example because it is not detailed enough to evaluate, will take too long to complete, will not prevent reoccurrence of the Red or Amber markings it was drafted to improve or is otherwise unacceptable to the *Employer*. Where the *Employer* does so it shall set out its reasons for doing so.
- Where the *Employer* accepts the Improvement Plan the *Consultant* immediately implements the actions in the Improvement Plan.
- Where the *Employer* rejects the Improvement Plan the *Consultant* resubmits its draft Improvement Plan taking into account the

*Employer's* comments within 5 Working Days of notice that the *Employer* rejects the preceding Improvement Plan.

- Without prejudice to any other right or remedy of the *Employer*, the *Employer* may terminate this contract by written notice to the *Consultant* if performance of the *Consultant* is classified as 'Poor' in three or more consecutive quarters and the *Consultant* fails in respect of any of such incidences of 'Poor' performance:
  1. to submit a draft Improvement Plan to the *Employer* in accordance with clause 67.4 or 67.8;
  2. to submit a draft Improvement Plan which the *Employer* acting reasonably does not approve;
  3. to implement an Improvement Plan agreed by the Parties by the date of rectification stipulated in the Improvement Plan; or
  4. following implementation of a previous Improvement Plan, where one or more of the same KPIs has received a Red marking in consecutive quarters for the same (or substantially the same) root cause.

**Contract Data relating to Z clauses**

- The *additional conditions of contract* are clauses Z1 to Z52 set out with this contract save for:

*Z9, Z21, Z26, Z35, Z36, Z37, Z41 and Z48.*

**Clause Z19 Employer's Limitation of Liability**

- The limit of the Employer's liability is REDACTED of the total Price payable in respect of all Task Orders which have been issued under this contract from time to time.

**Clause Z35 Not Used**

- 

**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	<i>credit rating</i>
<i>Consultant</i>	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](#) 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 as provided in Contract Schedule 2 - Consultant Proposal
- The *staff rates* are as set out in Contract Schedule 3 - Price List

The *Consultant* shall keep records of hours and days properly worked by the *Consultant's* staff in the form of timesheets.

- The following matters will be included in the Risk Register
  - Covid-19

### Optional statements • **The *Consultant* does not state any expenses**

#### **If the *Consultant* requires additional access**

The *Employer* provides access to:

- (a) all persons, places and things as are reasonably required for performance of the Contract; and
- (b) such additional persons, places and things that may be specified in the Task Order].

#### **If Option A or C is used**

The *activity schedule* is comprised of the work involved in the Task Orders instructed under clause X19 and added to the activity schedule under clause X19.2. The work in respect of each Task Order is added to the activity schedule in compliance with Contract Schedule 1 - Employer's Statement of Requirements and Scope, Contract Schedule 2 - Consultant Proposal and Contract Schedule 3 - Price List.

- The tendered total of the Prices is:
  - in respect of each project, the applicable service percentage of the construction cost of each project as set out in the Price List against the Anticipated Projects Value of that Project Type in each Financial Year or Part Year. The following terms are defined within clause Z52:
    - "Anticipated Projects Value"
    - "Project Type"
    - "Financial Year"
    - "Part Year"

- The anticipated aggregate total amount of the Prices in respect of all Life Cycle Works and Business as Usual projects in FY21/22 and FY22/23 is £1,190,000.00, exclusive of VAT.

## Additional conditions of contract – clauses Z1 to Z52

### Clause Interpretation and the law

#### Z1

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 Sub-consultants (and all persons employed by any Sub-consultant together with the Sub-consultant’s servants, consultants, agents, suppliers and sub-Sub-consultants);

**Contracting Authorities** means the bodies listed in the contract notice 2016/S 180-323830 on 17/09/2016 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;

**Law** means any applicable law, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, enforceable European Union right including enforceable rights within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, regulation, directive, order, mandatory guidance, code of practice and/or requirements or any regulatory body of which the Consultant is bound to comply;

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

Z2

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

Z2.4 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 Sub-consultants have:

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

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 Recovery of sums due from *Consultant***

**Z3**

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 *Employer* 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 Assignment and Novation**

**Z4**

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. Accordingly, 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 Discrimination**

### **Z5**

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 Sub-consultant is required to carry out any activity alongside the *Employer’s* employees, the *Consultant* ensures that each such employee or Sub-consultant 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 Sub-consultant obligations substantially similar to those set out above.

## **Clause Conflict of interest**

### **Z6**

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 Merger, take-over or change of control**

### **Z7**

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 Appointment of Adjudicator**

**Z8**

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 Project Bank Account**

**Z9** Z9.1 If Option Y(UK)1 applies to this contract then this Z clause applies

Z9.2 Clause Y1.6 is amended by inserting the following after the second sentence:

“The *Employer* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”

Z9.3 The *Employer* may notify the *Consultant* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer's* notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

**Clause Employer's Codes of Conduct**

**Z10** 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 Fair payment**

**Z11** Z11.1 The *Consultant* assesses the amount due to a Sub-consultant without taking into account the amount assessed under this contract.

Z11.2 The *Consultant* includes in the contract with each Sub-consultant

- a period for payment of the amount due to the Sub-consultant 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 Sub-consultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Sub-consultant 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 Sub-consultant to assess the amount due to a subSub-consultant 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 Sub-consultants 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 Confidentiality**

**Z12**

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 Sub-consultant 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 Security Requirements**

**Z13**

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 Official Secrets Act**

**Z14**

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 Sub-consultants 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 Statement of Requirements and Scope.

**Clause Data protection**

**Z15**

Z15.1 In this clause Z15 the following terms shall have the following meanings:

- |                                      |  |
|--------------------------------------|--|
| <b>“Consultant Personnel”</b>        | means all directors, officers, employees, agents, consultants and contractors of the <i>Consultant</i> and/or any Sub-Processor engaged in the performance of its obligations under this contract;   |
| <b>“Data Controller”</b>             | shall have the same meaning as given in Data Protection Legislation.   |
| <b>“Data Loss Event”</b>             | means any event that results, or may result, in unauthorised access to Personal Data held by the <i>Consultant</i> under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach;  |
| <b>“Data Processor”</b>              | has the meaning given to it in the Data Protection Legislation, as amended from time to time;  |
| <b>“Data Protection Legislation”</b> | means:<br>the Data Protection Act 2018;<br><br>the GDPR; and<br><br>all applicable Laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation,<br><br>in each case as amended from time to time; |
| <b>“Data Subject”</b>                | has the meaning given to it in the Data Protection Legislation, as amended from time to time;  |
| <b>“Data Subject Access</b>          | means a request made by a Data Subject in accordance with rights granted pursuant to   |

<b>Request</b>	the Data Protection Legislation to access his or her Personal Data;
<b>“GDPR”</b>	means UK GDPR (as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419);
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Legislation as amended from time to time and shall include Special Categories of Personal Data;
<b>“Personal Data Breach”</b>	shall have the meaning as given in the Data Protection Legislation;
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing and <b>“Process”</b> and <b>“Processed”</b> shall be interpreted accordingly;
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation): <ul style="list-style-type: none"> <li>(i) Pseudonymisation and encrypting Personal Data;</li> <li>(ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;</li> <li>(iii) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident</li> <li>(iv) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and</li> <li>(v) regularly assessing and evaluating the effectiveness of such measures adopted by it.</li> </ul>
<b>“Pseudonymisation”</b>	shall have the same meaning as given in Data Protection Legislation;
<b>“Restricted Country”</b>	means any country which: <ul style="list-style-type: none"> <li>a) is outside the United Kingdom;</li> </ul>

- b) is not determined to be adequate pursuant to regulations made under s17A of the Data Protection Act 2018; and
- c) has not been confirmed by the Contracting Authority as a non-Restricted Country in writing from time-to-time.

**“Special Categories of Personal Data”** shall have the meaning given in Data Protection Legislation;

**“Sub-Processor”** means any third party appointed to Process Personal Data on behalf of the *Consultant* related to this contract;

Z15.2 Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this contract, the Parties acknowledge that the *Employer* is the Data Controller and that the *Consultant* is the Data Processor.

Z15.3 The *Consultant* shall:

Z15.3.1 ensure that it and the Consultant Personnel comply with all of the applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act of omission, place the *Employer* in breach or potential breach of Data Protection Legislation;

Z15.3.2 process the Personal Data only to the extent and in such manner as is necessary for the purposes specified in this contract and in accordance with instructions from the *Employer* to perform its obligations under this contract in accordance with Contract Schedule 6 – Personal Data and Data Subjects, unless otherwise required by Law. In such case, the *Consultant* shall inform the *Employer* of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;

Z15.3.3 notify the *Employer* immediately if it considers that any of the *Employer’s* instructions infringe the Data Protection Legislation;

Z15.3.4 maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this clause Z15;

Z15.3.5 keep a record of any Processing of Personal Data it carries out on behalf of the *Employer* including (without limitation) the records specified in Article

30(2) of the GDPR and upon request provide a copy to the *Employer*;

- Z15.3.6 ensure that at all times it has in place appropriate Protective Measures to guard against a Data Loss Event, which the *Employer* may reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the Protective Measures) and which shall be implemented at the *Consultant's* own expense and at no cost to the *Employer*;
- Z15.3.7 not disclose or transfer the Personal Data to any third party or Consultant Personnel unless necessary for the provision of the *services* and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
- Z15.3.8 take reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:
  - Z15.3.8.1 are aware of and comply with the *Consultant's* duties under this contract;
  - Z15.3.8.2 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and
  - Z15.3.8.3 have undergone adequate training in the use, care, protection and handling of Personal Data;
- Z15.3.9 notify the *Employer* immediately if it becomes aware of a Data Loss Event or if it receives:
  - Z15.3.9.1 from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the *Employer's* obligations under the Data Protection Legislation;
  - Z15.3.9.2 any communication from the Information Commissioner or any other

regulatory authority in connection with Personal Data; or

Z15.3.9.3 a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

Z15.3.10 provide the *Employer* with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause **Error! Reference source not found.**(e)) at no cost to the *Employer* including by promptly providing:

Z15.3.10.1 the *Employer* with full details and copies of the complaint, communication or request;

Z15.3.10.2 where applicable, such assistance as is reasonably requested by the *Employer* to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and

Z15.3.10.3 the *Employer*, on request by the *Employer*, with any Personal Data it holds in relation to a Data Subject; and

Z15.3.11 if requested by the *Employer*, provide a written description of the measures that the *Consultant* has taken and the Protective Measures in place, for the purpose of compliance with its obligations pursuant to Clause **Error! Reference source not found.** and provide to the *Employer* copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

Z15.3.12 at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) using a secure method of transfer to the *Employer* on expiry or earlier termination of this contract unless the *Consultant* is required by Law to retain Personal Data.

Z15.4 The *Consultant* shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the *Consultant* or any Sub-consultant wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

Z15.4.1 the *Consultant* shall give a written request in accordance with Clause Z15.4.2 ("**Third Country**

**Processing Request”)** to the *Employer* which the *Employer* shall consider in its absolute discretion;

Z15.4.2 the *Consultant* shall set out in its proposal to the *Employer* for a Third Country Processing Request details of the following:

Z15.4.2.1 the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;

Z15.4.2.2 the Restricted Countries to which the Personal Data will be transferred and/or Processed;

Z15.4.2.3 any Sub-consultants or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and

Z15.4.2.4 how the *Consultant* will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries (in accordance with Article 46 of the GDPR and/or Data Protection Legislation) so as to ensure the *Employer’s* compliance with the Data Protection Legislation;

Z15.4.3 in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Data Protection Legislation and then-current *Employer*, Contracting Authority and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

Z15.4.4 the *Consultant* shall comply with such other instructions and shall carry out such other actions as the *Employer* may notify in writing, including:

Z15.4.4.1 incorporating standard and/or model clauses (which are approved as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties; and

Z15.4.4.2 procuring that any Sub-consultant or other third party who will be Processing and/or receiving or accessing the

Personal Data in any Restricted Countries either enters into:

- (a) a direct data processing agreement with the *Employer* on such terms as may be required by them; or
- (b) a data processing agreement with the *Consultant* on terms which are equivalent to those agreed between the *Employer* and the Sub-consultant relating to the relevant Personal Data transfer, and

Z15.4.4.3 in each case which the *Consultant* acknowledges may include the incorporation of model contract provisions (which are approved as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the *Employer* deems necessary for the purpose of protecting Personal Data.

Z15.5 The *Consultant* shall use its reasonable endeavours to assist the *Employer* to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of their obligations under the Data Protection Legislation to the extent the *Consultant* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

Z15.6 The *Consultant* shall allow for audits of its Processing activity by the *Employer* or the *Employer's* designated auditor and comply with all reasonable requests or directions by the *Employer* to enable the *Employer* to verify that the *Consultant* is in full compliance with its obligations under this contract.

Z15.7 The *Consultant* shall designate a data protection officer if required by the Data Protection Legislation.

Z15.8 Before allowing any Sub-Processor to process any Personal Data related to this contract, the *Consultant* shall:

- (a) notify the *Employer* in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the *Employer*;
- (c) enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this Clause 35 such that they apply to the Sub-Processor; and provide

the *Employer* with such information regarding the Sub-Processor as they may reasonably require.

Z15.9 The *Consultant* shall remain fully liable for all acts or omissions of any Sub-Processor.

Z15.10 Within thirty (30) Working Days of the date of termination or expiry of this contract, the *Consultant* shall return to the *Employer* any data belonging to the *Employer* that is in the *Consultant's* possession, power or control, either in its then current format or in a format nominated by *Employer*, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the contract, or such period as is necessary for such compliance.

**Clause Freedom of Information  
Z16**

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 Sub-consultants 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 Records and Audit Access**

**Z17**

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 Sub-consultant 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 Sub-consultant.

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 Sub-consultant 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 Reporting: Small and Medium Enterprises**

**Z18**

Z18.1 In this clause "SME" is

- a Sub-consultant or
- a Sub-consultant to a Sub-consultant

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 Sub-consultant 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 Sub-consultant include a requirement that the conditions of contract for any subSub-consultant engaged by the Sub-consultant who is an SME include obligations substantially similar to those set out in clause Z18.4.

**Clause The *Employer's* liability**

**Z19**

Z19.1 The *Employer's* total liability to the *Consultant* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.

Z19.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for

- the total of the Prices if Option A applies,
- the Price for Services Provided to Date adjusted by the *Consultant's* share if Option C applies.
- the Price for Services Provided to Date if Option E applies.
- the amount of any expenses properly spent by the *Consultant* in Providing the Services.
- Any tax which the law requires the *Employer* to pay to the *Consultant*.

**Clause Tax Non-Compliance**

**Z20**  
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 - Not used**

**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 3 shall apply as follows:
  - where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of Contract Schedule 3 shall apply;
  - where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Contract Schedule 3 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 3; and
  - Part C of Contract Schedule 3 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 3 shall apply and Parts A and B of Contract Schedule 3 shall not apply; and
  - Part D of Contract Schedule 3 shall apply on the expiry or termination of the *service* or any part of thereof.

**Changes to *staff rates* and Sub-consultants**

**Clause Z23**

- 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 Subject always to paragraphs 2.1 and 7 of Framework Schedule 3, with effect from the first day of the first *extension period* (“Indexation Adjustment Date”) the *staff rates* shall be adjusted as follows. The relevant adjustment shall:
- Z23.2.1 be applied on Indexation Adjustment Date and the Parties shall amend the *staff rates* shown in this contract to reflect such variations;
- Z23.2.2 be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index (“CPI Index”) published for the twelve (12) Months ended on the 31st of January immediately preceding the Indexation Adjustment Date (<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>);
- Z23.2.3 where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the *Employer* and the *Consultant* shall agree otherwise;
- Z23.2.4 if the CPI Index is no longer published, the *Employer* and the *Consultant* shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this clause Z23.2.
- Z.23.3 Except as set out in clause Z23.2, no costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the *Employer* or Sub-consultants of the performance of their obligations under this contract.
- Z23.4 If a Sub-consultant 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 Sub-consultant 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 Law does not require the Sub-consultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant’s* request, the *Consultant* directs the Sub-consultant to submit its proposal directly to the *Employer*.
- Z23.5 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Sub-consultant 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 Sub-consultant 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 Sub-consultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Sub-consultant to submit its records and certificate directly to the *Employer*.

Z23.6 The *Consultant* includes in the conditions of contract for each Sub-consultant

- 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 Sub-consultant under this clause Z23,
- an obligation on the Sub-consultant 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 Sub-consultant,
- a right for the *Consultant* to recover from the Sub-consultant (or to deduct from any amount that would otherwise be due to the Sub-consultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the Sub-consultant and
- an acknowledgment from the Sub-consultant that the *Employer* may enforce these provisions directly against the Sub-consultant under the Contracts (Rights of Third Parties) Act 1999.

**Clause Insurance cover**

**Z24**

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 Professional indemnity insurance**

**Z25**

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 OMIT DO NOT USE~~

~~Z26.1 If the *Employer* instructs a change to the Scope which involves the omission of part of the services, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the services.~~

~~Z26.2 The following is added at the end of the first bullet point in clause 91.1 of the conditions of contract:~~

~~“unless instructed otherwise by the *Employer*”.~~

~~Z26.3 The following are treated as a substantial failure by the *Consultant* to comply with his obligations~~

~~• a key resource needed by the *Consultant* to Provide the Services~~

~~is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*~~

- ~~• the *Consultant's* performance as measured in accordance with the current edition of the Collaborative Performance Framework is below the *failure level*~~
- ~~• the *Consultant* breaching the terms of its obligations in clause 22.1 of the *conditions of contract* or~~
- ~~• any conflict of interest under this contract cannot be resolved to the *Employer's* satisfaction.~~

~~Z26.4 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if in the *Employer's* opinion the known or anticipated cost of the project, which the services are performed (or to be performed) in connection with, has significantly increased.~~

### **Clause Termination – PCRs, Regulation 73**

**Z27**

Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply 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 Value Added Tax (VAT) Recovery and Invoicing**

**Z28**

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.

Z28.2 The *Consultant* shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the services supplied and any other documentation reasonably required by the *Employer* to substantiate the invoice should be supplied in accordance with clauses Z28.7 and Z28.8.

Z28.3 The *Consultant* shall indemnify the *Employer* on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the *Employer* at any time in

respect of the *Consultant's* failure to account for or to pay any VAT relating to payments made to the *Consultant* under this contract. Any amounts due under this Z28.3 shall be paid by the *Consultant* to the *Employer* not less than five (5) Working Days before the date upon which the tax or other liability is payable by the *Employer*.

Z28.4 The *Employer* shall not be liable to the *Consultant* in any way whatsoever for any error or failure made by the *Consultant* (or the *Employer*) in relation to VAT, including without limit:-

- a) where the *Consultant* is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
- b) where the *Consultant* has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or
- c) where the *Consultant's* treatment of VAT in respect of any claim for payment made under this contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
- d) where the *Consultant* has specified a rate of VAT, or a VAT classification, to the *Employer* (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the *Consultant* subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this clause Z28.4(d), the *Consultant* shall be obliged to repay any overpayment by the *Employer* on demand.

Z28.5 Where the *Consultant* does not include VAT on an invoice, the *Employer* will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

Z28.6 The *Consultant* acknowledges that the *Employer* has advised the *Consultant* that the *Consultant* should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the *Consultant* should seek clarification of this contract's VAT status with HMRC.

Z28.7 The *Employer* and the *Consultant* shall exchange all orders, invoices, claims and payments via electronic methods.

Z28.8 The following information is required independently from the *Consultant* in order to verify invoices and shall be provided before or at the same time that an invoice or other claim for payment is submitted by the *Consultant* to the *Employer*:

- a) records of any Time Charge or other charge determined by reference to *staff rates*, including in relation to any Task Order issued under Option E and/or where applicable in respect of compensation events. Such records shall be in the form of timesheets and/or such other evidence of time spent that the *Employer* shall reasonably require and shall be broken down according to each Task to which they relate (including details of the specific Task to which each time entry relates);
- b) the *Employer* reserves the right to request records to evidence

completion of relevant activities for the appropriate procurement type and RIBA stage (as detailed within The Employer's Statement of Requirements and Scope) as requested in the Task Order issued under Option A.

and shall be sent to the following person (or such replacement person that the *Employer* shall notify):

Please note that Regions A to E of the DWP's Estate Job Centre & Office Fit Out Contractor Framework referred in the table below are defined within The Employer's Statement of Requirements and Scope

Type of project	Contact Name	Email Address
All projects in Region C and D of DWP's Estate Job Centre & Office Fit Out Contractor Framework	REDACTED D	REDACTED
All projects in Region A, B and E of DWP's Estate Job Centre & Office Fit Out Contractor Framework	REDACTED D	REDACTED

#### Clause Tax Arrangements of Public Appointees

##### Z29

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 Sub-consultant) 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 Consortia

### Z30

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 Subconsulting**

**Z31**

Z31.1 Before:

- appointing a proposed Sub-consultant or
  - allowing a Sub-consultant to appoint a proposed subSub-consultant
- 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 Sub-consultant or subSub-consultant 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 Sub-consultant or subSub-consultant.

Z31.2 The *Consultant* does not appoint the proposed Sub-consultant (or allow the Sub-consultant to appoint the proposed subSub-consultant) 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 Sub-consultant or subSub-consultant 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 Sub-consultant or subSub-consultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

- replace the Sub-consultant or
- require the Sub-consultant to replace the subSub-consultant.

**Clause Energy Efficiency Directive**

**Z32**

Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Sub-consultant and subSub-consultant 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 Sub-consultant and subSub-consultant complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”.

**Clause Compliance with statutory requirements**

**Z33**

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 Negotiation and mediation**

**Z34**

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 Collateral Warranty Agreements – Not Used**

**Z35**

**Access to MOD sites – Not Used**

**Clause**

**Z36**

**Clause MoD DEFCON Requirements – Not Used**

**Z37**

**Clause Intellectual Property Rights**  
**Z38**

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 licensee 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 Financial Distress**

**Z39**

- 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 Parent Company Guarantee**

##### **Z41**

Z41.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later. Parent Company Guarantees are given by

- for a standalone company – the Controller,
- for an unincorporated joint venture (more than one party) – the Controller of each Consortium Member or
- for an incorporated joint venture– the Controller of each Consortium Member.

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

Z41.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

#### **Clause Offshoring of data**

##### **Z42**

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 confirmed to the *Consultant* that either

- the *Employer* has gained approval for such storage in accordance with “*Offshoring information assets classified at OFFICIAL*” dated November 2015 (or any later revision or replacement) or
  - such approval is not required.
- 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 quarterly basis the numbers of apprentices employed and the wider skills training provided, in Providing the Services.

Z45.2 The *Consultant* is required to make available to its employees and Sub-consultants working on this contract, information about the Government's Apprenticeship programme and wider skills opportunities.

Z45.3 The *Consultant* is to provide any further skills training opportunities that are appropriate for its employees engaged in the services.

Z45.4 The *Consultant* is to provide an annual 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 Sub-consultants,
- 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                      Not used**

**Clause Z49    Option X19: Task Order**

<b>Identified and defined terms</b>	<b>X19</b> X19.1	<p>(1) A <b>Task</b> is work within the <i>services</i> which the <i>Service Manager</i> may instruct the <i>Consultant</i> to carry out within a stated period of time.</p> <p>(2) A <b>Task Order</b> is the <i>Service Manager’s</i> instruction to carry out a Task in the form set out in Contract Schedule 7.</p> <p>(3) <b>Task Completion</b> is when the <i>Consultant</i> has done all the work in the Task and corrected Defects which would have prevented the <i>Employer</i> or Others from using the Affected Property and Others from doing their work.</p> <p>(4) <b>Task Completion Date</b> is the date for completion stated in the Task Order unless later changed in accordance with this contract.</p>
<b>Providing the Service</b>	X19.2	<p>A Task Order includes</p> <ul style="list-style-type: none"> <li>• a detailed description of the work in the Task;</li> <li>• a priced list of items of work in the Task in which items taken from the Price List are identified;</li> <li>• the starting and completion dates for the Task;</li> </ul>

- the amount of delay damages for the late completion of the Task;
- the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used; and
- where applicable, any payment milestones applicable to the Task.

The *Service Manager* consults the *Consultant* about the contents of a Task Order before he issues it.

When a Task Order is issued

- the priced list of items for the Task is inserted in the Price List; and
- the work involved is added to the Activity Schedule.

An instruction to carry out a Task is not a compensation event.

X19.3 The delay damages in a Task Order, if any, are not more than the estimated cost to the *Employer* of late completion of the Task. If Task Completion is later than the Task Completion Date, the *Consultant* pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.

The Prices for items in the Task price list which are not taken from the Price List are assessed in the same way as compensation events.

X19.4 Where payment milestones are specified in a Task Order, any completed activity (within the meaning of clause 11.2(15)) which is the subject of a payment milestone shall only form part of the Price for Services Provided to Date once all activities which are required for the relevant payment milestone have become completed activities.

**Time** X19.5 The *Consultant* does not start any work included in the Task until the *Service Manager* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the *service period*.  
If Task Completion is after the end of the *service period*, the *service period* is extended until Task Completion. The *Service Manager* does not issue a Task Order during this extended period.  
The *Service Manager* may issue an instruction changing a Task Order.

**Task Order programme** X19.6 The *Consultant* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the Contract Data.

X19.7 The *Consultant* shows on each Task Order programme which he submits for acceptance

- the Task starting date and the Task Completion Date,
- planned Task Completion,
- the order and timing of the operations which the *Consultant* plans to do in order to complete the Task,
- provisions for
  - float,
  - time risk allowances,
  - health and safety requirements and

- the procedures set out in this contract,
  - the dates when, in order to Provide the Service in accordance with his Task Order programme, the *Consultant* will need
    - access to the Affected Property,
    - acceptances,
    - Plant and Materials, equipment and other things to be provided by the *Employer* and
    - information from Others,
  - for each operation, a statement of how the *Consultant* plans to do the work identifying the principal Equipment and other resources which he plans to use and
  - other information which the Statement of Requirements and Scope requires the *Consultant* to show on a Task Order programme submitted for acceptance.
- X19.8 Within one week of the *Consultant* submitting a Task Order programme to him for acceptance, the *Service Manager* either accepts the programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting the Task Order programme is that
- the *Consultant's* plans which it shows are not practicable,
  - it does not show the information which this contract requires or
  - it does not comply with the Statement of Requirements and Scope.
- Revising the Task Order programme** X19.9 The *Consultant* shows on each revised Task Order programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - the effects of implemented compensation events,
  - how the *Consultant* plans to deal with any delays and to correct notified Defects and
  - any other changes which the *Consultant* proposes to make to the Task Order programme.
- X19.10 The *Consultant* submits a revised Task Order programme to the *Service Manager* for acceptance
- within the *period for reply* after the *Service Manager* has instructed him to and
  - when the *Consultant* chooses to.
- The latest programme accepted by the *Service Manager* supersedes previous accepted programmes.
- Compensation events** X19.11 The following are compensation events.
- (1) The *Service Manager* gives an instruction changing a Task Order. If the effect of a compensation event which is an instruction changing a Task Order is to reduce the total Time Charge, the Prices are reduced.
  - (2) The *Consultant* receives the Task Order after the starting date stated in the Task Order.
  - (3) The *Employer* does not provide the right of access to the Affected Property in accordance with the latest accepted Task Order programme.
  - (4) The *Employer* does not provide something which he is to provide as stated in the Statement of Requirements and

Scope in accordance with the latest accepted Task Order programme.

(5) The *Employer* or Others do not work in accordance with the latest accepted Task Order programme or within the conditions stated in the Statement of Requirements and Scope.

(6) An event which

- stops the *Consultant* completing a Task or
- stops the *Consultant* completing a Task by the Task Completion Date,

and which

- neither party could prevent,
- an experienced contractor would have judged at the date of issue of the Task Order to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

(7) A Task Completion Date is later than the end of the *service period*.

X19.12 If, due to the compensation event, planned Task Completion is delayed, the delay to the Task Completion Date is stated in the *Consultant's* quotation for the event and a programme is submitted with details of the assessment of the delay.

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

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

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

**Implementing  
compensation  
events**

X19.13 The changes to the Prices are assessed using the *staff rates* where applicable. The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Service Manager's* notification implementing a compensation event.

Any compensation event under clause X19.11(7) does not give rise to any increase to the Prices and the *Consultant* is only entitled to an extension to the Task Completion Date and/or to a Key Date.

**Transfer of Tasks  
on expiry of the  
*service period***

X19.14 In the period of 3 months prior to the end of the *service period* and following expiry or termination of the *service period* the *Consultant* shall, without additional charge, provide the *Employer* with all reasonable co-operation and assistance and copies of all information, records and documents that the *Employer* may reasonably request to facilitate any Task which has a Task Completion Date following expiry of the *service period* which the *Employer* seeks to transfer in an orderly manner to the *Employer* or its replacement provider.

## Clause Z50 Volumes

- Z50.1 The *Consultant* acknowledges and agrees that no guarantee is given by the *Employer* in respect of levels or values of work. Any levels or values of work referred to in a Statement of Requirements and Scope given the *Employer* or the Contract Schedules are indicative only and shall not be binding on the *Employer*.

## Clause Z51 Integrator

- Z51.1 In this clause Z51 the following terms shall have the following meanings:
- a) “**Integrator**” means the *Employer’s Agent*, being supplier under the Integrator Agreement, and such supplier(s) that the *Employer* appoints as its replacement or successor from time to time (whether or not under the Integrator Agreement); and
  - b) “**Integrator Agreement**” means the integrator agreement dated 13 June 2017 entered into by (1) the *Employer* and (2) the Integrator.
- Z51.2 The *Consultant* acknowledges that the *Employer* has appointed the Integrator to manage this contract on behalf of the *Employer*.
- Z51.3 Unless otherwise specified by the *Employer*, the *Consultant* will liaise and cooperate with, and accept instructions from, the Integrator as if it was the *Consultant*. For the avoidance of doubt, unless specifically set out in this contract, the *Consultant* shall not have any direct liability under this contract to the Integrator.
- Z51.4 The *Employer* may, at any time, make direct contact with, and/or provide direct instructions to, the *Consultant* and the *Consultant* shall liaise directly with the *Employer* and comply with any such instructions (insofar as they are obliged to in accordance with this contract).
- Z51.5 Where the *Consultant* receives any instruction from the:
- Z51.5.1 Integrator that conflicts with any instruction received by the *Consultant* directly from the *Employer*; or
  - Z51.5.2 *Employer* that conflicts with any instruction received by the *Consultant* from the Integrator,
- the *Consultant* shall immediately notify the *Employer* and the Integrator to seek clarification in relation to which instruction it should comply with. The *Employer* shall confirm which instruction (or any other instruction as may be relevant) the *Consultant* should comply with and the *Consultant* shall do so in accordance with its obligations under this contract.

## Clause Z52 Price adjustment mechanism

- Z52.1 At or around the start of each:
- a) “**Financial Year**”, being an accounting period of the *Employer* during the term of this contract (as at the date of this contract being a period of 12 months commencing on 1 April); or
  - b) “**Part Year**”, being a period during the term of this contract which does not constitute a full Financial Year,

the *Employer* shall, for each type of project referred to in the Price List (“**Project Type**”), estimate its anticipated value of projects of that Project Type in respect of that Financial Year or Part Year (“**Anticipated Projects Value**”). The *Employer* shall inform the Supplier of the Anticipated Projects Value in respect of each Project Type each Financial Year or Part Year.

- Z52.2 For the purposes of clause X19 the Prices for each Task Order shall be calculated and payable on the basis of the pricing applicable to the Anticipated Projects Value for that Project Type, as set out in the Price List (the “**Pricing Band**”). In the case of a Part Year the Pricing Band values shall be pro-rated according to the proportion of a Financial Year that the Part Year represents.

- Z52.3 In the event that the actual project values for a given Project Type in respect of a Financial Year or Part Year (“**Actual Projects Value**”) is less than or exceeds the Anticipated Projects Value to the extent that a different Pricing Band is applicable (after pro-rating the Pricing Band as set out in Z52.2) (a “**Project Value Change**”) the Prices in respect of the Task Orders in respect of that Project Type shall be adjusted in accordance with clauses Z52.4 to Z52.8.

- Z52.4 If either party considers there is a Project Value Change, within 40 Working Days following the later of:
- a) completion of, or an instruction to discontinue, the final Task Order which was instructed in the relevant Financial Year or Part Year (as appropriate); or
  - b) the last day of the *service period* or, if different, the date of expiry or termination of this contract,

either party may serve a notice on the other party specifying that it considers that there has been a Project Value Change (a “**Price Adjustment Notice**”), provided that the *Consultant* shall not be permitted to serve a Price Adjustment Notice (and there shall be no corresponding price increase) where the *Employer* has terminated the contract or the *Consultant’s* obligation to provide the *services* due to any failure by the *Consultant* to comply with his obligations or any other breach by the *Consultant* of the contract.

Z52.5 Within 20 Working Days following service of a Price Adjustment Notice under clause Z52.4, the *Consultant* shall serve a notice on the *Employer* detailing:

- a) the Actual Projects Value;
- b) the Prices payable in respect of each Task Order in respect of that Project Type (prior to adjustment under clause Z52.6) instructed during the relevant Financial Year or Part Year ("**Pre-Adjustment Prices**");
- c) the Prices payable in respect of each Task Order adjusted on the basis of the rates applicable to the Actual Projects Value pursuant to the Price List (in respect of any Part Year, pro-rated according to the proportion of a Financial Year that the Part Year represents) ("**Adjusted Prices**"); and
- d) the amount by which the aggregate Pre-Adjustment Prices exceed or are less than the aggregate Adjusted Prices

(the "**Price Adjustment Notice**").

Z52.6 Within 20 Working Days following receipt of the Price Adjustment Notice the *Employer* shall confirm in writing whether or not it agrees with the Price Adjustment Notice. The *Consultant* shall promptly provide such co-operation, assistance, and additional information and documentation that the *Employer* shall reasonably request for assessing the Price Adjustment Notice. If the *Employer* confirms that it does not agree or does not provide confirmation within such period the Parties shall use reasonable endeavours and negotiate in good faith for a period of 10 Working Days (from and including: (a) the day following the date of confirmation of disagreement; or (b) the day following expiry of the 20 Working Day period, as appropriate) in order to agree the Price Adjustment Notice and the amount by which the aggregate Pre-Adjustment Prices exceed or are less than the aggregate Adjusted Prices (the "**Price Differential**").

Z52.7 In the event that the Parties are unable to agree the Price Adjustment Notice and the Price Differential by the expiry of such 10 Working Day period the dispute shall be determined in accord with clauses Z34 and/or W2.

Z52.8 In the event that the Price Adjustment Notice and Price Differential have been agreed or determined:

- a) in the event that the Price Differential is positive, the *Consultant* shall raise an invoice in accordance with this

contract in respect of the Price Differential, which shall be payable in accordance with this contract; or

- b) in the event that the Price Differential is negative, the *Consultant* shall raise a credit note in the amount of the Price Differential.

**Contract Schedule 1 - Invitation to Tender for Cost Management Professional Services to support DWP Life Cycle Works and Business as Usual Projects in FY21/22 and FY22/23 dated 17<sup>th</sup> February 2021, as amended.**



Invitation to Tender.zip (Command Line)

## Contract Schedule 2 - McBains Ltd Proposal dated 12th March 2021

**REDACTED**

## Contract Schedule 3 - Price List

REDACTED

# Contract Schedule 4 - TUPE Schedules (Annex G) and list of Notified Sub-consultants

## STAFF TRANSFER

### 1. Definitions

1.1. 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”**

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:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) 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;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) 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;
- f) claims whether in tort, contract or statute or otherwise;
- g) 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;
<b>"New Fair Deal"</b>	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;
<b>"Notified Sub-Consultant"</b>	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;
<b>"Principles of Good Employment Practice"</b>	means the guidance published by the Cabinet Office and found at <a href="http://www.gov.uk/government/publications/principles-of-good-employment-practice">www.gov.uk/government/publications/principles-of-good-employment-practice</a> ;
<b>"Replacement Consultant"</b>	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> from time to time or where the <i>Employer</i> is providing Replacement Services for its own account, shall also include the <i>Employer</i>
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the <i>service</i> and which the <i>Employer</i> receives in substitution for any of the <i>service</i> following the end of the <i>service period</i> or earlier termination, whether those services are provided by the <i>Employer</i> internally and/or by any third party;
<b>"Replacement Sub-Consultant"</b>	means a Sub-consultant 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);
<b>"Service Transfer"</b>	any transfer of the <i>service</i> (or any part of the <i>service</i> ), for whatever reason, from the <i>Consultant</i> or any Sub-consultant to a Replacement Consultant or a Replacement Sub-Consultant
<b>"Service Transfer Date"</b>	means the date of a Service Transfer;
<b>"Staffing Information"</b>	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 <i>Employer</i> may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format: <ul style="list-style-type: none"> <li>their ages, dates of commencement of employment or engagement and gender;</li> <li>details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;</li> <li>details of contracted working hours;</li> <li>the identity of the employer or relevant contracting party;</li> <li>their relevant contractual notice periods and any other terms relating to termination of</li> </ul>

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. Relevant Transfers

1.1. The *Employer* and the *Consultant* agree that:

1.1.1. 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

1.1.2. 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.

1.2. 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

2.1. 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:

2.1.1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;

2.1.2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Employer Employees; and/or

b) any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.

2.1.3. 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;

2.1.4. 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:

a) 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

- b) 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.
  - 2.1.5. 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;
  - 2.1.6. 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
  - 2.1.7. 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.
- 2.2. 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:
- 2.2.1. 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
  - 2.2.2. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
- 2.3. 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:
- 2.3.1. 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
  - 2.3.2. 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*.
- 2.4. 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.

2.5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Annex G:

2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. 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.

2.6. 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.

2.7. The indemnity in paragraph 2.6 of Part A of this Annex G

2.7.1. shall not apply to:

a) any claim for

a) 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

b) 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;

b) 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

2.7.2. 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.

2.8. 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*.

### 3. *Consultant* Indemnities and Obligations

3.1. 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:

3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;

- 3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
- a) any collective agreement applicable to the Transferring Employer Employees; and/or
  - b) any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. 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;
- 3.1.4. 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;
- 3.1.5. 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;
- 3.1.6. 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:
- a) 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
  - b) 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;
- 3.1.7. 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
- 3.1.8. 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.
- 3.2. 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.

3.3. 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*.

#### 4. Information

4.1. 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.

#### 5. Principles of Good Employment Practice

5.1. 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.

5.2. 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:

- 5.2.1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.2.2. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.2.3. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.2.4. The New Fair Deal.

#### 6. Pensions

6.1. 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

1.1. The *Consultant* undertakes to enter into the Admission Agreement.

1.2. The *Consultant* and the *Employer*:

1.2.1. 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;

1.2.2. 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;

1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and

1.2.4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. 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

2.1. 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.

2.2. 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.

2.3. 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

3.1. 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.

3.2. 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

4.1. The *Consultant* and the *Employer* respectively undertake to each other:

4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

4.1.2. 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).

## 5. Indemnities

5.1. 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.

## 6. Employer Obligation

6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## 7. Subsequent Transfers

7.1. The *Consultant* shall:

7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

7.1.2. 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

7.1.3. for the period either:

a) 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

b) 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 B

### TRANSFERRING FORMER CONSULTANT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

#### 1. Relevant Transfers

##### 1.1. The Parties agree that:

- 1.1.1. 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
  - 1.1.2. 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.
- 1.2. 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

- 2.1. 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:
- 2.1.1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
  - 2.1.2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
    - a) any collective agreement applicable to the Transferring Former Consultant Employees; and/or
    - b) any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.
  - 2.1.3. 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:
    - a) 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

- b) 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;
  - 2.1.4. 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;
  - 2.1.5. 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
  - 2.1.6. 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.
- 2.2. 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:
- 2.2.1. 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
  - 2.2.2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
- 2.3. 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:
- 2.3.1. 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
  - 2.3.2. 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*.
- 2.4. 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.

2.5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:

2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. 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.

2.6. 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.

2.7. The indemnity in paragraph 2.6 of Part B of this Annex G

2.7.1. shall not apply to:

a) any claim for

a) 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

b) 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

b) 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

2.7.2. 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.

2.8. 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*.

### 3. Consultant Indemnities and Obligations

3.1. 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:

- 3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
  - a) any collective agreement applicable to the Transferring Former Consultant Employee; and/or
  - b) any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. 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;
- 3.1.4. 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;
- 3.1.5. 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;
- 3.1.6. 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:
  - a) 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
  - b) 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;
- 3.1.7. 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
- 3.1.8. 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.

- 3.2. 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.
  - 3.3. 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.
4. Information
    - 4.1. 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.
5. Principles of Good Employment Practice
    - 5.1. 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:
    - 5.2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
    - 5.3. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
    - 5.4. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
    - 5.5. the New Fair Deal.
6. Procurement Obligations
    - 6.1. 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.
7. Pensions

7.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

## ANNEX TO PART B: PENSIONS

### 1. Participation

1.1. The *Consultant* undertakes to enter into the Admission Agreement.

1.2. The *Consultant* and the *Employer*:

1.2.1. 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;

1.2.2. 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;

1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and

1.2.4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. 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

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2.1. 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.

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2.2. 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.

2.3. 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.

2.4. 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

- 3.1. 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.
- 3.2. 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

4.1. The *Consultant* and the *Employer* respectively undertake to each other:

4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

4.1.2. 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).

#### 5. Indemnities

5.1. 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.

#### 6. Employer Obligation

6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### 7. Subsequent Transfers

7.1. The *Consultant* shall:

7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

7.1.2. 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

7.1.3. for the period either:

- a) 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

b) 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

- 1.1. 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.
- 1.2. 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:
  - 1.2.1. 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
  - 1.2.2. 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*.
- 1.3. If an offer referred to in paragraph 1.2.2 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.
- 1.4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
  - 1.4.1. no such offer of employment has been made;
  - 1.4.2. such offer has been made but not accepted; or
  - 1.4.3. 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.

#### 2. Indemnities

- 2.1. Subject to the *Consultant* and/or the relevant Notified Sub-Consultant acting in accordance with the provisions of paragraphs 1.2 to 1.4 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 1.4 of Part C of this Annex G, the *Employer* shall:
  - 2.1.1. 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 1.2 of Part C of this Annex G made pursuant to the provisions of paragraph 1.4 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

- 2.1.2. 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 1.2 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.
- 2.2. If any such person as is described in paragraph 1.2 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 1.4 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*.
- 2.3. Where any person remains employed by the *Consultant* and/or any Sub-Consultant pursuant to paragraph 1.2 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.
- 2.4. The indemnities in paragraph 2.1 of Part C of this Annex G
- 2.4.1. shall not apply to:
- a) any claim for
    - a) 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
    - b) 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
  - b) 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
- 2.4.2. shall apply only where the notification referred to in paragraph 1.2.1 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.

### 3. Procurement Obligations

- 3.1. 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.

## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. Pre-service Transfer Obligations

1.1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
- 1.1.2. receipt of the giving of notice of early termination or any partial termination of this contract;
- 1.1.3. the date which is twelve (12) months before the end of the *service period*; and
- 1.1.4. 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*.

1.2. 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*:

- 1.2.1. the *Consultant's* Final Personnel List, which shall identify which of the Staff are Transferring *Consultant* Employees; and
- 1.2.2. the Staffing Information in relation to the *Consultant's* Final Personnel List (insofar as such information has not previously been provided).

1.3. 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*.

1.4. 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.

1.5. 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):

- 1.5.1. 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;
- 1.5.2. 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);

- 1.5.3. 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;
- 1.5.4. 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;
- 1.5.5. 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
- 1.5.6. 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.

- 1.6. 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.
- 1.7. 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:
  - 1.7.1. the most recent month's copy pay slip data;
  - 1.7.2. details of cumulative pay for tax and pension purposes;
  - 1.7.3. details of cumulative tax paid;
  - 1.7.4. tax code;
  - 1.7.5. details of any voluntary deductions from pay; and
  - 1.7.6. bank/building society account details for payroll purposes.

## 2. Employment Regulations Exit Provisions

- 2.1. 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.

- 2.2. 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.
- 2.3. 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:
  - 2.3.1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
  - 2.3.2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
    - a) any collective agreement applicable to the Transferring Consultant Employees; and/or
    - b) 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;
  - 2.3.3. 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;
  - 2.3.4. 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:
    - a) 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
    - b) 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;

- 2.3.5. 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);
  - 2.3.6. 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
  - 2.3.7. 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.
- 2.4. 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:
- 2.4.1. 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
  - 2.4.2. arising from the Replacement Consultant's failure, and/or Replacement Sub-Consultant's failure, to comply with its obligations under the Employment Regulations.
- 2.5. If any person who is not identified in the Consultant's Final Personnel List claims, or it is determined in relation to any person who is not identified in the Consultant's Final Personnel List, 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:
- 2.5.1. 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
  - 2.5.2. 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*.
- 2.6. 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.

2.7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:

2.7.1. no such offer of employment has been made;

2.7.2. such offer has been made but not accepted; or

2.7.3. 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.

2.8. 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.

2.9. The indemnity in paragraph 2.8 of Part D of this Annex G

2.9.1. shall not apply to:

a) any claim for

a) 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

b) 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

b) 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

2.9.2. 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.

2.10. 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*.

2.11. 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:

- 2.11.1. the *Consultant* and/or any Sub-Consultant; and
  - 2.11.2. the Replacement Consultant and/or the Replacement Sub-Consultant.
- 2.12. 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.
- 2.13. 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:
- 2.13.1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;
  - 2.13.2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:
    - a) any collective agreement applicable to the Transferring Consultant Employees; and/or
    - b) 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;
  - 2.13.3. 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;
  - 2.13.4. 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;
  - 2.13.5. 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;

- 2.13.6. 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:
- a) 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
  - b) 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;
- 2.13.7. 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
- 2.13.8. 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.
- 2.14. 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.

**ANNEX 1: LIST OF NOTIFIED SUB-CONSULTANTS**

As of the Contract Date, no Sub-Consultants are intended to be used in this appointment.

**Contract Schedule 5 - Template form of Collateral Warranty in favour of a beneficiary**

Not Used

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## Contract Schedule 6 - Personal Data and Data Subjects

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller
2. Any such further instructions shall be incorporated into this Contract Schedule 6 – Personal Data and Data Subjects.
3. This Contract Schedule 6 – Personal Data and Data Subjects shall be completed by the Data Controller, who may take account of the view of the Data Processor, however, the final decision as to the content of this Contract Schedule 6 – Personal Data and Data Subjects shall be with the Data Controller at its absolute discretion.
4. The contact details of the Data Processor’s Data Protection Officer are **REDACTED**.  
Email: **REDACTED**. Telephone: **REDACTED**

Description	Details
Identity of Data Controller and Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Employer</i> is the Data Controller and the <i>Consultant</i> is the Data Processor in accordance with clause Z15.
Subject matter of the processing	The processing is needed in order to ensure that the Data Processor can effectively deliver the Call Off Contract to provide the <i>services</i> to the <i>Employer</i> .
Duration of the processing	Personal Data is processed for the duration of the <i>service period</i> to allow <i>services</i> to be performed.
Nature and purposes of the processing	The nature of the processing will include the storage and use of names and business contact details of staff of both the <i>Employer</i> and the <i>Consultant</i> as necessary to deliver the services and to undertake contract management. The Call Off Contract itself will include the names and business contact details of staff of both the <i>Employer</i> and the <i>Consultant</i> involved in delivery or management of the Call Off Contract.

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Type of Personal Data	Names, business telephone details and email addresses, office location and position of staff of both the <i>Employer</i> and the <i>Consultant</i> .
Categories of Data Subject	Staff of both the <i>Employer</i> and the <i>Consultant</i> , including where those staff are named within the Call Off Contract itself or involved in contract management.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under European Union or European member state law to preserve that type of data	Following the <i>completion date</i> , the <i>Consultant</i> will delete the Personal Data from any computers, storage devices and storage media that are to be retained by the <i>Consultant</i> after the expiry of the Call Off Contract. The <i>Consultant</i> will certify to the <i>Employer</i> that it has completed such deletion.

## Contract Schedule 7 - Form of Task Order

<b>TASK ORDER</b>										
<b>Task Order No:</b> <i>[insert reference]</i>										
<b>Date:</b> <i>[insert date]</i>										
<b>From:</b> Secretary of State for Work and Pensions ( <b>Employer</b> )										
<b>To:</b> <i>[insert Consultant details]</i> ( <b>Consultant</b> )										
<b>Agreement:</b> agreement dated [DATE] between (1) the Employer and (2) the Consultant for the provision of cost management professional services to support DWP Life Cycle Works and Business as Usual Projects in FY21/22 and FY22/23.										
<b>The Service Manager instructs the Consultant to carry out the following Task on the following basis:</b>										
1.	Task Description & Affected Property	<i>[insert description of Task/service to be provided and address]</i>								
2.	Conditions of Contract	NEC3 Professional Services Contract April 2013 core clauses and the clauses for main [Option A] [Option E]								
3.	Task Starting date	<i>[insert date]</i>								
4.	Task Completion Date	<i>[insert date]</i>								
5.	Handovers	To be uploaded and closed out by Gleeds Advisory Ltd within [20] working days of project completion.								
6.	The period within which the <i>Consultant</i> is to submit a Task Order programme for acceptance is	Within 5 Working Days of receipt of this Task Order								
	The priced list of items of work in the Task in which items taken from the Price List are identified at:	Contract Schedule 3 - Price List.								
7.	<p><i>[[Delete as appropriate - use this section instead of the below where Contract Option A is used] - Total of the Prices for this Task Order: £[insert total], broken down as follows:</i></p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: right;">Price</th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">•</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="text-align: left;">•</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="text-align: left;">•</td> <td style="text-align: right;">£]</td> </tr> </tbody> </table>		Item	Price	•	£	•	£	•	£]
Item	Price									
•	£									
•	£									
•	£]									
	<p><i>[[Delete as appropriate – use this section instead of the above where Contract Option E is used] Forecast Total of the Prices for this Task Order: £[insert total], broken down as follows:</i></p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: right;">Price</th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">•</td> <td style="text-align: right;">£</td> </tr> </tbody> </table>		Item	Price	•	£				
Item	Price									
•	£									

	<ul style="list-style-type: none"> <li>• £</li> <li>• £]</li> </ul>																												
8.	<p>The period for payment is 30 days after the date when payment is due.</p> <p>Payment milestones will be in accordance with one of the options 1 to 3 listed below as selected in this Task Order:</p> <table border="1"> <thead> <tr> <th colspan="2">Option 1</th> <th colspan="2">Option 2</th> <th>Option 3</th> </tr> </thead> <tbody> <tr> <td>RIBA Stage 1</td> <td>10.50%</td> <td rowspan="3">Stages 1 to 3</td> <td rowspan="3">35%</td> <td rowspan="8">As agreed between the <i>Consultant</i> and the <i>Employer</i> and outlined in this Task Order.</td> </tr> <tr> <td>RIBA Stage 2</td> <td>10.50%</td> </tr> <tr> <td>RIBA Stage 3</td> <td>14.00%</td> </tr> <tr> <td>RIBA Stage 4</td> <td>25.00%</td> <td rowspan="4">Stage 4 to 7</td> <td rowspan="4">65%</td> </tr> <tr> <td>RIBA Stage 5</td> <td>34.00%</td> </tr> <tr> <td>RIBA Stage 6</td> <td>5.00%</td> </tr> <tr> <td>RIBA Stage 7</td> <td>1.00%</td> </tr> <tr> <td></td> <td>100.00%</td> <td></td> <td></td> </tr> </tbody> </table> <p>Option selected: [1, 2 or 3]</p> <p>Option 3: [Describe Option 3 here, or delete these square brackets].....</p> <p>In any case, the period for payment is 30 days after the date when payment is due.</p>	Option 1		Option 2		Option 3	RIBA Stage 1	10.50%	Stages 1 to 3	35%	As agreed between the <i>Consultant</i> and the <i>Employer</i> and outlined in this Task Order.	RIBA Stage 2	10.50%	RIBA Stage 3	14.00%	RIBA Stage 4	25.00%	Stage 4 to 7	65%	RIBA Stage 5	34.00%	RIBA Stage 6	5.00%	RIBA Stage 7	1.00%		100.00%		
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RIBA Stage 7	1.00%																												
	100.00%																												
9.	<p>The <i>Employer</i> provides access to the following persons, places and things:</p> <ul style="list-style-type: none"> <li>c) access to DWP premises as necessary; and</li> <li>d) such additional access required, as set out below: <ul style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ul> </li> </ul>																												
10.	CDM Regulations – Gleeds Advisory Ltd performs the role of Principal Designer.																												
11.	<b>The <i>Employer</i> accepts the above price and the <i>Service Manager</i> instructs the <i>Consultant</i> to carry out the Task</b>																												
<p>This Task Order is issued under the Agreement. Terms defined in the Agreement shall have the same meaning in this Task Order. The Priced List of Items attached to this Task Order (if any) shall be deemed to form part of this Task Order.</p>																													

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Signed by **THE SECRETARY OF STATE**  
**FOR WORK AND PENSIONS**

.....  
Authorised Signatory

We accept the terms of this Task Order and agree to proceed accordingly.

Signed by **MCBAINS LTD** acting by a Director

.....  
Director

## **Contract Schedule 8 - Security Policy**

### **1. GENERAL**

The Consultant shall, and shall procure that any Sub-Consultant (as applicable) shall, comply with the Employer's security requirements as set out in the Call Off Contract which include the requirements set out in this Schedule 8 to the Call Off Contract (the "**Security Policy**"). The Security Policy

includes, but is not limited to, requirements regarding the confidentiality, integrity and availability of Employer Assets, the Employer’s Systems Environment and the Consultant’s Systems Environment. Terms used in this Schedule 8 which are not defined below shall have the meanings given to them in the Contract Data and/or clause Z1 (Interpretation and the law) of this Call Off Contract.

<b>“Availability Test”</b>	shall mean the activities performed by the Consultant to confirm the availability of any or all components of any relevant ICT system as specified by the Employer.
<b>“Breach of Security”</b>	<p>means the occurrence of:</p> <ul style="list-style-type: none"> <li data-bbox="815 658 1369 898">(I) any unauthorised access to or use of Employer Data, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);</li> <li data-bbox="815 949 1369 1189">(II) the loss and/or unauthorised disclosure of any Employer Data, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);</li> <li data-bbox="815 1240 1369 1480">(III) any unauthorised event resulting in loss of availability of any Employer Data, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);</li> <li data-bbox="815 1532 1369 1771">(IV) any unauthorised changes or modification to any Employer Data, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).</li> </ul>
<b>“CHECK”</b>	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.

<b>“Cloud”</b>	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
<b>“Consultant’s Systems Environment”</b>	means any ICT systems provided by the Consultant (and any Sub-consultant) which are or may be used for the provision of the <i>services</i> .
<b>“Cyber Essentials Plus”</b>	shall mean the Government-backed, industry-supported scheme managed by the NCSC with higher level of security requirements to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>“Cyber Security Information Sharing Partnership” or “CiSP”</b>	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>“Employer Assets”</b>	mean any <i>Employer Devices</i> and <i>Employer Data</i> .
<b>“Employer Data”</b>	<p>means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-</p> <ul style="list-style-type: none"> <li>(i) supplied to the <i>Consultant</i> by or on behalf of the Employer; or</li> <li>(ii) which the <i>Consultant</i> is required to generate, process, store or transmit pursuant to this Call Off Contract.</li> </ul>
<b>“Employer’s Systems Environment”</b>	means all of the Employer’s ICT systems which are or may be used for the provision of the <i>services</i> .

<p><b>“Good Security Practice”</b></p>	<p>shall mean:</p> <ul style="list-style-type: none"> <li>a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);</li> <li>b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and</li> <li>c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.</li> </ul>
<p><b>“Information Security”</b></p>	<p>shall mean:</p> <ul style="list-style-type: none"> <li>a) the protection and preservation of: <ul style="list-style-type: none"> <li>i) the confidentiality, integrity and availability of any Employer Assets, the Employer’s Systems Environment (or any part thereof) and the Consultant’s Systems Environment (or any part thereof);</li> <li>ii) related properties of information including, but not limited to, authenticity, accountability, and non-repudiation; and</li> </ul> </li> <li>b) compliance with all Law applicable to the processing, transmission,</li> </ul>

	storage and disposal of Employer Assets.
<b>“Information Security Manager”</b>	shall mean the person appointed by the Consultant with the appropriate experience, authority and expertise to ensure that the Consultant complies with the Security Policy.
<b>“Information Security Management System (“ISMS”)</b>	shall mean the set of policies, processes and systems designed, implemented and maintained by the Consultant to manage Information Security Risk as specified by ISO/IEC 27001.
<b>“Information Security Questionnaire”</b>	shall mean the Employer’s set of questions used to audit and on an ongoing basis assure the Consultant’s compliance with the Security Policy. The Information Security Questionnaire is the Security Management Plan.
<b>“Information Security Risk”</b>	shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.
<b>“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301</b>	shall mean a) ISO/IEC 27001; b) ISO/IEC 27002/IEC; and c) ISO 22301  in each case as most recently published by the International Organization for Standardization or its successor entity (the “ISO”) or the relevant successor or replacement information security standard which is formally recommended by the ISO.
<b>“NCSC”</b>	shall mean the National Cyber Security Centre or its successor entity (where applicable).
<b>“Penetration Test”</b>	shall mean a simulated attack on any Employer Assets, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).
<b>“PCI DSS”</b>	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards

	Council, LLC or its successor entity (the “PCI”).
“Risk Profile”	shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
“Security Test”	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
“Security Policies”	mean the Employer’s Security Policies published by the Employer from time to time and shall include any successor, replacement or additional Security Policies. The Security Policies are set out in Annex A.
“Security Policies and Standards”	mean the Security Policies and the Security Standards
“Security Standards”	mean the Employer’s Security Standards published by the Employer from time to time and shall include any successor, replacement or additional Security Standards. The Security Standards are set out in Annex B.
“Tigerscheme”	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
“Vulnerability Scan”	shall mean an ongoing activity to identify any potential vulnerability in any Employer Assets, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).

1.1 Reference to any notice to be provided by the Consultant to the Employer shall be construed as a notice to be provided by the Consultant to the Employer’s Agent.

## 2. PRINCIPLES OF SECURITY

2.1 The Consultant shall at all times comply with the Security Policy and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

## 3. ISO/IEC 27001 COMPLIANCE AND AUDIT

3.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with ISO/IEC 27001 in relation to the services during the Call Off Contract.

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3.2 The Consultant shall appoint an Information Security Manager and shall notify the Employer of the identity of the Information Security Manager on the *starting date* and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.

3.3 The Consultant shall ensure that it operates and maintains the Information Security Management System during the *service period* and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:

- a) a scope statement (which covers all of the Services provided under this Call Off Contract);
- b) a risk assessment (which shall include any risks specific to the Services);
- c) a statement of applicability;
- d) a risk treatment plan; and
- e) an incident management plan

in each case as specified by ISO/IEC 27001.

The Consultant shall provide the Information Security Management System to the Employer upon request within 10 Working Days from such request.

3.3A If the Consultant reasonably considers that it is not reasonably commercially possible for it to comply with paragraphs 3.1 and 3.3 of this Schedule by the start of the *service period*, the Consultant shall:

- a) give written notice to the Employer to inform it of the same and provide to the Employer, for its consideration, within 10 working days of signature of this Call Off Contract:
  - i. a proposed action plan (including a timetable) indicating how the Consultant will become compliant with paragraphs 3.1 and 3.3 of this Schedule (including any specific feedback from the Employer in regards to the completed Information Security Questionnaire) and the dates by which they can reasonably become compliant (assuming the Consultant uses all reasonable endeavours to do so) ("**Proposed ISO27001 Action Plan**"); and
  - ii. its proposed Information Security Management System that mitigates the failure to comply with paragraphs 3.1 and 3.3 of this Schedule as far as reasonably commercially possible and which is otherwise compliant with the requirements of this Schedule ("**Proposed ISMS**"),

and the Consultant shall make such amendments to the Proposed ISO27001 Action Plan and the Proposed ISMS that the Employer shall consider necessary in the interests of complying with this Schedule and managing Information Security Risk. Upon the Employer being satisfied with the Proposed ISO27001 Action Plan and Proposed ISMS (following implementation of such amendments it considers necessary) it shall notify the Consultant, upon which they shall become the "**ISO27001 Action Plan**" and "**Interim ISMS**" respectively;

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- b) use all reasonable endeavours to become compliant with paragraphs 3.1 and 3.3 of this Schedule as soon as possible and in any event shall become compliant by no later than the dates set out in the ISO27001 Action Plan; and
  - c) operate and maintain the Proposed ISMS until such time as the Interim ISMS is approved, upon which it will operate and maintain the Interim ISMS, as modified from time to time pursuant to the implementation of the ISO27001 Action Plan.

Any breach of this paragraph 3.3A constitutes a substantial failure to comply with the Consultant's obligations under the Call Off Contract.

- 3.4 The Consultant shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Employer.
- 3.5 Notwithstanding the provisions of paragraph **Error! Reference source not found.** to paragraph **Error! Reference source not found.**, the Employer may, in its absolute discretion, notify the Consultant that it is not in compliance with the Security Policy and provide details of such non-compliance. The Consultant shall, at its own expense, undertake those actions required in order to comply with the Security Policy within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Security Policy within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.

#### **4. CYBER ESSENTIALS PLUS SCHEME**

- 4.1 The Consultant shall, and shall procure that any Sub-Consultant (as applicable) shall, obtain and maintain certification to Cyber Essentials Plus (the "Cyber Essentials Plus Certificate") in relation to the Services during the *service period*. The Cyber Essentials Plus Certificate shall be provided by the Consultant to the Employer annually on the dates as agreed by the Parties.
- 4.2 The Consultant shall notify the Employer of any failure to obtain, or the revocation of, a Cyber Essentials Plus Certificate within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Plus Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Plus Certificate during the *service period* after the first date on which the Consultant was required to provide a Cyber Essentials Plus Certificate in accordance with paragraph **Error! Reference source not found.** (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.

#### **5. RISK MANAGEMENT**

- 5.1 The Consultant shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the *service period* which includes standards and processes for the assessment of any potential risks in relation to the *services* and processes to ensure that the Security Policy is met (the **Risk Assessment**). The Consultant shall provide the Risk Management Policy to the Employer upon request within 10 Working Days of such request. The Employer may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Security Policy. The Consultant shall, at its own expense, undertake those

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actions required in order to implement the changes required by the Employer within one calendar month of such request or on a date as agreed by the Parties.

- 5.2 The Consultant shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the threat landscape or (iii) at the request of the Employer. The Consultant shall provide the report of the Risk Assessment to the Employer, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Consultant shall notify the Employer within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Employer decides, at its absolute discretion, that any Risk Assessment does not meet the Security Policy, the Consultant shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, cooperate with the Employer in relation to the Employer's own risk management processes regarding the *services*.
- 5.5 For the avoidance of doubt, the Consultant shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph **Error! Reference source not found.** Any failure by the Consultant to comply with any requirement of this paragraph **Error! Reference source not found.** (regardless of whether such failure is capable of remedy), shall constitute a substantial failure by the Consultant to comply with his obligations.

## **6. SECURITY AUDIT AND ASSURANCE**

- 6.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, complete the information security questionnaire in the format stipulated by the Employer (the "**Information Security Questionnaire**") at least annually or at the request by the Employer. The Consultant shall provide the completed Information Security Questionnaire to the Employer within one calendar month from the date of request.
- 6.2 The Consultant shall conduct Security Tests to assess the Information Security of the Consultant's Systems Environment and, if requested, the Employer's Systems Environment. In relation to such Security Tests, the Consultant shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the Employer's System Environment or (iii) at the request of the Employer which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Employer. The Consultant shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Consultant shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Employer in its absolute discretion.

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- 6.3 The Employer shall be entitled to send the Employer's Agent or such other person it shall reasonably require to witness the conduct of any Security Test. The Consultant shall provide to the Employer notice of any Security Test at least one month prior to the relevant Security Test.
- 6.4 Where the Consultant provides code development services to the Employer, the Consultant shall comply with the Security Policy in respect of code development within the Consultant's Systems Environment and the Employer's Systems Environment.
- 6.5 Where the Consultant provides software development services, the Consultant shall comply with the code development practices specified in the Statement of Requirements and Scope or in the Security Policy.
- 6.6 The Employer, or an agent appointed by it, may undertake Security Tests in respect of the Consultant's Systems Environment after providing advance notice to the Consultant. If any Security Test identifies any non-compliance with the Security Policy, the Consultant shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Employer at its absolute discretion. The Consultant shall provide all such co-operation and assistance in relation to any Security Test conducted by the Employer as the Employer may reasonably require.
- 6.7 The Employer shall schedule regular security governance review meetings which the Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, attend.

## **7. PCI DSS COMPLIANCE AND CERTIFICATION**

- 7.1 Where the Consultant obtains, stores, processes or transmits payment card data, the Consultant shall comply with the PCI DSS.
- 7.2 The Consultant shall obtain and maintain up-to-date attestation of compliance certificates ("**AoC**") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("**SAQ**") completed by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the *service period*. The Consultant shall provide the respective PCI Reports to the Employer upon request within 10 Working Days of such request.
- 7.3 The Consultant shall notify the Employer of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

## **8. SECURITY POLICIES AND STANDARDS**

- 8.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Security Policy applicable to the services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. The Employer may issue instructions to the Consultant to comply with any amended Security Policy as required by the Employer, provided that where such amended Security Policy increases the burden on the Consultant pursuant to this contract, the novation

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shall be a compensation event. Accordingly a new clause 60.1(14) shall be added that reads “An amendment to a Security Policy pursuant to paragraph 8.2 of Contract Schedule 8 occurs which increases the burden on the Consultant pursuant to this Call Off Contract”.

- 8.3 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

## **9. CYBER SECURITY INFORMATION SHARING PARTNERSHIP**

- 9.1 The Consultant may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the *service period*. The Consultant may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the Consultant becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Consultant’s Risk Management Policy.

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## ANNEX A – EMPLOYER SECURITY POLICIES AND STANDARDS

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018  
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media  
(published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

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## ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

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## **Contract Schedule 9 - Employer's Code of Conduct**

You can find the latest version of the Employer's Code of Conduct published on:  
<https://www.gov.uk/government/publications/supplier-code-of-conduct> unless specified otherwise.

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## Contract Schedule 10 - Key Performance Indicators



Contract Schedule  
10 - Key Performance