

2024

JCT Consultancy Agreement (Public Sector) 2016 (CA 2016) Schedule of
Amendments
relating to

**Technical Services to support the procurement of the new DfE
Framework 2025**

The Secretary of State for Education ⁽¹⁾ and
ARCADIS CONSULTING (UK) LIMITED ⁽²⁾

Schedule of Amendments to the JCT Consultancy Agreement (Public Sector) 2016 (CA 2016)

The Contract shall comprise the JCT Consultancy Agreement (Public Sector) 2016 (CA 2016), subject to the amendments in this Schedule of Amendments, and shall be construed accordingly.

Agreement

THIS CONTRACT is made on 2024
BETWEEN:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Client**")
- (2) **ARCADIS CONSULTING (UK) LIMITED** (company number 02212959) whose registered office is situated at 80 Fenchurch Street, London, EC3M 4BY (the "**Consultant**")

Recitals

- First the Client wishes to have the following services carried out at the Consultant's usual place of working (the "**Project**") as more particularly described in the Client's Brief;
- Second for the purposes of the Project, the Client has requested the Consultant to act in the capacity specified in the Contract Particulars and, for the fee specified in Annex A (the "**Fee**") to provide the services set out in Annex B (the "**Services**"), which the Consultant has agreed to do on the terms of this Agreement;
- Third Delete.

Articles

Article 1: Consultant's obligations

After "Conditions" insert "and this Contract".

Article 2: Payment

After "Conditions" insert "and this Contract".

Article 3A: BIM Information Manager

The BIM Information Manager is

[I].....

.....

of

[I].....

.....

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.....
or such replacement as the Client at any time appoints to fulfil that role.

Article 3B: BIM Co-ordinator

The BIM Co-ordinator is

[I].....

.....

of

[I].....

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.....

.....

or such replacement as the Client at any time appoints to fulfil that role.]

Article 5: Arbitration

Not used – Arbitration does not apply

Article 6: Legal proceedings

Delete and insert "Without prejudice to Article 4 and clause 12.2, the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim which may arise out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)."

Article 7: The Consultant's Deeds of Collateral Warranty

Insert a new Article 7:

"7.1 Not used.

7.2 Not used.

7.3 Not used.

Article 8: Sub-consultants, Sub-contracts and Deeds of Collateral Warranty

Insert a new Article 8:

"8.1 Not used

8.2 Not used

8.3 Not used

8.4 Not used

Article 9: Incorporation of Schedule of Amendments

Insert a new Article 9:

"The Schedule of Amendments attached hereto is hereby incorporated into this Contract and the Agreement, Conditions and Schedules set out in the standard form shall take effect as amended by the Schedule of Amendments. If there is any discrepancy between the Agreement, Conditions and Schedules and the Schedule of Amendments, the wording contained in the Schedule of Amendments shall prevail."

Contract Particulars

Amend the Contract Particulars as follows:

Clause etc	Subject	
Article 5	Arbitration	Do not apply – legal proceedings apply
1.1	BIM Protocol	Delete and insert: 1.1 / BIM Documentation (<i>Not applicable unless is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated and the identified protocol is included in the Client's Brief.</i>) /
2.11.1	Consultant's aggregate liability (excluding liability for personal injury or death) is limited to	£10,000,000 (TEN MILLION POUNDS)
2.11.2	Consultant's liability in respect of pollution or contamination damage (excluding liability for personal injury or death) is limited to	£1,000,000 (ONE MILLION POUNDS) in the aggregate
8.1.1	Professional Indemnity insurance	See clause 8.1.1..
8.2.1	Professional Indemnity insurance – expiry of the required period of insurance is	See clause 8.2.1



10.2	<p>Novation</p> <p>Clause 10.2 <i>(if neither entry is deleted, clause 10.2 will not apply)</i></p> <p>Where 10.2 applies, the form of Novation Agreement <i>(Identify the form or the document in which it is set out)</i></p>	Does not apply
11.2	Suspension: Remobilisation – period for recommencement instructions	12 months
12.3	Arbitration - appointor of Arbitrator (and of any replacement)	Not used – legal proceedings apply
Part 2	Third Party Rights and Collateral Warranties	Not used.

Attestation

Execution as a Deed by the Client and Consultant.



Department
for Education

The CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION herewith affixed and)
authenticated)

Authorised by
the Secretary
of State

.....

Full name
(Block Capitals)

.....

EXECUTED AS A DEED by **ARCADIS**
CONSULTING (UK) LIMITED acting by a Director
and a witness

Director

Witness

Witness Name

Witness Address

CONDITIONS

SECTION 1: DEFINITIONS AND INTEPRETATION

- 1.1 Delete the definitions "**Arbitrator**", "**Beneficiary**", "**BIM Protocol**", "**Funder**", "**Information Release Schedule**", "**Purchaser**", "**Tenant**", and "**Third Party Rights**".

Amend the definitions in clause 1.1 as follows:

Agreement	at the end of the definition insert ", as amended by the Schedule of Amendments"
Article	at the end of the definition insert ", as amended by the Schedule of Amendments"
Conditions	at the end of the definition insert ", as amended by the Schedule of Amendments".
Consultant's Design Information Contract	delete "BIM Protocol" and insert "BIM Documentation". after "Conditions" insert ", the Schedule of Amendments".
Contract Particulars	at the end of the definition insert ", as amended by the Schedule of Amendments".
Design Information	After "other material" insert "and/or information".
Interest Rate	delete "5%" and insert "3%".
Recitals	at the end of the definition insert ", as amended by the Schedule of Amendments".
Services	at the end of the definition insert ", and all services, duties and obligations to be provided and performed by the Consultant as set out in the Contract".
Statutory Requirements	in line 4 after "regulation" insert "rule". In line 5, after "undertaker" insert "or equivalent or relevant public body". At the end of the definition insert "(and in particular so as to comply with any requirements relating thereto which may be stipulated as pre-requisites for the adoption of any services, drains, sewers, pipes, wires, cables, or other service transmission media by any such authority or body (where the same are to be adopted)) and any Statutory Agreements".

**Third Party
Agreement**

After "or the use of it" insert ", or any other third party agreement,".

1.1 Insert the following new definitions in clause 1.1:

BIM Co-ordinator	the person identified as the BIM Co-ordinator in Article 3B or such other person as may be notified to the Consultant from time to time.
BIM Documentation	the documents identified as such in the Contract Particulars (against reference to clause 1.1) along with any other documentation prepared after the date of this Contract to facilitate the delivery of the Model.
BIM Information Manager	the person identified as the BIM Information Manager in Article 3A or such other person as may be notified to the Consultant from time to time.
BIM Standards	<p>the following standards:</p> <ul style="list-style-type: none"> (a) BS 1192-4:2014: Collaborative production of information: Fulfilling employer's information exchange requirements using COBie – code of practice; (b) PAS1192-3:2014: Specification for information management for the operational phase of assets using building information modelling; (c) PAS1192-5:2015: Specification for security-minded building information modelling, digital built environments and smart asset management; (d) PAS1192-6:2018: Specification for collaborative sharing and use of structured Health and Safety information using BIM; (e) BS EN ISO 19650-1: 2018: Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) - Information management using building information modelling: Concepts and principles; (f) BS EN ISO 19650-2: 2018: Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) - Information

management using building information modelling: Delivery phase of the assets;

(g) any other recognised BIM standards notified to the Contractor and/or recognised by the industry from time to time,

and any amendments to, re-publication of or replacement of any or all of these standards.

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Change of Control	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.
Client	the Client as identified in the Agreement, which expression shall include permitted assignees and successors in title.
Client's Confidential Information	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Consultants of the Client, including all IPRs, 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 be considered to be confidential
Commercially Sensitive Information	the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the Consultant, the charges for the Services, its IPR or its business or which the Consultant has indicated to the Client that, if disclosed by the Client, would cause the Consultant significant commercial disadvantage or material financial loss;
Confidential Information Construction Products Regulations	the Client's Confidential Information and/or the Consultant's Confidential Information; the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).
Contracting Body	any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Services, Service and

Supply) (Amendment) Regulations 2000 other than the Client.

Consultant's Confidential Information

any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Consultants of the Consultant, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;

Crown Body

any department, office or agency of the Crown

Data Protection Laws

means, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (d) any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract];
- (e) any laws which implement any such laws; and
- (f) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

DOTAS

the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and 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 made under s.132A Social Security Administration Act 1992.

Environmental Information Regulations	the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations
Federated Model	a shared Model representing the completed Project consisting of connected but distinct individual Models and incorporating the Specified Models.
FOIA	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;
GDPR	the General Data Protection Regulation, Regulation (EU) 2016/679.
General Anti-Abuse Rule	<ul style="list-style-type: none"> - the legislation in Part 5 of the Finance Act 2013; and - any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
Group Company	any subsidiary company or holding company of an assignor, or another subsidiary or holding company of such company, as 'subsidiary' and 'holding company' are defined in the Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a).
Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax and others.
Intellectual Property Rights or "IPRs"	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-

How, trade secrets and other rights in Confidential Information;

- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction;
- (c) all other rights having equivalent or similar effect in any country or jurisdiction; and
- (d) all or any goodwill relating or attached thereto.

Law

any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant is bound to comply;

Material

means:

- (a) all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or other documents or materials produced or prepared by or on behalf of the Consultant or the Client in relation to and/or connection with the Project and/or the site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Project and/or the site; and
- (b) all information in any electronic medium in relation to the Project and/or the site and/or the completed Project comprised in the Specified Models.

Model	a digital representation of part of the physical and/or functional characteristics of the Project.
Moral Rights	moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988.
Non-Performance Deductions	see Annex A
Occasions of Tax Non-Compliance	<p>where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> - A Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; - The failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or - Where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion.
Personal Data	has the meaning given in applicable Data Protection Laws from time to time.
Prohibited Act	<p>to directly or indirectly offer, promise or give any person working for or engaged by the Client or other Contracting Body or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> • 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;
- 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 Client; 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.

Project Team Members

the members identified in Annex E and their sub-consultants and/or sub-contractors or such other professionals as the Client or the Consultant may from time to time engage in connection with the Project.

Request for Information

a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations

Relevant Requirements

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

Relevant Tax Authority

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

Schedule of Amendments	this Schedule of Amendments.
Security Policy	the Client's security policy attached as Annex G (Security Provisions) as may be updated from time to time"
Specified Models	the Model or Models which the Consultant or any Project Team Member is to produce and deliver in accordance with the BIM Documentation.
Statutory Agreements	an agreement pursuant to section 38 and/or 278 of the Highways Act 1980 and/or an agreement pursuant to section 104 of the Water Industry Act 1991 and/or an agreement pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972.
IR35 Assessments	DfE require the supplier to use the "Check Employment Status" tool on gov.uk <u>Check employment status for tax - GOV.UK (www.gov.uk)</u> , DfE may, at any time request evidence for a sample of workers.

- 1.2.4 After "body corporate" insert "or any legal entity having legal capacity".
- 1.2.6 Delete "a BIM Protocol or other protocol" and insert "any BIM Documentation" and delete "protocol" from the last line and insert "documentation".
- 1.3 Insert a new final paragraph "All payments made by the Client to the Consultant pursuant to any such interim agreement, letter of intent and/or other arrangement shall be deemed to have been made as part of the Fee. For the avoidance of doubt, the Client shall have no further liabilities (including any liability to make any payments) under such interim agreement, letter of intent and/or other arrangement."
- 1.4 In clause 1.4 **delete** "Notwithstanding any other provision of this Contract," and **insert** "Subject to the express rights of any person under any collateral warranty granted under the provisions of this Contract,"
- 1.6 Delete and insert: "This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales."

[clauses 1.7 and 1.8 not used]

1.9 **Insert** new clauses 1.9 to 1.23 as follows:

1.10 **Insert** new clause 1.10:

“Freedom of information”

1.10.1 The Consultant acknowledges that unless the Client has notified the Consultant that the Client is exempt from the provisions of the FOIA, the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The Consultant shall co-operate with and assist the Client so as to enable the Client to comply with its information disclosure obligations.

1.10.2 The Consultant shall:

1.10.2.1 transfer to the Client 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;

1.10.2.2 provide the Client with a copy of all Information in its possession, or power in the form that the Client shall require within five Working Days (or such other period as the Architect/Contract Administrator may specify) of the Client's request;

1.10.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

1.10.2.4 procures that its sub-contractors do likewise.

1.10.3 The Client is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

1.10.4 The Consultant shall not respond directly to a Request for Information unless authorised to do so by the Client.

1.10.5 The Consultant acknowledges that the Client may, acting in accordance with the Cabinet Office Freedom of Information 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.

1.10.6 The Consultant shall ensure that all Information is retained for disclosure for twelve years where this Contract is executed as a deed or six years where this Contract is executed under hand and shall permit

the Client to inspect such records as and when reasonably requested from time to time."

1.11 Insert a new clause 1.11 :

"GDPR

The Client and the Consultant shall comply with the provisions of Annex H

1.12 Insert a new clause 1.12:

"Tax Compliance

1.12.1 The Consultant represents and warrants that as at the date of this Contract, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

1.12.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non- Compliance occurs, the Consultant shall:

1.12.2.1 notify the Client in writing of such fact within 5 days of its occurrence; and

1.12.2.2 promptly provide to the Client:

1.12.2.2.1 details of the steps which the Consultant is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

1.12.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require."

1.13 Insert new clause 1.13

Prevention of Fraud and Bribery

1.13.1 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 date of this Contract:

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

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

1.13.2 During the carrying out of the Services the Consultant shall not::

1.13.2.1 commit a Prohibited Act; and/or

1.13.2.2 do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, Consultants, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements

1.13.3 During the carrying out of the Services the Consultant shall:

1.13.3.1 establish, maintain and enforce, and require that its sub-contractors 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;

1.13.3.2 keep appropriate records of its compliance with this Contract and make such records available to the Client on request;

1.13.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Consultant's employees or any person acting on the Consultant's behalf from committing a Prohibited Act.

1.13.4 The Consultant shall notify the Client immediately in writing if it becomes aware of any breach of clause 1.13.1, or has reason to believe that it has or any of the its employees or sub-contractors have:

1.13.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

1.13.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

1.13.4.3 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.

1.13.5 If the Consultant shall make a notification to the Client pursuant to clause 1.13.4, the Consultant shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with this Contract.

1.13.6 If the Consultant breaches Clause 1.13.3, the Client may by notice require the Consultant to remove from carrying out the Services any Consultant's Person whose acts or omissions have caused the Consultant's breach.

1.14 Insert new clause 1.14

Security Requirements

The Consultant shall comply with, and procure the compliance of the Consultant's Persons, with:

1.14.1 the Security Policy

1.14.2 Contract Schedule Annex G (Security Provisions).

1.15 Insert new clause 1.15

Cyber Essentials

The Client and the Consultant shall comply with the provisions Clause 1.2 Cyber Essentials of Annex G (Security Provisions) "

1.16 Insert new clause 1.16

HMRC Requirements

This clause is to incorporate HMRC special terms and conditions in the form of HMRC Call-Off Schedule 23 (HMRC Terms) [Guidance: Client to reference Call-Off Schedule 23 (HMRC Terms)].

1.17 Insert a new clause 1.17:

"Publicity and Branding

1.17.1 The Consultant shall not:

- a. make any press announcements or publicise this contract in any way; or
- b. use the Client's name or brand in any promotion or marketing or announcement of the contract;

without the prior written approval of the Client.

1.17.2 The Client is entitled to publicise the contract in accordance with any legal obligation upon the Client, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise."

1.18 Insert a new clause 1.18:

"Change of Control

1.18.1 The Consultant shall notify the Client immediately in writing and as soon as the Consultant is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The Consultant shall ensure that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

1.18.2 The Client may terminate the Consultant's obligation to perform the Services (which shall take effect as termination under clause 11.5.1) within six months from:

- a. being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- b. where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred but shall not be permitted to terminate where an approval was granted prior to the Change of Control."

1.19 Insert a new clause 1.19:

"Financial Standing

The Client may terminate the Consultant's obligation to perform the Service (which shall take effect as termination under clause 11.5.1) where in the reasonable opinion of the Client there is a material detrimental change in the financial standing and/or the credit rating of the Consultant which:

- a. adversely impacts on the Consultant's ability to perform its obligations under this Contract; or

could reasonably be expected to have an adverse impact on the Consultant's ability to perform its obligations under this Contract."

1.20 Insert a new clause 1.20:

"Records, audit access and open book data

1.20.1 The Consultant shall keep and maintain for twelve years full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the Client.

1.20.2 The Consultant shall:

- a. keep the records and accounts referred to in clause 1.20.1. in accordance with law;
- b. afford any auditor access to the records and accounts referred to in clause 1.20.1 at the Consultant's premises and/or provides records and accounts (including copies of the Consultant's published accounts) or copies of the same, as may be required by any auditor from time to time during the Consultant performing the Services and the liability period under the contract in order that the auditor may carry out an inspection to assess compliance by the Consultant and/or its Sub-contractors of any of the Consultant's obligations under this contract including in order to:
 - i. verify the accuracy of any amounts payable by the Client under this contract (and proposed or actual variations to them in accordance with this Contract);
 - ii. verify the costs of the Consultant (including the costs of all Sub-contractors and any third party suppliers) in connection with performing the Services;
 - iii. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Client has no obligation to inform the Consultant of the purpose or objective of its investigations;
 - iv. obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; and
 - v. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- c. subject to the Consultant's rights in respect of confidential information, the Consultant provides the auditor on demand with all reasonable co-operation and assistance in respect of:
 - i. all reasonable information requested by the Client within the scope of the audit;

- ii. reasonable access to sites controlled by the Consultant and to any Consultant's equipment used to perform the Services; and
- iii. access to the Consultant's personnel.

1.20.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 1.20, unless the audit reveals a default by the Consultant in which case the Consultant reimburses the Client for the Client's reasonable costs incurred in relation to the audit.

1.20.4 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."

1.21 Insert a new clause 1.21:

"Equality and diversity

1.21.1 The Consultant shall perform its obligations under this contract in accordance with

- a. all applicable equality law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- b. any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality law;

1.21.2 The Consultant shall take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)."

1.22 Insert a new clause 1.22:

"Conflicts of interest

1.22.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its personnel are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or its personnel and the duties owed to the Client under this contract.

1.22.2 The Consultant shall promptly notify and provide full particulars to the Client if such conflict referred to in the clause above arises or may reasonably be foreseen as arising.

1.22.3 The Client may terminate the Consultant's obligation to perform the Services immediately under clause 11.5.2 (as if insolvency applied) and/or to take such other steps the Client deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under this contract."

1.23 Insert a new clause 1.23:

"Financial distress

The Consultant complies with the provisions of Annex F (Financial Distress) in relation to the assessment of the financial standing of the Consultant and the consequences of a change to that financial standing."

SECTION 2: CONSULTANT'S GENERAL OBLIGATIONS

2.1 After "the Client's Brief" insert "and the Contract". After "expected of a" insert "properly qualified". After "size, scope" insert ", nature, value, character, timescale". After "complies with" insert "the terms of this Contract and".

At the end of 2.1 insert the following new paragraphs:

"The Consultant shall comply and procure compliance with the BIM Documentation in place for the time being, and in doing so shall have due regard to the relevant requirements and recommendations of the BIM Standards.

In performing his obligations under this Contract, the Consultant shall and shall ensure that each of his sub-consultants shall comply with the Modern Slavery Act 2015.

The Consultant shall comply with the Client's standards of corporate governance and the Consultant warrants that in entering into this Contract it has not and shall not (and shall procure that anyone employed or acting on behalf of it or any of its agents shall not) commit any Prohibited Act."

2.1A Insert a new clause 2.1A:

"Client's obligations

The Client shall comply with its obligations under the BIM Documentation."

2.1B Insert a new clause 2.1B:

"Admittance to the Site

2.1.B.1 The Consultant shall submit details of people who are to be employed by it and its sub-contractors in connection with the Services to the Client. The details shall include a list of names and addresses, the capabilities in which they are employed, and other information required by the Client/Architect/Contract Administrator.

2.1.B.2 The Client may instruct the Consultant to take measures to prevent unauthorised persons being admitted to site. The instruction shall be valued as a variation under clause 3.6.1 if the measures are additional to those required by the Client's Requirements.

2.1.B.3 Consultant's Representative and Key Personnel are to carry a Client's pass and comply with all conduct requirements from the Client whilst they are on the parts of the site identified in the Client's Brief.

2.1.B.4 The Consultant shall submit to the Client for acceptance a list of the names of the people for whom passes are required. On acceptance, the Client or Architect/Contract Administrator will issue the passes to the Consultant. Each pass shall be returned to the Client when the employee no longer requires access to that part of the site or after the Client or Architect/Contract Administrator has given notice that the employee is not to be admitted to the site.

2.1.B.5 The Consultant shall not take photographs of the site or of work carried out in connection with the Services unless it has obtained the acceptance of the Client.

2.1.B.6 The Consultant shall take the measures needed to prevent any Consultant's employee taking, publishing or otherwise circulating such photographs."

2.1C Insert a new clause 2.1C:

"Legislation and Official secrets

2.1.C.1 The Consultant shall comply with the law in the carrying out of the Services.

2.1.C.2 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this Contract.

[2.1.C.3 The Consultant shall notify its employees and its sub-contractors of their duties under these Acts."

2.2 Delete ", subject only to clause 6.5"

2.4 Delete and insert: "The Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Project any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's profession and/or the construction industry:

2.4.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;

2.4.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Project or any part thereof and/or to other structures, finishes, plant and/or machinery;

2.4.3 to reduce or possibly reduce the normal life expectancy of works of a type comparable to the Project;

2.4.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the Project;

2.4.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or

2.4.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

The Consultant shall immediately notify the Client and Lead Consultant if it becomes aware of any such use, permission or specification or failure to comply with this clause."

2.7 After "prior consent" insert "and the Consultant shall ensure that it complies with the provisions of Article 8 in relation to any sub-contracting".]

Insert new subclauses, Sub-contracting 2.7A to 2.7C as follows:

"2.7A Each sub-contract shall include:

2.7A.1 period for payment of the amount due to the sub-contractor not greater than 5 days after the final date for payment in this Contract. The

amount due shall, but shall not be limited to, payment for work which the sub-contractor has completed from the previous application date up to the current application date in this Contract;

2.7A.2 a provision requiring the sub-contractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this Contract;

2.7A.3 a provision requiring the sub-contractor to assess the amount due to a subsubconsultant without taking into account the amount paid by the Consultant, and.

2.7A.4 terms and conditions that are no less favourable than those of this Contract. The Client shall be entitled to reject sub-contract conditions proposed by the Consultant that are unduly disadvantageous to the sub-contractor.

2.7B.1 The Consultant shall take all reasonable steps to engage SMEs as sub-contractors and to seek to ensure that no less than the percentage of the sub-contractors stated in the Client's Requirements (the "**SME Percentage**") are SMEs or that a similar proportion of the Fee is undertaken by SMEs.

2.7B.2 The Consultant shall report to the Client on a monthly basis the numbers of SMEs engaged as sub-contractors and the value of the Fee that has been undertaken by SMEs.

2.7B.3 Where available, the Consultant shall tender its sub-contracts using the same online electronic portal as was provided by the Client for the purposes of tendering this Contract.

2.7C Apprenticeships

2.7C.1 The Consultant shall take all reasonable steps to employ apprentices, and report to the Client the numbers of apprentices employed and the wider skills training provided, during the carrying out of the Services.

2.7C.2 The Consultant shall take all reasonable steps to ensure that no less than the percentage of its employees stated in the Client's Requirements (the "**Apprenticeship Percentage**") are on formal apprenticeship programmes or that a similar proportion of hours worked in carrying out the Services, (which may include support staff and sub-Contractors) are provided by employees on formal apprenticeship programmes.

2.7C.3 The Consultant shall make available to its employees and sub-contractors working on the Contract, information about the Government's Apprenticeship programme and wider skills opportunities.

2.7C.4 The Consultant shall provide any further skills training opportunities that are appropriate for its employees engaged in carrying out the Services.

2.7C.5 The Consultant shall provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the Client:

- the number of people during the reporting period employed on the Contract, including support staff and sub-Contractors;
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract;
- 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;
- other training/skills development being undertaken by employees in relation to this Contract, including:
 - (a) work experience placements for 14 to 16 year olds;
 - (b) work experience /work trial placements for other ages;
 - (c) student sandwich/gap year placements;
 - (d) graduate placements;
 - (e) vocational training;
 - (f) basic skills training; and
 - (g) on site training provision/ facilities."

2.9 After "subject to clause" insert " 2.1 and".

2.9.1 Delete this sub-clause.

2.9.2 Delete "sub-contractors" and insert "sub-consultants".

- 2.9.3 After "his control" insert "save where such event cause failure or delay arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

- 2.12 Insert a new clause 2.12:

"The Consultant shall provide all relevant information to and cooperate and coordinate with all duty holders under the CDM Regulations to enable all such duty holders to comply with their duties and obligations under the CDM Regulations.

The Consultant warrants that it shall comply with the duties and obligations of a designer as set out in the CDM Regulations. As and when requested by the Client, the Consultant shall provide to the Client such evidence as the Client may require which demonstrates the Consultant's competency to act as designer under the CDM Regulations.

Without prejudice to the generality of the foregoing the Consultant warrants that it shall comply with all of the duties and obligations as set out in the CDM Regulations which apply to the Consultant in the performance of the Services."]

- 2.13 Insert new clause 2.13

"The Consultant confirms that IR35 does not apply to the people providing the services and understands that the DfE intend to make assessments of such from time to time."

SECTION 3: LEAD CONSULTANTS AND CONTRACT ADMINISTRATION

- 3.2.2 After "beyond his control" insert "provided that the Consultant shall remain responsible for failure to issue the Design Information and other information at the times required where such failure arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

SECTION 4: CLIENT'S GENERAL OBLIGATIONS

- 4.1 Delete ", or likely to be useful,". After "Statutory Requirements" insert "provided that such information is not confidential or subject to obligations relating to confidentiality". Delete "promptly" and insert "as soon as reasonably practicable".
- 4.2 Delete.
- 4.4 At the end of the clause insert "provided that the Consultant has clearly requested such decisions approvals and instructions in writing and

included details of any date or deadline by which the Consultant requires such decisions approvals and/or instructions."

4.5 In the final paragraph after "unless it is agreed" insert "at the Client's sole discretion".

SECTION 5: REPRESENTATIVES AND KEY PERSONNEL

No amendments.

SECTION 6: FURTHER SERVICES, CHANGES AND FEE ADJUSTMENTS

6.3 At the end of 6.3, insert a new final paragraph: "Notwithstanding the foregoing or any other provision of this Contract, the Consultant shall not be entitled to any adjustment of the Fee or any other additional payment or reimbursement where (a) a Change arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant and/or (b) the Consultant has not complied with clause 6.4.

6.4 Delete ", resolution of any objection under clause 6.5".

6.5 Delete.

6.6 In the first paragraph after "within clause 6.3.4" insert "(and subject to the other provisions of clause 6.3)".

In clause 6.6.5 line two after "Incentive Payment" insert "or Non-Performance Deduction".

Insert a new final paragraph " Adjustment of the Fee or any other additional payment or reimbursement to the Consultant under this clause 6.6 shall be deemed to be full payment for the Consultant in respect of the matters for which the adjustment, payment or reimbursement is paid and the Client shall have no further liability to the Consultant in respect of such matters arising under the Contract or generally at law."

6.7 Delete "a default by the Consultant" and insert " any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

SECTION 7: PAYMENT

7.1 Delete "The" and insert "For the full and proper performance of the Services, the".

After 7.1.4 insert new paragraph "less any Non-Performance Deductions".

7.4 Amend clause heading to "Incentive Payments and Non-Performance Deductions"

In line one after "Incentive Payment" insert "or Non-Performance Deduction".

7.8 Delete the second sentence. At the end of the clause, insert "The Parties agree that this clause 7.8 is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998."

7.9.1 After "intention to suspend the performance of" insert "any or all of".

7.9.3 Delete the words "or on request" and, at the end of the clause, insert "The Consultant shall, on request, submit such further details as are reasonably requested by the Client."

7.10 Insert a new clause 7.10: "Any right of the Client to deduct or to set-off any amount (whether arising under any term of this Contract or under any rule of law or of equity) shall be exercisable against any monies due or to become due to the Consultant".

SECTION 8: INSURANCE

8.1 In the first sentence after "Consultant shall" insert "effect and". At the end of the clause after "reasonable rates", insert a new final paragraph: "For the purposes of this clause 8.1, "commercially reasonable rates" shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates."

8.1.1 Delete and insert "professional indemnity insurance covering (inter alia) all its liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with a limit of indemnity of not less than £10,000,000 (ten million pounds) for any one claim. The said terms and conditions shall 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 any amendment or reenactment thereof."

- 8.2.1 Delete "from the date of this Contract until the expiry of the period stated in the Contract Particulars" and insert " at all relevant times during the Project and for a period of 12 (twelve) years from the date of practical completion of the Project".
- 8.3 Delete and insert "As and when reasonably required by the Client, the Consultant shall provide satisfactory documentary evidence of the terms of insurances referred to in clause 8.1 and that the insurances referred to in clause 8.1 are being properly maintained in accordance with the terms of this clause 8, and shall confirm that payment has been made in respect of the last preceding premium due under such insurances."

SECTION 9: USE OF CONSULTANT'S DESIGN INFORMATION, CONFIDENTIALITY COPYRIGHT AND USE/ INTERLLECTUAL PROPERTY RIGHTS

Delete clause 9.1 and Insert the following:

"Document" means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the Consultant in relation to this Contract.

9.1.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the Consultant in relation to this Contract and the work executed from them remains the property of the Consultant. The Consultant hereby grants to the Client an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Client to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.

9.1.2 The Client may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to 9.1.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the Client.

9.1.3 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any Document the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Client to use any such copyright or Intellectual Property Rights from any

third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Client in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Client on industry acceptable terms.

9.1.4 The Consultant waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Client or any licensee or assignee of the Client.

9.1.5 In the event that any act unauthorised by the Client infringes a moral right of the Consultant in relation to the Documents the Consultant undertakes, if the Client so requests and at the Client's expense, to institute proceedings for infringement of the moral rights.

9.1.6 The Consultant warrants to the Client that he has not granted and shall not (unless authorised by the Client) grant any rights to any third party to use or otherwise exploit the Documents.

9.1.7 The Consultant shall supply copies of the Documents to the Client and to the Client's other Consultants 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 Services.

9.1.8 After the termination or conclusion of the Consultant's employment hereunder, the Consultant shall supply the Client with copies and/or computer discs of such of the Documents as the Client or Architect/Contract Administrator may from time to time request and the Client shall pay the Consultant's reasonable costs for producing such copies or discs.

9.1.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Client against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Confidentiality and Information Sharing

Delete clause 9.2 and insert the following:

9.2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

9.2.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

- 9.2.1.2 not disclose the other party's Confidential Information to any other person without prior written consent.
- 9.2.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information
- 9.2.1.4 notify the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010
- 9.2.2 The clause above shall not apply to the extent that:
 - 9.2.2.1 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 1.10 (Freedom of Information);
 - 9.2.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 9.2.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 9.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 9.2.2.5 it is independently developed without access to the other party's Confidential Information.
- 9.2.3 The Consultant may only disclose the Client's Confidential Information to Consultant's Persons who are directly involved in the provision of the service and who need to know the information, and shall ensure that such Consultant's Persons are aware of and shall comply with these obligations as to confidentiality.
- 9.2.4 The Consultant shall not, and shall procure that the Consultant's Persons do not, use any of the Client's Confidential Information received otherwise than for the purposes of this contract.
- 9.2.5 The Consultant may only disclose the Client's Confidential Information to Consultant's Persons who need to know the information, and shall ensure that such Consultant's Persons 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's Persons 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 Client as the Client 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's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant's Persons in connection with obligations as to confidentiality.

- 9.2.6 At the written request of the Client, the Consultant shall procure that those members of the Consultant's Persons identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 9.2.7 Nothing in this Contract shall prevent the Client from disclosing the Consultant's Confidential Information:

9.2.7.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies 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 Body;

9.2.7.2 to a professional adviser, consultant, Consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract, or any person conducting an Office of Government Commerce gateway review;

9.2.7.3 for the purpose of the examination and certification of the Client's accounts;

9.2.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;

9.2.7.5 for the purpose of the exercise of its rights under this Contract;
or

9.2.7.6 to a proposed successor body of the Client in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

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 Client under this clause 9.2.

- 9.2.8 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or sub-contractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made

aware of the Client's obligations of confidentiality.

9.2.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the 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 IPR.

9.2.10 The Client may disclose the Confidential Information of the Consultant:

9.2.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

9.2.10.2 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

SECTION 10: ASSIGNMENT, NOVATION, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

10.1 Delete and insert:

“10.1 Subject to clause 10.2, where it is stated to apply, the Consultant shall not assign transfer or charge any benefit arising under or out of this Contract without the prior written consent of the Client (at its absolute discretion).

Without prejudice to clause 10.2, where it is stated to apply, the Client may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Contract and/or any benefit arising under or out of this Contract:

- (a) as security to any organisation providing finance in connection with the Project and/or site or any part thereof (and such rights may be re-assigned on redemption);
- (b) by absolute assignment to any Group Company; and
- (c) by absolute assignment on two other occasions only.”

10.3 Delete clause 10.3 in its entirety.

SECTION 11: SUSPENSION BY THE CLIENT AND TERMINATION

11.1.4 Before the comma insert "provided that the suspension was not as a result of or in connection with any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

- 11.2 Delete "2 months" and insert "12 months". At the end of the clause insert "provided that the suspension was not as a result of or in connection with any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".
- 11.4 After "do so, may" insert "if the Client still does not instruct the Consultant to recommence such Services".
- 11.5.2 Delete and insert "In the event of the Consultant's bankruptcy, insolvency, winding up, liquidation, administration, administrative receivership, LPA receivership and/or any analogous arrangement or event in this or any other jurisdiction, the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."
- 11.5.3 Delete and insert "If the Consultant commits a material breach of his obligations (including, without limitation, any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant), the Client may give notice to the Consultant specifying the breach and requiring its remedy. If the Consultant fails to comply with the notice within 14 days, the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."
- 11.5.5 Delete.
- 11.6.1.2 After "Design Information" insert "and the Materials". Delete from ", provided that in the case of" to "under clause 11.6.2" inclusive.
- 11.6.2 In the final paragraph after "insolvency or material breach" insert "or under clauses 11.5.2 or 11.5.3".
- 11.6.2.3 After "insolvency or material breach" insert "or under clauses 11.5.2 or 11.5.3".
- 11.6.2.4 Delete.
- 11.6.3 Insert a new second sentence "However, in the event of termination under clauses 11.5.2 or 11.5.3, instead of 2 months from the date of termination, the relevant date for invoice shall be 2 months after the date of practical completion of the Project"
- 11.6.4 Insert new clause "If the Consultant, fails an IR35 Assessment, the Client can terminate the Contract in respect of specific projects or the Contract as a whole"

SECTION 12: SETTLEMENT OF DISPUTES

- 12.2 At the end of the clause insert the following final paragraphs:

"The Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him.

At the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing."

Delete clauses 12.3 to 12.8.

SCHEDULES

Schedule 1 Third Party Rights

Delete.

Schedule 2 Supplemental Provisions

Paragraph 1 Delete.

ANNEXURES

Annex A Fee and Other Payments

At paragraph 3 amend clause heading to "Incentive Payments and Non-Performance Deductions"

Annex B	The Services
Annex C	Consultant Deeds of Collateral Warranty - Not used
Annex D	Sub- consultant Deeds of Collateral Warranty - Not used
Annex E	Project Team Members
Annex F	Financial Distress
Annex G	Security Provisions
Annex H	GDPR

Annex A

Fee and Other Payments

1. The Fee shall be a maximum of £738,079.53 excluding VAT pounds)
2. The Fee shall be payable in accordance with section 7 in the following amounts or percentages:

Payment milestones
Payments will be made based on the Pricing Schedule and invoices provided at the end of every month until completion of the services in each financial year. For example, starting 31 August 2024 and 30 September 2024, and as per Table 1 attached and in accordance with the Pricing Schedule attached.

3. Incentive Payments are: Not applicable

4. THERE ARE NO OPTIONAL SERVICES

5. The daily all-in rate for any necessary extension of the Services work (and for the purposes of any apportionment under clause 11.6.2.1) is based on the Consultant's Project Staff in accordance with the Pricing Schedule.
6. The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed or other Changes within Clause 6.3
7. Not used.

8. Not used.
9. Delete.
10. The amounts and rates shown above are exclusive of VAT.

Annex B **The Services**

Volume 4 – Scope of Services

DfE require the appointed Technical Adviser team to provide specialist technical advice in relation to the development and procurement of the new Framework.

The appointed Technical Advisers should note that the actual scope of services may vary over time and any changes will be managed in line with the Contract.

Unless otherwise stated within these duties, the TA will report to the DfE Delivery Lead for this reprocurement.

The appointed Technical Adviser team will provide specialist technical and commercial advice to DfE and other identified advisers through challenge, identifying gaps, ambiguities, and opportunities for improvement throughout the new framework design and procurement process to establish the new Framework. The appointed Technical Adviser team will have oversight of all project workstreams and be required to ensure all activities are aligned, integrated, and coordinated, supporting and / or leading the timely sharing of information across functional boundaries to prevent silos from emerging. Their industry expertise in constructing educational spaces will be leveraged to support the development of a gold standard framework.

Note: Technical advice encompasses (but is not limited to) all technical issues relating to the project, including architecture and design, civil and structural engineering, mechanical and electrical engineering, quantity surveying, health and safety (including CDM advice and input), surveys and investigations, Fixtures, Fittings and Equipment (FF&E), Facilities Management and ICT integration.

The new framework needs to meet the DfE's application of the UK BIM Framework & ISO 19650 for the production of procurement and new framework documentation in conjunction with nominated DfE Working Group Lead.

The Technical Adviser team will work to the deadlines, programme and standards set by the DfE.

When reporting Technical Advisers should be succinct, logical and fact based.

Key Framework and Procurement Documentation development requirements

1. Commercial (Procurement and Assurance)

1.1 Participation stage documentation (for publication)

The TA will have the responsibility as Lead Drafter for the production of the following documents.

Successful / Unsuccessful bidder letters	To be drafted by TA and submitted to DfE Legal Lead for review and sign off.	Arcadis to draft
Feedback template for bidders	To be drafted by TA and submitted to DfE Legal and Commercial Leads for review and sign off.	Arcadis to draft

1.2 Participation stage documentation (not for publication)

Participation Stage Execution Plan	To be submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
Participation Stage Clarifications Tracker	To be submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
Participation Stage Response Summary	To be submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
Participation Stage Evaluation Summary	To be submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
Participation Stage Tender Report & Lessons Learned	To be submitted to DfE Commercial Lead for review and sign off. To note, the Tender Report is also to be submitted to the DfE Lead Lead.	Arcadis to draft
Participation Stage Evaluation Panel and Moderators Tracker	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
Participation Stage Evaluation Report (including shortlisted and fails)	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.	DfE to draft
Participation Stage Evaluator & Moderator Schedule	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft

Participation Stage Key Milestones	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.	Arcadis to draft
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1.3 ITT Documentation (for publication)

ITT Successful / Unsuccessful bidder letters	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.
ITT - Feedback Template for bidders	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.
Financial Viability Risk Assessment Tool	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.

1.4 ITT Supporting Documentation (Not for publication)

ITT Execution Plan	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.
ITT Clarifications Tracker	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.
ITT Response Summary	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.
ITT Tender Report & Lessons Learned	To be drafted by TA and submitted to DfE Legal and Commercial Leads for review and sign off.
ITT Evaluation Panel & Moderators Tracker	To be drafted by TA and submitted to DfE Commercial Lead for review and sign off.

1.5 Not used

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1.6 – Tender evaluation

- Technical Adviser firm required to provide CVs of evaluators prior to commencement of evaluation for approval by DfE Commercial Lead.

Technical Advisors will be required to evaluate responses in accordance with the below:

- At the Condition of Participation stage, we anticipate there will be between 400 and 1000 bidder responses
-
- The evaluation rules will be as follows:
 - Number of Evaluators per question (approx 4 questions) - 3x Technical Adviser and 3x DfE Each Evaluator can only evaluate one question
 - Number of Moderators per question - 1x DfE Moderator (plus 1x DfE reserve)

At the ITT stage, we anticipate there will be between 100 and 150 bidder responses based on the contractors desired number of Lots to be included in e.g., One contractor desiring to be on four lots will submit four separate ITTs.

- The evaluation rules will be as follows:

Number of Evaluators per questions (approx 20 questions) - 1x Technical Advisors and 3 x DfE
- Each Evaluator can only evaluate one question
- Number of Moderators per question – 1 x DfE Moderator (plus 1 x DfE reserve).

2. Legal

The DfE will have the sole responsibility as Lead Drafter for the production of the following document(s)

Pre-Construction Services Agreement	To be produced DfE Legal (via panel arrangement) and submitted to TA for technical review and returned to DfE Legal Lead.
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3. Cost Strategy

The DfE Cost Strategy team will have the sole responsibility as Lead Drafter for the production of the following document(s)

Refurbishment Scope of Works Guidance	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Refurbishment Scope of Works Template	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Flexible Funding Model *NEW STRATEGY	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Definition of Base Funding	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Feasibility Cost Plan	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Concept Development Options appraisal	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.



FFE Calculator incorporating inflation mechanism	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
FFE calculator guidance	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Contractor Pricing Schedule	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Contractor Pricing Rules and guidance	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
PCSA Pricing Schedule/Rule/Milestones	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Contractor Surveys Guidance - rules - pricing - ITT/Framework	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Technology infrastructure Cost Matrix	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
LAD Calculator	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Externals & Abnormals Rate book (Harmonised rates book)	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Location & Inflation Mechanisms	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
Lifecycle Cost Modelling	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
ITT Pricing/Evaluation Questions	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.
ITT Pricing Guidance	TA to review and stress test documents produced and report back to DfE Cost Strategy Team on outcome.

Note:

Where it is noted “TA to review and stress test” the TA will run the documents through theoretical scenarios, testing for operational malfunctions and any weakness in the documentation.

Where it is noted “report back”, this should be provided in both written and verbal communication. The TA must clearly identify any issues, such as operational malfunctions, together with suggested solutions. The TA must clearly identify any weaknesses or ambiguity in the documents, including written guidance and rules. The TA must provide constructive feedback and suggestions for improvement, where applicable.

4. Framework Structures and Processes

4.1 Framework Handbook

Framework Handbook - Introduction / Framework Structure / Framework Overview / Regional Structure / Procurement Route / Award Option / FoC / Info Management / Glossary	To be produced by DfE Framework together with TA and submitted to DfE Legal team for review and sign off.
Appendix A - Process Timelines	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.
Appendix B - Procurement & Info Delivery Milestones: contractor requirements	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.
Appendix E - Performance Based Allocations & Local Competition Rules	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.
Appendix F - Framework Evaluation Standard	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.
Appendix G - Quality Criteria & Maximum Weightings	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.
Appendix H - Quality Scoring Criteria	To be drafted by TA and submitted to DfE Framework Lead for internal review and sign off.

4.2 Framework Performance Regimes

Performance Indicators Parts A & B	To be drafted by DfE Framework team and submitted to TA review.
KPI & MI Data Template	To be drafted by DfE Framework team and submitted to TA review.
Direct Award Rankings	To be drafted by DfE Framework team and submitted to TA review.
Direct Award Tracker	To be drafted by DfE Framework team and submitted to TA review.
Performance Dashboard Template	To be drafted by DfE Framework team and submitted to TA review.
Scoring Methodology Handbook	To be drafted by DfE Framework team and submitted to TA review.
KPI / MIR Collection Handbook	To be drafted by DfE Framework team and submitted to TA review.
Performance Improvement Plan Template	To be drafted by DfE Framework team and submitted to TA review.

4.3 Framework (Call-off)

Preliminary ITT Template	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Preliminary Invitation to Submit Proposal Template	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Preliminary ITT/ISP Appendix A: Evaluation Matrix	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Invitation to Tender (ITT) Template (framework call-off)	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Invitation to Submit Proposal (ISP) Template	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Future Schools Notice Template	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
ITT/ISP Appendix I: Technical Requirements (by value band)	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
ITT/ISP Appendix K: Evaluation Matrix (by value band)	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
PITT / ITT Successful / Unsuccessful Bidder Letters	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Selected Panel Member (SPM) Letter	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
DfE EOI Response form	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.
Scheme Notification Form	To be drafted by TA and submitted to DfE Framework Lead for internal legal review and sign off.

4.4 Other

Contact Details for Framework Contractors	To be produced by DfE Framework and submitted to TA for review and returned to Framework Team for sign off.
Information Management Protocol (for all framework documentation)	To be produced by DfE Framework and submitted to TA for review and returned to Framework Team for sign off.
Training Strategy and Induction Approach	To be produced by DfE Framework and submitted to TA for review and returned to Framework Team for sign off.
Framework Training Materials	To be produced by TA and submitted to DfE Framework Team for review and sign off

Framework Management Protocol	To be produced by DfE Framework and submitted to TA for review and returned to Framework Team for sign off.
Operational Pipeline	To be produced by DfE Framework and submitted to TA for review and returned to Framework Team for sign off.

5. Design and Information Management

The DfE Design and Information Management Team will have the sole responsibility as Lead Drafter for the production of DfE's overarching design principles, spatial standards including model designs, environmental principles, technical specification and information requirements for delivery.

The Technical Advisor must coordinate with the DfE Design and Information Management Working Group to ensure that DfE's technical standards including delivery processes, tools and templates are fully considered and aligned to overall deliverables. This may include technical support, review and challenge at the earliest opportunity.

6. Not used

7. General

The Technical Advisor must attend all weekly / fortnightly Working Group meetings. It is likely that most meetings will be online via Microsoft Teams, and DfE would expect the pricing to reflect this. Where meetings are required in person, these are likely to be in either Sheffield or London.

Each Working Group will be led by a DfE member of staff and will include representation from the Technical Adviser firm. Appendix A shows the setup of the Working Groups along with the governance and assurance structure.

Each Working Group will deliver all aspects within its specific area of expertise. Details of working groups is detailed in Appendix A.

Technical Advisor will be responsible for the following activities.

- Maintaining an overview of all Working Groups, producing weekly or bi-weekly progress reports / updates to the Delivery Lead & Senior Responsible Owner (SRO) capturing all recommendations, changes and/or additions to approach, process or documentation that may arise from any of the Working Groups.
- Organisation and management of meetings details and frequencies as follows:
 - Working Groups meetings will be held on a weekly basis for each Working Group (5 in total).

- CF25 Strategic Decisions Review meeting chaired by SRO (currently occurring weekly on Wednesday, with Commercial Assurance and Approvals Governance (CAAG) papers being submitted on Friday before).
 - CF25 Huddle meeting for each Working Group Head to jointly update the progress in regard to weekly developments (currently occurring weekly on Monday).
- Document management process in place to ensure a robust approach to the management and storage of information (Note: DfE is currently using DfE dedicated SharePoint space and MS Teams Channels for each Working Group).
- Assist in the preparation of documentation for the new Framework as required by the Working Group Leads and Delivery Lead.
- Management of the Risk & Issues Log, ensuring actions required are disseminated to relevant Leads for review and resolution (Currently captured in the weekly Huddle Review).
- Collaborate with DfE on the administration of the DfE e-procurement system (online Jaggaer system) as well as the upcoming Centralised Digital Platform (New Proc. Regs).
- To provide any further support, as reasonably required, to the Department in any further activities to deliver the Department's requirements, as agreed by way of a contract change notice further to the Terms and Conditions.

Annex C
Consultant Deeds of Collateral Warranty -
Not used

Annex D
Sub-Consultant Deeds of Collateral Warranty
Not used

Annex E
Project Team Members

**Note to tenderers – this shall be inserted at contract award based upon
the successful tenderer’s submission.**

REDACTED

Commercial – REDACTED

Framework Design – REDACTED

Design and Information Management – REDACTED

Cost Strategy – REDACTED

Technology – REDACTED

Legal – REDACTED

Annex F **Financial Distress**

1. Definitions

1.1. In this Schedule [] the following definitions apply:

"Credit Rating Threshold" means the minimum credit rating level for the Consultant as set out in Annex 1

"Financial Distress Event" means the occurrence or one or more of the events listed in this Schedule []

"Financial Distress Service Continuity Plan" means a plan setting out how the Consultant will ensure the continued performance in accordance with this contract in the event that a Financial Distress Event occurs;

"Rating Agency" means the rating agency means Dun & Bradstreet.

2. Credit rating and duty to notify

2.1. The Consultant warrants and represents to the Client for the benefit of the Client that as at the Contract Date the long-term credit ratings issued for the Consultant by the Rating Agency.

2.2. The Consultant promptly notifies (or procures that its auditors promptly notify) the Client if there is any significant downgrade in the credit rating issued by any Rating Agency for the Consultant (and in any event within seven days from the occurrence of the downgrade).

2.3. If there is any downgrade credit rating issued by any Rating Agency for the Consultant, the Consultant ensures that the Consultant's auditors thereafter provide the Client within 14 days of a written request by the Client with written calculations of the quick ratio for the Consultant at such date as may be requested by the Client. For these purposes the "quick ratio" on any date means:

Where

A. is the value at the relevant date of all cash in hand and at the bank of the Consultant

B. is the value of all marketable securities held by the Consultant determined using closing prices on the working day preceding the relevant date

C. is the value at the relevant date of all account receivables of the Consultant and

D. is the value at the relevant date of the current liabilities of the Consultant.

2.4. The Consultant:

- ☐ regularly monitors the credit ratings of the Consultant with the Rating Agencies and
- ☐ promptly notifies (or shall procure that its auditors promptly notify) the Client following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, shall ensure that such notification is made within 14 days of the date on which the Consultant first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph, the credit rating of the Consultant shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Consultant at or below the applicable Credit Rating Threshold.

3. Consequences of a financial distress event

3.1. In the event of:

3.1.1. the credit rating of the Consultant dropping below the applicable Credit Rating Threshold;

3.1.2. the Consultant issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Consultant;

3.1.4. the Consultant committing a material breach of covenant to its lenders;

3.1.5. a Sub-contractor notifying the Client that the Consultant has not satisfied any sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

3.1.6. any of the following:

- ☐ commencement of any litigation against the Consultant with respect to financial indebtedness or obligations under this contract;
- ☐ non-payment by the Consultant of any financial indebtedness; any financial indebtedness of the Consultant becoming due as a result of an event of default
- ☐ the cancellation or suspension of any financial indebtedness in respect of the Consultant in each case which the Client reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the Consultant in accordance with this contract

then, immediately upon notification of the Financial Distress Event (or if the Client becomes aware of the Financial Distress Event without notification and brings the event

to the attention of the Consultant), the Consultant shall have the obligations and the Client shall have the rights and remedies as set out in paragraphs 3.2 – 3.6.

3.2. The Consultant:

3.2.1 at the request of the Client meets the Client as soon as reasonably practicable (and in any event within three working days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing) to review the effect of the Financial Distress Event on its continued performance in accordance with this contract and

3.2.2. where the Client reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the Financial Distress Event could impact on the Consultant's continued performance in accordance with this Contract:

- ☐ submits to the Client for approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 14 days from the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing)
- ☐ provides such financial information relating to the Consultant as the Client may reasonably requires.

3.3. The Client does not withhold approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Client does not approve the draft Financial Distress Service Continuity Plan, the Client informs the Consultant of the reasons and the Consultant takes those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which the Consultant resubmits to the Client within seven days of the rejection of the first or subsequent (as the case may be) drafts. This process is repeated until the Financial Distress Service Continuity Plan is approved by the Client or referred to the dispute resolution procedure.

3.4. If the Client considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, the Client may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure.

3.5. Following approval of the Financial Distress Service Continuity Plan by the Client, the Consultant

- ☐ reviews on a regular basis (which shall not be less than monthly) the Financial Distress Service Continuity Plan and assesses whether it remains adequate and up to date to ensure the continued performance in accordance with this Contract
- ☐ where the Financial Distress Service Continuity Plan is not adequate or up to date in, submits an updated Financial Distress Service Continuity Plan to the Client for approval, and the provisions of shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan and
- ☐ complies with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.6. Where the Consultant reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the Consultant notifies the Client and subject to the agreement of the Client, the Consultant is relieved of its obligations under paragraph 3.

4. Termination rights

4.1. The Client may terminate the Consultant's obligation to perform the Services if

- ☐ the Consultant fails to notify the Client of a Financial Distress Event in accordance with paragraph 2.2;
- ☐ the Client fails to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3 and/or
- ☐ the Consultant fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.

5. Primacy of credit ratings

5.1. Without prejudice to the Consultant's obligations and the Client's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- ☐ the Consultant is relieved automatically of its obligations under paragraph 3 and
- ☐ the Client is not entitled to require the Consultant to provide financial information in accordance with paragraph 2.3.

ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Consultant Credit current rating (long term) []

Credit Rating Threshold []

Annex G Security Provisions

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement the other definitions in the Contract:

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>the Government’s HMG Baseline Personal Security Standard. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p>
<p>“Buyer”</p>	<p>the Client</p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: https://www.ncsc.gov.uk/information/about-certified-professional-scheme</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</p>

<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Protection Officer”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Personal Data requiring Sensitive Processing”</p> <p>“Data Subject”,</p> <p>“Process” and</p> <p>“Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Legislation</p>
<p>“Buyer’s Data”</p> <p>“Buyer’s Information”</p>	<p>is any data or information owned or retained to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Data Controller;</p>
<p>“Departmental Security Requirements”</p>	<p>the Buyer’s security policy or any standards, procedures, process or specification for security that the Supplier is required to deliver.</p>
<p>“Digital Marketplace / G-Cloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>
<p>“End User Devices”</p>	<p>the personal computer or consumer devices that store or process information.</p>
<p>“Good Industry Standard”</p> <p>“Industry Good Standard”</p>	<p>the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>

“GSC” “GSCP”	the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
“HMG”	Her Majesty’s Government
“ICT”	Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that ICT system.
“Need-to-Know”	the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	the National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP). the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	Role Based Access Control, a method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.

<p>“Storage Area Network”</p> <p>“SAN”</p>	<p>an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.</p>
<p>“Secure Sanitisation”</p>	<p>the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction-0</p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</p>
<p>“Senior Information Risk Owner”</p> <p>“SIRO”</p>	<p>the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm’s length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. https://www.gov.uk/government/publications/security-policy-framework</p>
<p>“Supplier”</p>	<p>the Consultant</p>
<p>“Supplier Staff”</p>	<p>all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under the Contract.</p>

Operative Provisions

- 1.1. The Supplier shall be aware of and comply with the relevant HMG security policy framework, NCSC guidelines and where applicable these Departmental Security Requirements which include but are not constrained to the following paragraphs.
- 1.2. Where the Supplier will provide products or Services or otherwise handle information at OFFICIAL for the Buyer, the requirements of Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 dated 25 May 2016, or any subsequent updated document, are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract”. The certification scope shall be relevant to the Services supplied to, or on behalf of, the Buyer.
- 1.3. Where paragraph 1.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services supplied to, or on behalf of, the Buyer. The scope of certification and the statement of applicability must be acceptable, following review, to the Buyer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Buyer’s Data being handled in the course of providing the Services and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Buyer’s Data).
- 1.5. Buyer’s Data being handled while providing an ICT solution or service must be separated from all other data on the Supplier’s or sub-contractor’s own IT equipment to protect the Buyer’s Data and enable the data to be identified and securely deleted when required in line with paragraph 1.14. For information stored digitally, this must be at a minimum logically separated. Physical information (e.g., paper) must be physically separated.
- 1.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas used in relation to the delivery of the products or Services, and that store or process Buyer’s Data, in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.

- 1.7. The Supplier shall have in place, implement and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Buyer's Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Buyer's Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 1.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Buyer's Data, including but not limited to:
 - 1.8.1. physical security controls;
 - 1.8.2. good industry standard policies and processes;
 - 1.8.3. malware protection;
 - 1.8.4. boundary access controls including firewalls, application gateways, etc;
 - 1.8.5. maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - 1.8.6. use of secure device configuration and builds;
 - 1.8.7. software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - 1.8.8. user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - 1.8.9. any services provided to the Buyer must capture audit logs for security events in an electronic format at the application, service and system level to meet the Buyer's logging and auditing requirements, plus logs shall be:
 - 1.8.9.1. retained and protected from tampering for a minimum period of six months;
 - 1.8.9.2. made available to the Buyer on request.
- 1.9. The Supplier shall ensure that any Buyer's Data (including email) transmitted over any public network (including the Internet, mobile networks or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10. The Supplier shall ensure that any Buyer's Data which resides on a mobile, removable or physically uncontrolled device is stored

encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.

- 1.11. The Supplier shall ensure that any device which is used to process Buyer's Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.

- 1.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Buyer's Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 1.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Buyer's Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.

The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 1.14. In the event of termination of Contract due to expiry, as a result of an Insolvency Event or for breach by the Supplier, all information assets provided, created or resulting from provision of the Services shall not be considered as the Supplier's assets and must be returned to the Buyer and written assurance obtained from an appropriate officer of the Supplier that these assets regardless of location and format have been fully sanitised throughout the Supplier's organisation in line with paragraph 1.15.

- 1.15. In the event of termination, equipment failure or obsolescence, all Buyer's Data and Buyer's Information, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC-approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier shall protect (and ensure that any sub-contractor protects) the Buyer's Information and Buyer's Data until such time, which may be long after termination or expiry of the Contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- 1.16. Access by Supplier Staff to Buyer's Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Buyer. All Supplier Staff must complete this process before access to Buyer's Data is permitted. [Any Supplier Staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact].
- 1.17. All Supplier Staff who handle Buyer's Data shall have annual awareness training in protecting information.
- 1.18. Notwithstanding any other provisions as to business continuity and disaster recovery in the Contract, the Supplier shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services delivered. If an ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This must include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19. integrity or availability of Buyer's Data, including user credentials, used or handled while providing the Services shall be recorded as a Security Incident. This includes any non-compliance with the Departmental Security Requirements and these provisions, or other security standards pertaining to the solution.

Security Incidents shall be reported to the Buyer immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If Security Incident

reporting has been delayed by more than 24 hours, the Supplier should provide an explanation about the delay.

Security Incidents shall be reported through the Buyer's nominated system or service owner.

Security Incidents shall be investigated by the Supplier with outcomes being notified to the Buyer.

- 1.20. The Supplier shall ensure that any Supplier ICT systems and hosting environments that are used to handle, store or process Buyer's Data, including Supplier ICT connected to Supplier ICT systems used to handle, store or process Buyer's Data, shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Services being provided are to be shared with the Buyer in full without modification or redaction and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required, to be determined by the Buyer upon review of the ITHC findings.
- 1.21. The Supplier or sub-contractors providing the Services will provide the Buyer with full details of any actual or future intent to develop, manage, support, process or store Buyer's Data outside of the UK mainland. The Supplier or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Buyer.
- 1.22. The Buyer reserves the right to audit the Supplier or sub-contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Supplier's, and any sub-contractors', compliance with the paragraphs contained in this Schedule.
- 1.23. The Supplier and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Buyer. This will include obtaining any necessary professional security resources required to support the Supplier's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- 1.24. Where the Supplier is delivering an ICT solution to the Buyer they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Buyer's Policy. The

Supplier will provide the Buyer with evidence of compliance for the solutions and services to be delivered. The Buyer's expectation is that the Supplier shall provide written evidence of:

- 1.24.1. compliance with HMG Minimum Cyber Security Standard.
- 1.24.2. any existing security assurance for the Services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification (e.g. United Kingdom Accreditation Service).
- 1.24.3. any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
- 1.24.4. documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be and date expected.

Additional information and evidence to that listed above may be required to ensure compliance with DfE security requirements as part of the DfE security assurance process. Where a request for evidence or information is made by the Buyer, the Supplier will acknowledge the request within 5 working days and either provide the information within that timeframe, or, if that is not possible, provide a date when the information will be provided to the Buyer. In any case, the Supplier must respond to information requests from the Buyer needed to support the security assurance process promptly and without undue delay.

- 1.25. The Supplier shall contractually enforce all these Departmental Security Requirements onto any third-party suppliers, sub-contractors or partners who could potentially access Buyer's Data in the course of providing the Services.
- 1.26. The Supplier shall comply with the NCSC's social media guidance: how to use social media safely for any web and social media-based communications. In addition, any Communications Plan deliverable must include a risk assessment relating to the use of web and social media channels for the programme, including controls and mitigations to be applied and how the NCSC social media guidance will be complied with. The Supplier shall implement the necessary controls and mitigations within the plan and regularly review and update the risk assessment throughout the contract period. The Buyer shall have the right to review the risks within the plan and approve the controls and mitigations to be implemented, including

requiring the Supplier to implement any additional reasonable controls to ensure risks are managed within the Buyer's risk appetite.

- 1.27. Any Supplier ICT system used to handle, store or process the Buyer's Data, including any Supplier ICT systems connected to systems that handle, store or process the Buyer's Data, must have in place protective monitoring at a level that is commensurate with the security risks posed to those systems and the data held. The Supplier shall provide evidence to the Buyer upon request of the protective monitoring arrangements in place needed to assess compliance with this requirement.

Annex H GDPR

The Parties do not anticipate that this Contract will involve any processing of Personal Data by the Contractor on behalf of the Employer, and the Contractor is not authorised by the Employer to process Personal Data under the terms of this Contract. The remainder of this Schedule will only be completed and have effect if the Employer instructs the Contractor to process Personal Data under the terms of this Contract. The following definitions shall apply to this Annex H

Agreement : this contract;

Processor Personnel : means all directors, officers, employees, agents, consultants and Consultants of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation : (i) the GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019 ;

Data Protection Impact Assessment : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR.

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

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

DPA 2018 : Data Protection Act 2018

GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

Protective Measures : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

Sub-processor : any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

1. DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor unless otherwise specified in Schedule[X]. The only processing that the Processor is authorised to do is listed in Schedule [X] by the Controller and may not be determined by the Processor.

1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule [X], unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, are appropriate to

protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

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

ensure that :

- (v) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
- (vi) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) 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 Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller

immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.

1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any

consultation by the Controller with the Information Commissioner's Office.

1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation .

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub- processors.

1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

1.15 Where the Parties include two or more Joint Controllers as identified in Schedule [X] in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

Annex A - Part 2: Schedule of Processing, Personal Data and Data

Subjects Schedule [X] Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:
[Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are:
[Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Consultant is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and Consultant have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p>"Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p>

	In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead."
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</p>
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete	[Describe how long the data will be retained for, how it be returned or destroyed]
UNLESS requirement under union or member	



state law to preserve that type of data	
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