



DATED _____ **2021**

**THE SECRETARY OF STATE FOR JUSTICE
(OF THE MINISTRY OF JUSTICE)**

and

GLEEDS ADVISORY LIMITED

**NEC3 PROFESSIONAL SERVICES CONTRACT
(APRIL 2013 EDITION): OPTION G**

**FOR THE PROVISION OF
COST MANAGEMENT SERVICES**



THIS AGREEMENT is made the
2021

day of

PARTIES:

1. **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (the "**Employer**", with such term including its successors in title and assigns); and
2. **GLEEDS ADVISORY LIMITED** which is a company incorporated in and in accordance with the laws of England (Company No. 06472422 whose registered office address is at 95 New Cavendish Street, London, W1W 6XF (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies across a number of different Lots.
- (B) The *Consultant* was appointed to Lot 4 of the framework and executed the framework agreement (with reference number **RM3741**) which is dated 03 May 2017 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On 26 April 2021 the *Employer* invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On 25 May 2021 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.
- (F) The Consultant acknowledges that another supplier has been selected by the Employer pursuant to Lot 1 of the Framework Agreement to provide estate delivery partner services (the "**Estate Delivery Partner**") and that the Consultant shall work with the Estate Delivery Partner as set out in this contract.

IT IS AGREED AS FOLLOWS:

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Call Off Contract is the entire agreement between the Parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other



than those expressly set out in this agreement.

5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. This contract is comprised of the following documents:
 - 6.1 this Form of Agreement;
 - 6.2 the NEC3 Professional Services Contract (April 2013) edition Option G (the "**NEC3 PSC**");
 - 6.3 the *conditions of contract* of the NEC3 PSC;
 - 6.4 the NEC3 PSC dispute resolution "Option W2" (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies);
 - 6.5 Schedule 1: Contract Data; (REDACTED)
 - 6.6 the secondary options of the NEC3 PSC as referred to in Contract Data: Part One (including Option Z: Additional conditions of contract set out at Schedule 2);
 - 6.7 Schedule 3: Scope;
 - 6.8 Schedule 4: Prices; (REDACTED)
 - 6.9 Schedule 5: Template collateral warranty in favour of a beneficiary; (REDACTED)
 - 6.10 Schedule 6: Template Deed of Guarantee; (REDACTED)
 - 6.11 Schedule 7: Security Aspects Letter; (REDACTED)
 - 6.12 not used;
 - 6.13 Schedule 9: Template Task Order;
 - 6.14 Schedule 10: Data Protection Schedule; (REDACTED)
 - 6.15 Schedule 11: BIM Protocol; and (REDACTED)
 - 6.16 any and all other documents referred to in the Contract Data, a Task Order and/or the other documents comprising this contract which are annexed to this contract and/or have been signed for identification purposes by or on behalf of the Parties.
7. If there is any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence (unless the *Employer* expressly determines or agrees otherwise):
 - 7.1 the Form of Agreement;
 - 7.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
 - 7.3 Contract Data: Part One (including any annexures to or documents referred to in the



- same);
- 7.4 Contract Data: Part Two (including any annexures to or documents referred to in the same);
- 7.5 the Scope (except for any Scope contained in a Task Order) and each of the documents therein provided by the *Employer* as at the Contract Date and such further information as may be issued to the *Consultant* by the *Employer* pursuant to and in accordance with this contract from time to time;
- 7.6 the relevant Task Order and any documents included or referred to therein as provided by or on behalf of the Employer (but excluded any Scope not included and/or referred to in that Task Order); and
- 7.7 the other documents forming part of this contract.
8. If there is any conflict, ambiguity, discrepancy or inconsistency in or between:
- 8.1 the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* take priority over the *conditions of contract* (unless the *Employer* expressly determines or agrees otherwise);
- 8.2 the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the Contract Data: Part Two (unless the *Employer* expressly determines or agrees otherwise).
9. This contract shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 10 and for the enforcement of any judgment, order or award given under English jurisdiction.

IN WITNESS WHEREOF THIS FORM OF AGREEMENT WAS EXECUTED AS A DEED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE



Ministry
of Justice

The corporate seal of **THE SECRETARY OF
STATE FOR JUSTICE** hereto affixed is
authenticated by:

OFFICIAL

Authenticated by (signature):

_____[REDACTED]_____

Authenticated by (printed name):

_____[REDACTED]_____

EXECUTED (but not delivered until the date
hereof) **AS A DEED** by **GLEEDS
ADVISORY LIMITED** acting by a director in
the presence of a witness:

Director (signature):

_____[REDACTED]_____

Director (printed name):

_____[REDACTED]_____

Witness: _[REDACTED]

Name: _[REDACTED]

Address: _[REDACTED]

Signature: _[REDACTED]

Printed Name: _[REDACTED]



CONTRACT DATA

Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option G, dispute resolution Option W2 and secondary Options X1, X2, X8, X18, X20, Y(UK)2, and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is
Name: The Secretary of State for Justice
Address: Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
 - The BIM Coordinator is to be identified (if relevant) for each Task Order.
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the *Adjudicator nominating body* or nominated by the *Adjudicator nominating body* in the absence of agreement. *[Replace with Chartered Institute of Arbitrators for non-engineering services]*
 - The *services* are as set out and more particularly described in the Scope and/or a Task Order as part of a Task.
 - The Scope is set out at Schedule 3.
 - The Project Consultants are any consultant identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any Project Site.
 - The Estate Delivery Partner is Mace Limited (company number 02410626) whose registered office is situated at 155 Moorgate, London, EC2M 6XB
 - A Contractor is any party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any Project Site (collectively being the "Contractors").
 - The Data Protection Schedule is set out at Schedule 10.
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply for the enforcement of any judgment, order or award given under English jurisdiction
 - The *period for reply* is two (2) weeks.
 - The *period for retention* is twelve (12) years following Completion or earlier termination.



- The *Adjudicator nominating body* is the Technology and Construction Solicitors Association (TeCSA).
 - The *tribunal* is litigation in the courts of England and Wales.
- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
 - access to *access date*
 in each case as identified in a Task Order.
- 3 Time**
- The Contract Period Expiration Date is the date falling four (4) years (together with the duration of any Task Orders entered into within the four year period) after the Contract Date with a possible one (1) year extension thereafter for defects.
 - The *Consultant* submits revised programmes at intervals no longer than one month.
- 4 Quality**
- The quality policy statement and quality plan are provided within two (2) weeks of the Contract Date.
 - The *defects date* is fifty two (52) weeks after
 - o the later of the following dates to occur
 - o the last date on which the Consultant performed any services under a Task Order and
 - o the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of that Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with any Project Site (if entered into) and
 - o (if occurring earlier) the date on which the engagement of the Consultant under this contract is terminated.
- 5 Payment**
- The *assessment interval* is monthly.
 - For the purposes of Option Y2.2, the **final date for payment** is fourteen (14) days after the later of the date on which
 - o payment is stated as becoming due under this contract or
 - o the *Employer* receives a Valid Invoice for the sum(s) due.
 - The template form of Valid Invoice is set out at Schedule 13.
 - The *currency of this contract* is the pound sterling (£).
 - The *interest rate* is 4% per annum above the Bank of England base rate in force from time to time.
- 8 Indemnity, insurance and liability**
- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

Event / Type of coverage

Cover

Period



Failure of the <i>Consultant</i> to exercise the standard of skill and care specified by this contract	Not less than [REDACTED] in respect of any one claim and in the aggregate per annum	from the <i>starting date</i> until 6 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but [REDACTED] any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
<ul style="list-style-type: none"> The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to [REDACTED] for each and every claim. 		

Optional Statements

If no programme is identified in part two of the Contract Data

- The *Consultant* is to submit a first programme for acceptance within 2 weeks of the Contract Date.
- The *Consultant* does not state (nor is entitled to the payment of) any expenses in connection with the *services*.

Option X2

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

Option X8

- The *collateral warranty agreements* are in the form(s) contained in Schedule 5 and shall be made in favour of (i) any Contracting Authority (ii) any funder providing



funding in relation to a Project Site or (iii) any other party that the *Employer* notifies to the *Consultant* (acting reasonably).

- The *subconsultant collateral warranties* are in the form(s) contained in Schedule 5 and shall be made in favour of the *Employer* and (i) any Contracting Authority (ii) any funder providing funding in relation to a Project Site or (iii) any other party that the *Employer* notifies to the *Consultant* (acting reasonably).

Option X18

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to [REDACTED] of the Prices for any Task Order.
- The *Consultant's* liability to the *Employer* for Defects that are not found until after the defects date is limited to [REDACTED] for each and every claim.
- The *end of liability* date is 6 years after completion of the whole of the *services*.

Option X20

- The Key Performance Indicator Schedule is at Schedule 12.
- A report of performance against each Key Performance Indicator is provided monthly.

Option Z

- The *additional conditions of contract* are contained in Schedule 2.

Contract Data relating to Z clauses

Clause Z19 Not used

Clause Z39 Financial Distress

The *credit ratings* at the Contract Date and the rating agencies issuing them are

party	rating agency	credit rating
<i>Consultant</i>	Dun & Bradstreet	[REDACTED]

Clause Z42 Off Shoring of Data

The Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement.

Clause Z45 Not used



Clause Z48 Building Information Modelling

A BIM Protocol applies and is appended at Schedule 11 to this contract.

Clause Z49 Task Orders

- The Template Task Order is set out at Part 1 of Schedule 9.
- The Task Schedule is set out at Part 2 of Schedule 9.
- If no programme is identified in Contract Data: Part Two, the Consultant is to submit a first (1st) programme for acceptance within two (2) weeks of the date of the first (1st) Task Order issued under this contract.
- The Consultant prepares forecasts of the total Time Charge and/or lump sum prices in respect of each Task at intervals no longer than every four (4) weeks from the date of the first (1st) Task Order issued under this contract.



Part two – Data provided by the *Consultant*

1 Statements given in
all contracts

- The *Consultant* is
 - Name** Gleeds Advisory Limited
 - Address** 95 New Cavendish Street, London, W1W 6XF
- The *key people* are those people identified below (and such other *key persons* as may be identified in a Task Order):
 - Name [REDACTED]
 - Job [REDACTED]
 - Responsibilities [REDACTED]
 - Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- The *staff rates* are detailed in Schedule 4 (Prices). [REDACTED]

If the *Consultant* states any expenses

- The *expenses* stated by the *Consultant* are generally included in the charge out rates in Schedule 4 (Prices). If a Task Order requires any abnormal expenditure this will be discussed on a case by case basis in the preparation of each Task Order.

If the *Consultant* requires additional access

The *Employer* provides access to the following persons, places and things which will be identified if and where required in each Task Order.



SCHEDULE 2
ADDITIONAL CONDITIONS OF CONTRACT

Clause The following amendments shall be made to the *conditions of contract*.
Z1A

11.2(2) Delete and insert "Not used".

11.2(3) Delete and insert "Not used".

11.2(5) At the end of clause 11.2(5) delete the full stop and insert "or is otherwise not in accordance with a Task Order and/or this contract".

11.2(6) Replace both instances of "the Contract Data" with "a Task Order".

11.2(9) Delete and insert:

"To Provide the Services means regularly and diligently to do the work necessary to complete the *services* in accordance with this contract (including each Task Order) and applicable law and all incidental work, *services* and actions which this contract requires."

11.2(11) In the fourth bullet point insert "in a Task Order or" before "in an instruction".

11.2(17) Delete and insert:

"The Price for Services Provided to Date is, for each Task, the total of

- the Time Charge for each Task Milestone which has been completed where that Task is stated in its Task Order as being subject to time charge, and
- the lump sum price for each Task Milestone which has been completed where it is stated in its Task Order as being subject to a lump sum price (unless otherwise agreed in advance and in writing by the Employer)."

11.2(20) Delete and substitute as follows:

"Prices means

- the Time Charge for Tasks that are identified in a Task Order as being subject to time charge as specified in that Task Order, and
- the lump sum price for a Task where that Task is stated in its Task Order as being subject to a lump sum price as specified in that Task Order."

11.2(26) Insert new clause 11.2(26):

"CDM Regulations means the Construction (Design and Management) Regulations 2015."

11.2(27) Insert new clause 11.2(27):



"CEMAR means the *Employer's* online contract-management software, as more particularly described in the Scope or any alternative as may be notified to the *Consultant* from time to time."

11.2(28) Insert new clause 11.2(28):

"Construction Package means a package of construction works (and ancillary services, as necessary) to be undertaken (and, as the context permits, designed) by a Contractor under a Building Contract in connection with a Project Site."

11.2(29) Insert new clause 11.2(29):

"Contract Period is the period commencing on the Contract Date and expiring on the Contract Period Expiration Date, unless this contract is terminated earlier pursuant to and in accordance with its terms."

11.2(30) Insert new clause 11.2(30):

"Contract Period Expiration Date is the date identified as such in Contract Data: Part One."

11.2(31) Insert new clause 11.2(31):

"Deleterious Materials means any material which, in the context of its use or specification in any part(s) of a Project Site (whether alone, in combination with other materials, or in a particular situation)

- pose a hazard to the health and safety of any person who may come into contact with it,
- would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed,
- pose a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project Site, and/or
- has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification."

11.2(32) Insert new clause 11.2(32):

"Employer's Statement has the meaning given to that term in clause 51.7 of this contract."

11.2(33) Insert new clause 11.2(33):

"Force Majeure Event is any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of an *Employer's* risk

- war, hostilities (whether war is declared or not), invasion, act of foreign enemies,
- rebellion, revolution, insurrection, military or usurped power, or civil war,
- acts of terrorism and action of the United Kingdom government in response to the



threat of an act of terrorism,

- riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Consultant*,
- munitions of war or explosive materials, ionizing radiation or contamination by radioactivity, except where attributable to the *Consultant's* use of such munitions or explosives,
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government),
- strike, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Consultant* and
- flooding or landslip caused by weather conditions which renders a material part of a Project Site as unsuitable for the *Consultant* to Provide the Services in a safe manner or renders impassable access to the Project Site and no suitable alternative access is available."

11.2(34) Insert new clause 11.2(34):

"Laws means any applicable Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling binding on the Parties directly or through precedent, international convention or Treaty ratified by the United Kingdom, all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the Consultant's obligations under this contract are carried out and any United Kingdom government policy legally binding on the Parties either particularly or as part of a class and in each case as the same may be amended, repealed or replaced from time to time."

11.2(35) Insert new clause 11.2(35):

"Principal Contractor has the meaning given to the term "principal contractor" in the CDM Regulations."

11.2(36) Insert new clause 11.2(36):

"Principal Designer has the meaning given to the term "principal designer" in the CDM Regulations."

11.2(37) Insert new clause 11.2(37):

"Project means the development of any Project Site within the MOJ's estate."



11.2(38) Insert new clause 11.2(38):

"Project Site means a site identified by the *Employer* to the *Consultant* in writing from time to time, including as part of a Task Order, as falling within the remit of this contract (if not already identified in the Scope as at the Contract Date)."

11.2(39) Insert new clause 11.2(39):

"Task Milestone Payment Cap means the sum identified as such in a Task Order in respect of a specific Task Milestone (as may otherwise be adjusted pursuant to clause 50.7)."

11.2(40) Insert new clause 11.2(40):

"Task Milestone is each milestone relevant to a Task as identified in a Task Order."

11.2(41) Insert new clause 11.2(41):

"Task Start Date is the date identified as such in a Task Order."

11.2(42) Insert new clause 11.2(42):

"Template Task Order is the template order form in respect of Tasks to be instructed by the *Employer* under this contract in the form set out in Schedule 9."

11.2(43) Insert new clause 11.2(43):

"Valid Invoice means a VAT-compliant invoice in the form referred to in Contract Data: Part One, provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Consultant*, with any such amendments applying as from the next assessment date after the *Employer's* notification."

11.2(44) Insert new clause 11.2(44):

"VAT means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it."

11.2(45) "Working Day means any day other than a Saturday or Sunday or public holiday in England and Wales."

12.4 Delete and insert:

"The contract constitutes the entire agreement between the Parties as to the *services* to be provided in accordance with the contract and supersedes and takes the place of all documents which may be in existence at the date hereof and all arrangements, statements, negotiations, discussions, representations, understandings, agreements and warranties which may have been made by or on behalf of either of the Parties hereto."

12.5 Insert new clause 12.5:

"Without prejudice to any liability the *Employer* may have in respect of fraudulent misrepresentation, the *Consultant* hereby acknowledges and confirms to the *Employer* that in entering into this contract it has placed no reliance upon any statement, representation



or warranty made or given by the *Employer* during the course of the tender process and/or negotiations which is not reflected in the body of this contract or any documents referred to herein."

13.1 Delete and insert:

"Unless otherwise notified by the *Employer* from time to time and in writing, all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions and other communications between the Parties under or in connection with this contract must be in writing in the *language of this contract*, and issued by a sender to a recipient by CEMAR.

The *Consultant* ensures that

- each and every document and/or communication prepared and/or issued by or on behalf of it pursuant to this contract is clearly marked with any document security-related designation specified in the Scope and any communications protocol and/or document security protocol that the *Employer* notifies the *Consultant* of in writing from time to time, and
- it will (and ensure that any third parties engaged by it in connection with the Project will) comply with any communications protocol and/or document security protocol of the *Employer* that the *Employer* may issue to the *Consultant* and/or any document security-related requirements specified in the Scope (and that the *Employer* may update and/or replace at its sole discretion) from time to time, at its own cost and without any adjustment to any Task Completion Date.

Any communication required under this contract from the *Consultant* to Others in connection with the Project is copied simultaneously to the *Employer* unless otherwise instructed by the *Employer*."

13.2 Delete the wording of clause 13.2 and insert:

"A communication issued via CEMAR shall have effect when it is communicated by the sender to the recipient, provided that any communication sent after 17:00 shall be treated as having been received at 09:00 on the first (1st) Working Day after its transmission."

13.6 Insert "and/or relevant Task Order" after "in the Scope" in the final sentence.

15.1 In the second bullet point insert "Task" before "Completion".

15.1A Insert new clause 15.1A:

"Without prejudice to clause 15.1 the Consultant shall give an early warning by notifying the Employer as soon as it becomes aware of any matter which could:

- constitute a Defect,
- constitute a compensation event which has not been previously notified,
- result in a breach of this contract, or



- cause a breach of any applicable law or statutory requirement,"

15.5 Insert new clause 15.5 as follows:

"If the *Consultant* gives an early warning in relation to any matter, the notification of that early warning includes sufficient detail to enable the *Employer* to understand:

- the nature of the matter notified,
- the reason why the matter exists,
- the potential impacts of the matter, including potential impacts in relation to the total of the Prices, delay to Completion or meeting a Key Date and performance of the *services*,
- any steps being taken by the *Consultant* or third parties to mitigate the impact of the matter, and
- any steps which could be taken by the *Employer* or Others to mitigate the impact of the matter.

The *Consultant* provides supporting documentation to substantiate and explain the details in the early warning notice."

15.6 Insert new clause 15.6 as follows:

"The Risk Register does not change the allocation of risk as set out in this contract."

18.1 Replace the wording of clause 18 in its entirety with the following wording:

"18 **Force Majeure Events**

18.1 If a Force Majeure Event comes to the attention of a Party, it notifies the other Party. Following such notice the *Employer* may

- give the *Consultant* an instruction as to how the *Consultant* is to respond to the relevant Force Majeure Event, and/or
- instruct the *Consultant* to submit proposals as to how the *Consultant* should respond to the relevant Force Majeure Event and postpone the giving of any further instruction until after it has received the *Consultant's* proposals.

18.2 The *Consultant*, using the standard of care described in clause 21.2 of this contract, uses all reasonable diligence to

- mitigate the cause(s) and result(s) (including any cost expenditure) of the relevant Force Majeure Event,
- remedy the situation, and
- resume its obligations under this contract,



including complying with any instructions from the *Employer* as to how to do so and in particular the *Consultant* complies with any instruction relating to the minimisation of costs expenditure."

20.2 In clause 20.2:

- insert "Task" before "Completion"; and
- insert "in respect of the relevant Task" after "is given only."

21.1 Insert ", each Task Order, this contract and applicable law" after "the Scope".

21.2 Delete and insert:

"The *Consultant*, in Providing the Services, exercises (and warrants that it has exercised) all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant (or, where the *services* involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in providing services similar in nature, extent and complexity to the *services* in relation to projects of a similar size, scope, value, character and complexity as the Project."

21.4 In line 4 delete "Completion" and substitute "completion".

21.5 Insert a new clause 21.5 as follows:

"Without prejudice to the generality of this clause 21, the *Consultant*

- shall perform the *services* having regard to the health and safety of persons involved in the Project and shall comply with
 - any codes of practice, guidance notes and recommendations published by the Health and Safety Executive,
 - any safety policies produced by the *Employer* and any Contractors, and
 - the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation" (as amended from time to time) as published by the Construction Confederation and the Fire Protection Association,
- promptly notifies the *Employer* of any health and safety hazards which may arise in connection with the performance of its duties and obligations under this contract (and the *Employer* promptly notifies the *Consultant* of any health and safety hazards which may exist or arise in connection with the Project from time to time and which may affect the *Consultant* in the performance of its duties and obligations under this contract),
- notifies the *Employer* immediately in the event of any incident occurring in connection with the performance of its duties and obligations under this contract at any Project Site from time to time (as notified by the *Employer* to the *Consultant*) where that incident causes any personal injury or damage to property which could give rise to personal injury,



- ensures that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the *Employer* on request to the extent required in connection with the *services* being provided by the *Consultant*,
- warrants to the *Employer* that it has complied and will comply with the requirements of the CDM Regulations insofar as they relate to the *services* to be performed by the *Consultant* under this contract, including
 - where specified as such in a Task Order that includes "works" for the purposes of clause 21.3, undertaking (and discharging all duties and obligations under the CDM Regulations in connection with) the role of Principal Designer and/or Principal Contractor in connection with the relevant works and
 - in respect of each actual and potential Construction Package, the *Consultant* liaising with and cooperating with the Principal Designer and the Principal Contractor appointed by the *Employer* in connection with that Construction Package (and as notified by the *Employer* to the *Consultant* in writing) as and when required by the relevant Principal Designer and the Principal Contractor in the performance by it of all functions and duties allocated to it by the CDM Regulations."

21.6 Insert a new clause 21.6 as follows:

"The *Consultant* warrants and undertakes to the *Employer* that it has performed and that it shall continue to Provide the Services:

- so that the *services* and any Project to which the *services* relate will comply with all planning agreements, permissions, conditions, deeds and documents relating to the *services* and/or such Project which the *Employer* shall have notified in writing to the *Consultant* or of which the *Consultant* ought reasonably to have been aware, and
- at such times and in such manner as not to cause the *Employer* to breach any of its obligations under any of its contracts with Others."

21.7 Insert new clause 21.7 as follows:

"Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the *Employer* shall, unless otherwise expressly stated in the contract or agreed in writing by the *Employer*, relieve the *Consultant* of any of its obligations under the contract or any related agreement (including but not limited to any collateral warranty) or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the *Employer* in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made."

21.8 Insert new clause 21.8 as follows:



"Subject always to the standard of skill and care referred to in clause 21.2, the *Consultant* warrants to the *Employer* that to the extent it either is obliged to specify or approve materials, products or goods for use in the Project or does so specify or approve, it shall not specify or approve anything that is Deleterious Materials."

23.1 Delete and insert:

"Without prejudice to any specific co-ordination obligations contained in clause Z56 and/or Z57 the *Consultant* co-operates with Others in obtaining and providing information which it or they need in connection with the *services*, and in a timely manner having regard to the *Consultant's* obligations under this contract and the obligations of Others which are notified to the *Consultant* or of which the *Consultant* ought reasonably to be aware. The *Consultant* also performs the *services* so as not to interfere, hinder or disrupt Others."

23.3 Delete the final sentence of clause 23.3.

24.3 In the second bullet-point of clause 24.3 delete the full-stop at the end of the list and insert:

"or

- they do not comply with any requirement set out in this contract, the Scope or any Task Order."

25.1 Replace the wording of clause 25.1 with the following:

"The *Consultant* obtains approval from Others directly where

- specified in the Scope and/or any Task Order and/or
- necessary to Provide the Services."

30.1 In clause 30.1:

- insert "on a Task" after "does not start work",
- replace "starting date" with "its Task Start Date", and
- insert "Task" before each instance of "Completion".

30.2 Replace the wording of clause 30.2 with the following:

"The *Employer* decides the date of Task Completion and the date on which each Condition is met. The *Employer* certifies the date of Task Completion for a Task and the date on which each Condition is met within one (1) week of the date of Task Completion or within one (1) week of the date on which each Condition is met (as the context requires)."

30.4 Insert a new clause 30.4 with the following wording:

"This contract is effective from the Contract Date and continues in full force and effect until the end of the Contract Period. Notwithstanding the foregoing, this contract remains effective after the end of the Contract Period until all services under any Task Order issued before the end of the Contract Period have been performed by the *Consultant* or terminated in accordance with this contract."



31.2 In clause 31.2:

- replace the wording of the first bulleted item with "the Task Start Dates, access dates, Key Dates, Task Completion Dates and Task Milestone(s) for each Task,"; and
- replace "planned Completion" with "planned Task Completion for each Task" in the second bulleted item.

31.3 In the final bulleted item of clause 31.3, replace "the Scope" with "this contract and/or any Task Order".

32.2 In clause 32.2:

- insert a new bulleted item after the second bulleted item with the wording "following the occurrence of a compensation event,"; and
- in the final bulleted item, replace the wording "*starting date*" until the end of the item with "Task Start Date for the first Task Order until Task Completion of the final Task".

34.1 In clause 34.1, insert "Task" before each instance of "Completion".

41.1 In clause 41.1, insert "each Task" before each instance of "Completion".

41.2 In clause 41.2 insert a new bulleted item after the word "minimises" with the following wording "where the Defect is identified before Task Completion or the satisfaction of any Condition(s) for any Key Date(s) that apply to that Task, the adverse effect on the relevant Key Date(s) and the Task Completion Date and".

41.3 Insert new clause 41.3 as follows:

"Notwithstanding any other provision of this contract, the *Consultant* is not entitled to any costs incurred or any addition to the Time Charge in respect of staff time spent in repeating a test or inspection after a Defect is found."

50.1 Delete the wording of clause 50.1 and insert the following:

- "50.1 The *Consultant* assesses the amount due and submits a Valid Invoice at each assessment date. The first assessment date is decided by the *Consultant* to suit the procedures of the Parties and is not later than the *assessment interval* after the Task Start Date of the first Task Order. Later assessment dates occur
- at the date of each *assessment interval* until eight weeks after the *defects date*,
 - at the last occasions on which Task Completion occurs in respect of a Task Order issued under this contract,
 - any other time prior to the last occasion on which Task Completion occurs in respect of a Task Order issued under this contract, when the *Employer* requires an assessment to be made in accordance with clause 51.7 or clause 92.3 of this contract.

The *Consultant* acknowledges and agrees that

- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 52 (inclusive) and Option Y(UK)2 in respect of an invoice submitted by or on behalf of the *Consultant* that the invoice
 - is a Valid Invoice (provided always that the *Employer* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice) and
 - clearly identifies which Task Milestones the sums in the invoice relate to,
- where an invoice submitted by the *Consultant* to the *Employer* at an assessment date is not a Valid Invoice, the *Employer* shall notify the *Consultant* of this in writing and the *Consultant* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant invoice as part of the invoice that it issues to the *Employer* at the next assessment date and no earlier and
- this core clause 5 and Option Y(UK)2 are construed accordingly."

50.3 Delete the wording of clause 50.3 and insert the following:

"50.3 The amount due is

- the Price for Services Provided to Date (including any sums that may be payable to the *Consultant* under the second sub-bulleted item of the third bulleted item of clause 56.8) and
- other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.

Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

If a programme is identified in the Contract Data and is then not provided by the *Consultant* within the period stated in the Contract Data, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has submitted a first programme to the *Employer* for acceptance showing the information which this contract requires.

50.6 Replace the wording of clause 50.6 with the following:

"Payments under this contract are made in the *currency of this contract* only."

50.7 Insert a new clause 50.7 with the following wording:

"Notwithstanding any other provision of this contract, the *Consultant* acknowledges and agrees that

- the maximum amount that the *Consultant* is entitled to claim (and, subject to the application of this clause 50, clause 51 and Option Y(UK)2, receive) payment for in relation to any Task Milestone in respect of which the relevant Task Order states that the *Consultant* is to be paid on a Time Charge basis does not exceed the



relevant Task Milestone Payment Cap (if any) for that Task Milestone as identified as such in the Task Order, and

- a Task Milestone Payment Cap for a Task Milestone will only be increased if authorised in advance and in writing by the *Employer* at its sole discretion."

50.8 Insert a new clause 50.8 as follows:

"If there is subsequently any adjustment to the consideration due to the *Consultant* under the contract or the extent to which the *Consultant* Providing the Services is a supply on which VAT is chargeable under the applicable law, then

- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
 - the *Consultant* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Employer*, and
 - the *Employer* will pay to the *Consultant* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of the supply for which the *Consultant* is liable to account, and
- if the adjustment is downward or the extent to which the supply is a supply on which the VAT that is chargeable decreases, then
 - the *Consultant* shall issue a valid VAT credit note or a revised Valid Invoice to the *Employer*, and
 - the *Consultant* will pay to the *Employer* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account, or
- the Parties may agree in writing to withhold from any further sums payable to the *Consultant* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account."

50.9 Insert a new clause 50.9 with the following wording:

"If the *Employer* gives the *Consultant* a pay less notice under Option Y2.3 of this contract, the *Consultant* issues a revised Valid Invoice showing the revised amount and tax due. The issue of a Valid Invoice is a condition precedent to payment by the *Employer* of the amount stated in any Termination Statement."

50.10 Insert a new clause 50.10 with the following wording:

"In addition to any other legal rights and remedies of the *Employer*, whenever any sum of money is recoverable from or payable by the *Consultant* under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the *Consultant* under this contract provided that the *Employer* notifies the *Consultant* in writing not later than three (3) days before the final date for payment of the amount to be paid and the basis on which it is calculated."



51.1 Delete the wording of clause 51.1 and insert the following:

"51.1 Subject to any pay less notice under Option Y2.3 of this contract and (insofar as permitted by applicable law) the submission of a Valid Invoice which satisfies the conditions set out in clause 50 of this contract, each payment is made by the final date for payment detailed in the second paragraph of Option Y2.2. Each payment is the amount due less previous payments.

The Parties agree that

- If the *Employer* pays the *Consultant* any sums under or in connection with this contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Consultant* on account and shall be deductible from the next payment to be made to the *Consultant* under this contract and
- the *Consultant* issues a Valid Invoice even if the amount which the *Consultant* assesses to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*."

51.5 In clause 51.5 delete the words "compounded annually" and replace with the words "simple interest".

51.6 Insert a new clause 51.6 with the following wording:

"The *Employer* may in any pay less notice take into account

- any correction or modification that should properly be made to any previous payment, and
- in addition to the *Employer's* common law right of set-off, the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the *Employer* may have against the *Consultant* under or arising out of this contract or any other contract to which the *Employer* and the *Consultant* are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set-off or abatement."

51.7 Insert a new clause 51.7 with the following wording:

"The *Employer* may at any time if it considers any sums to be due to the *Employer* (including as a result of correction or modification to a previous payment pursuant to clause 51.6 of this contract) issue a notice to the *Consultant* stating the amount which the *Employer* determines to be due and the basis on which that amount has been calculated (an "**Employer's Statement**"). The amount which the *Employer* determines to be due under an Employer's Statement is subject to any pay less notice from the *Consultant* pursuant to Option Y2.3 of this contract."

51.8 Insert a new clause 51.8 with the following wording:

"Payment of the amount due under an Employer's Statement in each currency shall be made into the bank account nominated by the *Employer* in this contract."



51.9 Insert a new clause 51.9 with the following wording:

"The "**due date**" in respect of any payment referred to in clause 51.7 is as detailed in Option Y2.2(1)."

51.10 Insert a new clause 51.10 with the following wording:

"The *Consultant*

- allows the *Employer* (or any representative of the *Employer*) to visit its offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice, and
- ensures that a clause is inserted into each subcontract with a Subconsultant that reserves the right of the *Employer* (or any representative of the *Employer*) to visit that Subconsultant's offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice."

55 Delete and insert "Not used".

60.1 Delete the first sentence of clause 60.1 and insert the following:

"The following are compensation events, but only to the extent that they are not due to any negligence, default, unlawful act or omission or breach of or failure to comply with this contract by the *Consultant* or any Subconsultant (or its or their employees, agents or suppliers)."

60.1(5) In clause 60.1(5) after "The *Employer*" delete "or Others".

60.1(11) Delete the wording of clause 60.1(11) and insert "A Force Majeure Event occurs."

60.1(15) Delete and insert "Not used".

61.3 Insert "Task" before "Completion Date".

61.4 In clause 61.4, insert "Task" before all three instances of "Completion Date" and amend the final instance of "Completion Date" so that it reads "Completion Date(s)".

62.2 In clause 62.2, replace "Completion Date" with "Task Completion Date(s)".

62.6 Delete the final sentence of clause 62.6.

63.1 In clause 63.1 insert "Task" before each reference to "Completion".

63.2 In clause 63.2, insert "for or lump sum prices in respect of a Task" after "Time Charge".

63.4 Delete the wording of clause 63.4 and insert:

"The rights of the *Consultant* to changes to the Prices, the Task Completion Date and the Key Dates are the *Consultant's* exclusive rights and remedies in respect of a compensation



event that arises under this contract and/or for any/all breach thereof. The *Consultant* has no additional rights or remedies (including, but not limited to, damages for breach of contract) whether arising by common law, in equity, by statute or otherwise, in respect of any such compensation event."

63.8 Insert "Task" before "Completion Date" in line 3.

63.15 Insert new clause 63.15 as follows:

"Where a compensation event or its effect is in part attributable to the *Consultant's* fault, the Prices, the Task Completion Date or Key Dates shall not be changed to the extent attributable to the *Consultant's* fault. In this contract a "fault" of the *Consultant* includes any failure on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers) to take any reasonable action to prevent and/or mitigate the compensation event or its adverse effects, or any negligence or breach of this contract on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers)."

63.19 Insert a new clause 63.19 with the following wording:

"Notwithstanding any other provision of this contract, where the compensation event notified by the *Consultant* to the *Employer* is a Force Majeure Event, the *Consultant* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and any relevant Task Completion Date only."

64.4 Delete the final sentence of clause 64.4.

65.1 In the second bullet-point of clause 65.1 delete "or" and insert "."

Delete the third bullet-point of clause 65.1.

70.1 In line 2 of clause 70.1 delete "the purpose stated in the Scope" and insert "any purpose whatsoever in connection with the Project including, but not limited to, the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of the Project."

70.2 In line 3 delete "Completion" and substitute "completion".

70.4 Delete the wording of clause 70.4 and insert:

"The *Consultant* may not use the materials provided by it under this contract or otherwise in connection with the Project for other work unless expressly permitted in the Scope and/or Task Order or by the *Employer* in writing."

82.1 In the fifth bullet-point of clause 82.1 delete the full-stop at the end of the list and insert:

- "fraud, and
- wilful default."



82.2 Delete the wording of clause 82.2 and insert "Not used."

90.1 Replace "Either Party" with "The Employer" and add ", this contract and/or any Task Order" after "Provide the Services".

Delete 90.1 and replace as follows:

"The *Employer* may terminate the *Consultant's* obligation to Provide the Services, this contract and/or any Task Order by notifying the *Consultant* if in relation to the *Consultant*:

- 90.1.1 a resolution has been passed (or meeting convened or written resolution circulated), a petition has been presented (which is not withdrawn within 7 Working Days or an order has been made, for the purpose of its winding up or an application or order has been made for a provisional liquidator to be appointed;
- 90.1.2 a notice of intention to appoint an administrator has been filed, an application for the appointment of an administrator has been made or other steps in relation to the appointment of an administrator have been taken or an administrator has been appointed;
- 90.1.3 a procedure has been commenced, by the Registrar of Companies or any other person, with a view to striking off under section 652 of the Act;
- 90.1.4 an administrative receiver, receiver, administrator, liquidator or provisional liquidator or similar officer has been appointed or an Encumbrance has been enforced;
- 90.1.5 a floating charge has crystallised and/or the holder of a floating charge has taken steps to enforce such security;
- 90.1.6 an event has occurred or will occur by virtue of the execution and performance of the contract which would cause, or entitle any person to cause, any of the events cited at limbs (91.1.4) and (91.1.5) of this clause;
- 90.1.7 it has stopped paying its creditors, is insolvent, and/or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 90.1.8 any distress, distraint, charging order, attachment, execution or other process has been levied against any of its assets which remains undischarged;
- 90.1.9 a meeting of its creditors, or any class of them, has been held or summoned and/or a proposal has been made or notice given for or in respect of a moratorium, composition, plan or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; or
- 90.1.10 any event or step analogous to any of the above has occurred in any jurisdiction."

90.3 Replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order".

90.4 Replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order". In the second bullet point insert "Task" before "Completion".

90.5 Insert a new clause 90.5 as follows:

"90.5 **Termination at any time**



Notwithstanding any other provision of this contract

- the *Employer* may terminate this contract and/or any Task Order at any time and for any reason and
- in such circumstances, the *Employer* gives the *Consultant* not less than thirty (30) days' notice of such termination, within which period the *Consultant* ceases all activities under this contract or the relevant Task Order (as the context requires) in an orderly manner.

Upon the expiry of the period referred to in the first bulleted item of this clause 90.5

- the *Consultant's* engagement under this contract or in respect of the relevant Task Order (as the context requires) shall terminate,
- the procedure to be followed and the assessment of any further payment that may be due to the *Consultant* arising out of or in connection with the termination under this clause 90.5 shall be determined pursuant to clause 91, clause 92.1 and clause 92.3 respectively."

91.1 Insert "or where termination is of a Task Order, no further work necessary to Provide the Services under that Task Order" after "Provide the Services" in the first bulleted item of the clause.

92.1 In the first and second sentence, insert "of the contract and/or any relevant Task Order(s) (as the context requires)" after each instance of "termination";

92.3 Insert a new clause 92.3 with the marginal heading "**Payment on termination – additional rules**" with the following wording:

"92.3 **Payment on termination – additional rules**

- Within seven (7) days of the *Employer's* assessment of a final payment to or from the *Consultant* pursuant to this clause 92
 - the Party to whom final payment is due issues a statement to the other Party stating the amount which that Party considers to be due and the basis on which that amount has been calculated in accordance with the *Employer's* assessment under this clause 92.3 (a "**Termination Statement**") and
 - in the case of a Termination Statement from the *Consultant*, such Termination Statement includes a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement.
- If no pay less notice is issued by the payer in accordance with Option Y2.3 of this contract, the amount of the termination payment to be made is, subject to the provision of
 - a pay less notice under Option Y2.3 of this contract and
 - the submission of a Termination Statement by the payee together with (in the case of a Termination Statement of the *Consultant*) a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement,



the sum stated as due in the Termination Statement.

- The due date in respect of any payment referred to in clause 92.1 is one (1) week after the date of receipt by the payer of the Termination Statement pursuant to the first bulleted item of this clause 92.3.

The payment by the *Employer* to the *Consultant* pursuant to clause 92.1 and clause 92.3 in connection with the termination shall be the sole and exclusive remedy of the *Consultant* arising out of or in connection with the termination of this contract (whether in contract, tort (including negligence) or any other basis of law) and the *Consultant* shall have no right to claim any amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind."

X1 Delete the wording of clause X1 and insert:

- "The Parties agree that the *staff rates* referred to in the Contract Data will be subject to an annual indexation-based adjustment on the following basis
 - the adjustment to each *staff rate* shall be calculated by applying to it the average consumer price index ("**CPI**") monthly rate (as a percentage) for each month during the preceding Contract Year,
 - the percentage adjustment of each *staff rate* shall
 - not result in a negative adjustment, irrespective of any decrease in the average CPI monthly rate during the immediately preceding Contract Year and
 - not exceed a maximum of three per cent (3%) irrespective of the average CPI monthly rate during the preceding Contract Year,
 - the first such adjustment shall take place at the end of the first (1st) Contract Year (being July 2022) and shall then take place annually at the end of each subsequent Contract Year,
 - the adjustment shall be effective from the first (1st) day of the subsequent Contract Year,
 - once a *staff rate* is adjusted, it shall be deemed to replace the original *staff rate* referred to in the Contract Data for the purpose of any future adjustments (in each case, as adjusted on an annual basis pursuant to this contract) and
 - any such adjustments shall not be applied retrospectively to any preceding Contract Year(s)."

X2 Delete the wording of clause X2 and insert:

"A change in the *law of the project* is a compensation event if:

- it occurs after the Contract Date; and
- an experienced consultant using the standard of skill, care and diligence as set out



in clause 21.2 would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

The *Employer* may notify the *Consultant* of a compensation event for a change in the law and instruct it to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Time Charge, the Prices are reduced."

X20.1 Delete X20.1 and replace with:

"The Key Performance Indicators are set out in Schedule 12."

X20.3 Delete "Incentive Schedule" and replace with "Key Performance Indicator schedule attached at Schedule 12."

X20.4 Delete and insert "Not used".

X20.5 Delete "and associated payment in the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule".

W2 Dispute Resolution Procedure

W2.2(1) Delete "*starting date*" and insert "Task Start Date of the first Task Order".

Clause Z1 Interpretation and the law

Z1.1 In this contract, except where the context shows otherwise:

- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity;
- the words "includes" or "including" are construed without limitation; and
- any reference to the *Employer* having the right to terminate this contract or the *Consultant's* obligation to Provide the Services (or any wording with equivalent effect or intent) shall be read as allowing the *Employer* to (at its sole discretion) terminate this contract in its entirety or to terminate any individual Task Order(s) and the operative provisions of this contract shall be construed accordingly.

Z1.2 Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

Authority means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located



at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP

BIM Protocol means the BIM Protocol set out at schedule 11 to this contract.

Building Contract means each building contract entered into or to be entered into by the *Employer* and a Contractor in connection with a Construction Package forming part of the Project, whether pursuant to and in accordance with the terms of any Project Delivery Contract or otherwise.

Confidential Information is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.

Consultant Personnel is all persons employed or engaged by the *Consultant* together with the *Consultant's* servants, agents, suppliers, consultants and Subconsultants (and all persons employed by any Subconsultant together with the Subconsultant's servants, consultants, agents, suppliers and sub-subconsultants).

Contracting Authorities means the bodies listed in the contract notice **2016/S 180-323830** on 17 September 2016 in the Official Journal of the European Union and "Contracting Authority" shall be construed accordingly.

Contractor means each entity identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One.

COVID-19 means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.

Data Controller has the meaning given to the term "controller" in the GDPR.

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

Data Processor has the meaning given to the term "processor" in the GDPR.

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

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

Data Protection Laws means

- the GDPR and the LED,
- the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and



- all applicable laws about the processing of personal data and privacy.

Data Protection Officer has the meaning given to the term "data protection officer" in the GDPR.

Data Protection Schedule is the schedule identified as such in Contract Data: Part One.

Data Subject has the meaning given to the term "data subject" in the GDPR.

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their personal data.

DBS Check means a "standard", "enhanced" or "enhanced with lists" check (or any other equivalent check required by the *Employer* at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement organisation) from time to time.

Digital Construction Requirements means the documents comprising the "BIM2AIM Employer's Information Requirements Suite" that set out the requirements for the use and development of the Building Information Model and input of data into the Building Information Model, as set out in the BIM Schedule (or such other document as the *Employer* may provide to the *Consultant* from time to time).

Disclosure and Barring Service is a non-departmental public body sponsored by the Home Office established under the provisions of the Protection of Freedoms Act 2012 and which is responsible for the decision-making and maintenance of barring lists covering the children's and vulnerable adults sectors.

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

Estate Delivery Partner means the consultant appointed by the *Employer* to carry out estate delivery partner services in connection with any Project Site as referred to in Recital (F) of the Form of Agreement and Part 1 of the Contract Data.

Estate Delivery Partner Appointment means the appointment entered into by the *Employer* and the Estate Delivery Partner in connection with any Project Site.

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

GDPR means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time).

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

LED means the Law Enforcement Directive (Directive (EU) 2016/680).



Material means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this contract.

MSA Offence means an offence under the Modern Slavery Act 2015.

Personal Data has the meaning given to the term "personal data" in the GDPR.

Personal Data Breach has the meaning given to "**personal data breach**" under the GDPR.

Process has the meaning given to "processing" under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly).

Prohibited Act is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority or any other public body a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; and /or
- committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
 - under legislation or common law concerning fraudulent acts; or
 - defrauding, attempting to defraud or conspiring to defraud the *Employer*; or
 - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

Personnel Vetting Procedure is the *Employer's* procedure for the vetting of the Consultant Personnel as advised to the *Consultant* by the *Employer* in writing from time to time.

Processor has the meaning given to the term "**processor**" in the GDPR.

Project Appointment means any appointment entered into by the *Employer* with a Project Consultant in connection with any part(s) of the Project as notified by the *Employer* to the *Consultant* from time to time.



Project Consultant means any consultant identified as such in Contract Data: Part One or as is otherwise notified by the *Employer* to the *Consultant* from time to time in writing.

Project Delivery Contract means one or more contracts (that are not in themselves Building Contracts) entered or to be entered into between (1) the *Employer* and (2) multiple parties, including one or more Contractors, in connection with the delivery of the Project, as notified by the *Employer* to the *Consultant* in writing from time to time.

Project Focused is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the overall Project, which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money.

Protective Measures means all 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 such measures adopted by it.

Relevant Conviction means, save in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).

Relevant Policies are the *Employer's* ethics, anti-bribery and anti-corruption policies, as set out in the Scope.

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

Request for Information is a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Security Policy means the *Employer's* Security Aspects Letter annexed at Schedule 7 as may be updated from time to time.

Security Aspects Letter means the document so titled forming Schedule 7 as may be modified from time to time upon reasonable notice from the *Employer* to the *Consultant*.

Security Measures means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to

- maintain the safety of persons and public and personal property,
- prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm,



- prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire),
- maintain political, national and/or international security,
- prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties and/or
- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with applicable law,

such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts.

Sub-Processor means any third party appointed to Process any Personal Data on behalf of that Data Processor related to this contract.

Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Clause Z2 Prevention of fraud and bribery

Insert new clauses:

- Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:
- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- Z2.2 Throughout the period in which the *services* are performed the *Consultant* does not:
- commit a Prohibited Act; and/or
 - do or suffer anything to be done which would cause the *Employer* or any of the *Employer's* employees, consultants, contractors, sub-consultants or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements
- Z2.3 Throughout the period in which the *services* are performed the *Consultant*:
- establishes, maintains and enforces, and requires that its Subconsultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - complies with, and establishes, maintains and requires that its Subconsultants



comply with, the Relevant Policies;

- keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant's* employees or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

Z2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or has reason to believe that it has or any of the its employees or Subconsultants have:

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

Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract.

Z2.7 A failure to comply with this clause Z2 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.

Z2.8 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z2.

Clause Z3 Recovery of sums due from *Consultant*

Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of Her Majesty's Government.



Clause Z4 Assignment and Novation

Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Employer's* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.

Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;

upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. According a new clause 60.1(13) shall be added that reads "A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant* pursuant to this contract".

Z4.4 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

Z4.5 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is able to assign or otherwise dispose of its rights under this contract or any part thereof without the consent of the *Consultant* on two occasions only.

Clause Z5 Discrimination

Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z5.2 In connection with the *services* the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer's* employees, the *Consultant* ensures that each such employee or



Subconsultant complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

- Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and
- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
 - attends (and permits a representative from the *Employer* to attend) any associated meetings,
 - promptly allows access to any relevant documents and information and
 - cooperates fully and promptly with the investigatory body, court or tribunal.
- Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.
- Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

Clause Z6 Conflict of interest

- Z6.1 The *Consultant* does not take an action, and takes appropriate steps to ensure that no person engaged by or on behalf of it takes an action, which would cause a conflict of interest to arise in connection with this contract (a "Conflict of Interest"). The *Consultant* notifies the *Employer* if there is any uncertainty about whether a Conflict of Interest may exist or arise.
- Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to Conflicts of Interest relating to the *Consultant* or any person engaged by or on behalf of it and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.
- Z6.3 The *Consultant* must take positive steps to mitigate any Conflict of Interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a Conflict of Interest under Z6.2.
- Z6.4 Should the Parties be unable to either remove the Conflict of Interest and/or to reduce its damaging effect to a reasonably acceptable level, *the Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.
- Z6.5 The *Consultant* shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the *Consultant* (in whatever capacity) is placed in a position where, in the reasonable opinion of the *Employer* the behaviour of the *Consultant* or any personnel and/or party employed and/or engaged by it is not in the *Employer's* best interest or might adversely affect the *Employer's* reputation (a "Reputational Risk").



Z6.6 The *Consultant*:

- (a) warrants that, as at the date of this contract, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk,
- (b) shall notify and disclose to the *Employer* full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.

Z6.7 A failure to comply with this clause Z6 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)

- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
- **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
- **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
- **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
- **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into
- **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.

Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*,

and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

- Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
 - the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.
- Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.
- Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.8 In this clause Z7 a Change of Control in relation to
- material change in the ownership of shares in, or
 - change in the name or status of
- a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

- Z8.1 The *Adjudicator's* appointment under the NEC *Adjudicator's* Contract current at the *starting date* includes the following additional conditions of contract
- "The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Clause Z9 Not used

Clause Z10 *Employer's* Codes of Conduct

- Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct to the extent one is



included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

- Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Fair payment

Z11

- Z11.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.
- Z11.2 The *Consultant* includes in the contract with each Subconsultant
- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
 - a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
 - a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.
- Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.
- Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Confidentiality

Z12

- Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract or otherwise required by law, each party shall:
- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - not disclose the other party's Confidential Information to any other person without that other party's prior written consent.
- Z12.1A The *Consultant* does not and procures that its Subconsultants does not make any public statement relating to this contract and/or services without the prior written consent of the *Employer*, such consent not to be unreasonably withheld (provided that nothing in this bulleted item shall prevent the *Consultant* from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers).



Z12.2 Clause Z12.1 shall not apply to the extent that:

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract;
- it is independently developed without access to the other party's Confidential Information; or
- such disclosure is to professional advisors of either party for the purposes of obtaining advice in relation to this contract provided the relevant party ensures such professional advisors are obliged by an equivalent standard of confidentiality as referred to in this clause Z12.

Z12.3 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Employer's* Confidential Information received otherwise than for the purposes of this contract.

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.

Z12.5 At the written request of the *Employer*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant's*



Confidential Information:

- to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer* 's accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

and for the purposes of the foregoing, disclosure of the *Consultant's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause Z12.6.

Z12.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Subconsultant to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.

Z12.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.

Z12.9 Notwithstanding any other term of this contract

- the *Consultant* consents that the *Employer* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public,
- the *Consultant* shall assist and co-operate with the *Employer* in order to make information available to the general public as required by the *Employer* from time to time and

prior to such publication the *Employer* may, at its sole discretion, in whole or in part, redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a FOIA analysis), third party confidential information, information technology security and/or the prevention of corruption and/or Fraud.

Z12.10 A failure to comply with this clause Z12 is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z12.11 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses



(including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z12.

Clause Security Requirements

Z13

- Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:
- the Security Policy;
 - the Security Management Plan produced pursuant to the Security Policy; and
 - the Security Provisions contained within Clause Z53.
- Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy.
- Z13.3 Without prejudice to Z13.1 and/or Z13.2 the *Consultant* complies with, and procures the compliance of its personnel, with the requirements of the Security Aspects Letter as set out at Schedule 7 in the performance of the *services*.
- Z13.4 The *Consultant* acknowledges that the Security Aspects Letter is a standard template and as such cannot be directly amended and agrees that it shall be interpreted as follows for the purposes of this contract:
- (a) any references to "Contractor" shall be construed as the "*Consultant*"; and
 - (b) any references to "MOJ" shall be construed as the "*Employer*" as appropriate.

The Parties also agree that if there are any requirements in the Security Aspects Letter that the *Consultant* believes, exercising the standard of care referred to in 21.2, are not relevant to the Project and/or the performance of this contract the *Consultant* shall notify the *Employer* as soon as reasonably practicable and the *Employer* shall confirm whether or not such requirements are applicable or not.

Clause Official Secrets Act

Z14

- Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.
- Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.
- Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.
- Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any.

Clause Data protection

Z15

- Z15.1 The Parties acknowledge that
- for the purposes of the Data Protection Laws, the *Employer* is the Data Controller and the *Consultant* is the Data Processor unless otherwise



specified in the Data Protection Schedule and

- the only Processing that the Data Processor is authorised to do is listed in the Data Protection Schedule by the Data Controller and may not be determined by the Data Processor.

Z15.2 The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Laws.

Z15.3 The Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Data Controller, include

- a systematic description of the envisaged Processing operations and the purpose of the Processing,
- an assessment of the necessity and proportionality of the Processing operations in relation to the *services*,
- an assessment of the risks to the rights and freedoms of Data Subjects and/or
- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z15.4 The Data Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this contract

- Process that Personal Data only in accordance with the Data Protection Schedule, unless the Data Processor is required to do otherwise by applicable law (provided that if it is so required, the Data Processor shall promptly notify the Data Controller before Processing the Personal Data unless prohibited by applicable law),
- ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures), having taken account of the
 - nature of the data to be protected,
 - harm that might result from a Data Loss Event,
 - state of technological development, and
 - cost of implementing any measures and
- ensure that
 - the Data Processor Personnel do not Process any Personal Data except in accordance with this contract (and in particular the Data Protection Schedule), and
 - it takes all reasonable steps to ensure the reliability and



integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they

- are aware of and comply with the Data Processor's duties under this clause Z15,
 - are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-Processor,
 - 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 Data Controller or as otherwise permitted by this contract, and
 - have undergone adequate training in the use, care, protection and handling of Personal Data,
- it does not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled
 - the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Data Controller,
 - the Data Subject has enforceable rights and effective legal remedies,
 - the Data Processor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Data Controller in meeting its obligations),
 - the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the Processing of the Personal Data, and
 - at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of this contract unless the Data Processor is required by applicable law to retain the Personal Data.

Z15.5 Subject to clause Z15.6, the Data Processor shall notify the Data Controller immediately if it



- receives a Data Subject Access Request (or purported Data Subject Access Request),
 - receives a request to rectify, block or erase any Personal Data,
 - receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws,
 - receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this contract,
 - 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 applicable law, and/or
 - becomes aware of a Data Loss Event.
- Z15.6 The Data Processor's notification obligation under clause Z15.5 includes the provision of further information to the Data Controller in phases, as details become available.
- Z15.7 Taking into account the nature of the Processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause Z15.5 (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing
- the Data Controller with full details and copies of the complaint, communication or request,
 - such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws,
 - the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject,
 - assistance as requested by the Data Controller following any Data Loss Event, and
 - assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.
- Z15.8 Unless the Data Processor employs fewer than two-hundred and fifty (250) staff, the Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z15 unless the Data Controller determines that
- the Processing is not occasional,
 - the Processing includes special categories of data under Article 9(1) of the GDPR or Personal Data concerning criminal convictions and offences under Article 10 of the GDPR and/or



- the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- Z15.9 The Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.
- Z15.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Laws.
- Z15.11 Before allowing any Sub-Processor to Process any Personal Data related to this contract, the Data Processor must
- notify the Data Controller in writing of the intended Sub-Processor and Processing,
 - obtain the written consent of the Data Controller,
 - enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause Z15 such that they apply to the Sub-Processor and
 - provide the Data Controller with such information regarding the Sub-Processor as the Data Controller may reasonably require.
- Z15.12 The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- Z15.13 The Data Controller may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).
- Z15.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than thirty (30) Business Days' notice to the Data Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- Z15.15 The *Consultant* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause Z15 by the *Consultant* and/or its personnel (of any type) and/or its Subconsultants.

Clause Freedom of Information

Z16

- Z16.1 The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.
- Z16.2 The *Consultant*:
- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a



Request for Information;

- provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five (5) Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;
- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subconsultants do likewise.

Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.

Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

Z16.6 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Employer* to inspect such records as and when reasonably requested from time to time.

Clause Records and Audit Access

Z17

Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with this contract for the *period for retention*.

Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.

Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.

Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the

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

Clause Z18 Reporting: Small and Medium Enterprises

Z18.1 In this clause “SME” is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

- is autonomous,
- is a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z18.2 For each SME employed in connection with the *services*, the *Consultant* reports to the *Employer* on a monthly basis from the *starting date* until Completion and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value and percentage of the contract undertaken by the SME,
- the amounts paid to the SME and
- the aggregated value paid to the SME since the *starting date*.

Z18.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z18.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z18 to any government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z18.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include

- a term allowing the *Employer* to publish the information supplied under



Z18.2 and

- obligations substantially similar to those set out in this clause Z18.

Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z218.4.

Clause Z19 Not used

Clause Z20 Tax Non-Compliance

Z20.1

- (1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
 - the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).
- (3) General Anti-Abuse Rule is
 - the legislation in Part 5 of the Finance Act 2013 and
 - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (5) IR35 Contractor means any Personnel or any individual engaged either directly by the Consultant (or via any other intermediary or intermediaries) through a PSC;
- (6) ITEPA means the Income Tax (Earnings and Pensions) Act 2003;
- (7) PSC means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA;



- (8) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.
- Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.
- Z20.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
 - any mitigating factors that it considers relevant and
 - any other information requested by the *Employer*.
- Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if
- the warranty given by the *Consultant* under clause Z20.2 is untrue,
 - the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
 - the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable.
- Z20.5 Unless specifically authorised by the *Employer* in writing to do so, the *Consultant* shall ensure (and shall ensure that all or any other third parties ensure on behalf of the *Consultant*) that none of its Consultant Personnel will be supplied or otherwise allowed to be utilised in the undertaking of any services if they are an IR35 Contractor.
- Z20.6 Where, as per clause Z20.5 above, the *Employer* provides written authorisation to the *Consultant* that an IR35 Contractor can be utilised in the undertaking of any services, prior to the IR35 Contractor commencing any services, the *Consultant* shall provide (and shall ensure that all or any other third parties provide on behalf of the *Consultant*) all such information and documentation as is reasonably required by the *Employer* to make a determination as to whether the IR35 Contractor would be regarded for Income Tax purposes as an employee of the *Employer* under Part 2 Chapter 10 of ITEPA.
- Z20.7 Unless, as per clause Z20.5 above, the *Employer* has provided written authorisation that an IR35 Contractor can be supplied, in any other circumstances, in the event that the *Employer* determines that an IR35 Contractor has been supplied or otherwise engaged, it will be considered that there has been a material breach of this contract.
- Z20.8 The *Consultant* shall pay all Corporation Tax, Income Taxes, National Insurance Contributions, VAT and other taxes, duties, levies, charges and contributions (and any interest or penalties thereon) whatsoever properly payable by the *Consultant* in respect of payments to its Consultant Personnel. In particular, and without limitation, the *Consultant* shall comply with any requirement to make deductions of Income Tax and National Insurance Contributions at source and to pay employer National Insurance Contributions and Apprenticeship Levy in respect of each and



any of its Consultant Personnel.

Z20.9 The *Consultant* shall indemnify the *Employer* and keep the *Employer* indemnified in full against any and all expenses, liability, costs, claims, loss and proceedings of any kind and character howsoever arising in connection with any breach by the *Consultant* of sub-clauses Z20.5 to Z20.8 above. The *Consultant* shall also indemnify the *Employer* and keep the *Employer* indemnified in full against any liability of the *Employer* to account for deductions of Income Tax, and/or employee National Insurance Contributions, or to make a payment of employer National Insurance Contributions or Apprenticeship Levy (and in each case against any liability of the *Employer* to pay interest or penalties in respect of such sums), in respect of services provided by, or payments made to or in respect of, any Consultant Personnel, in each case regardless of whether or not the *Employer* has or is deemed by HM Revenue & Customs to have complied with its own obligations under Chapter 10 of Part 2 Income Tax (Earnings and Pensions) Act 2003 or otherwise.

Clause Not used
Z21

Clause Not used
Z22

Clause Changes to *staff rates* and Subconsultants
Z23

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the *Consultant's* (or if appropriate Consortium Member's – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

- is accurate and not misleading,
- has been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- is a true and fair reflection of the information included within the *Consultant's* books, management and statutory accounts and other documents and records and
- complies with this contract.

Z23.2 If a Subconsultant wishes to propose revisions to an existing *staff rate* or a new *staff rate* and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.



Z23.3 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Subconsultant to provide

- records of any Time Charge and expenses incurred by it or
- a certificate that its invoice and records of any Time Charge and expenses incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.

Z23.4 The *Consultant* includes in the conditions of contract for each Subconsultant

- provisions substantially similar to those set out in clause Z23.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z23,
- an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant,
- a right for the *Consultant* to recover from the Subconsultant (or to deduct from any amount that would otherwise be due to the Subconsultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the Subconsultant and
- an acknowledgment from the Subconsultant that the *Employer* may enforce these provisions directly against the Subconsultant under the Contracts (Rights of Third Parties) Act 1999.

Clause Z24 Insurance cover

Z24.1 All insurances required to be effected and maintained under this contract by the *Consultant* are placed with reputable insurers, to whom the *Employer* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z24.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract.

Clause Z25 Professional indemnity insurance



- Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.
- Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.
- Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.
- Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z26 Termination and omission of work

- Z26.1 The *Employer* may, by way of a written instruction to the *Consultant*, remove or omit all or part of the *services* (including under any individual Task Order) at any time and for any reason.
- Z26.2 If the *Employer* gives an instruction to the *Consultant* which involves the omission of part of the *services*, the *Employer* may engage other people to carry out the part omitted.



- Z26.3 Where the *Employer* gives an instruction to the *Consultant* to remove or omit any *services* (including from any individual Task Order), the Prices for any Task Orders that are subject to a lump sum price are adjusted accordingly and the *Employer* shall pay for the *Consultant's* unavoidable demobilisation costs, including for removal of plant and equipment.
- Z26.4 The *Employer* has no liability whatsoever (other than the above paragraph Z26.3) to the *Consultant* in respect of any such removal or omission (whether in contract, tort (including negligence) or otherwise), including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind.
- Z26.5 The *Consultant* shall not be entitled to any adjustment to any Task Completion Date arising out of or in connection with any instruction(s) issued by the *Employer* pursuant to this clause Z26.
- Z26.6 The following is added at the end of the first bullet point in clause 91.1 of the *conditions of contract*:
“unless instructed otherwise by the *Employer*”.
- Z26.7 The following are treated as a substantial failure by the *Consultant* to comply with his obligations
- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*,
 - the *Consultant* breaching the terms of its obligations in clause 22.1 of the *conditions of contract* or
 - any conflict of interest or reputational risk under this contract cannot be resolved to the *Employer's* satisfaction.
- Z26.8 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if in the *Employer's* opinion the known or anticipated cost of the Project, which the *services* are performed (or to be performed) in connection with, has significantly increased.

Clause Z27 Termination – PCRs, Regulation 73

- Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply with his obligations:
- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.
- Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if
- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the

Public Contracts Regulations 2015 or

- a United Kingdom or European court declares that a serious infringement of the obligations under the European Union Treaties and/or the Public Contracts Regulations 2015 has occurred in relation to this contract.

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

Clause Z28 Value Added Tax (VAT) Recovery

Z28.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Clause Z29 Tax Arrangements of Public Appointees

Z29.1 For the purposes of this clause

- **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word "control" in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity.
- **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

Z29.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z29.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z29.4 The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it.

Z29.5 If the *Consultant* fails to provide information in response to a request under clause Z29.4



- within the *period for reply* or
 - which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it
- the *Employer* may
- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
 - instruct the *Consultant* to replace the relevant member of Staff

Z29.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z29.2 and Z29.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z29.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z29.4 or Z29.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

Clause Z30 Not used

Clause Z31 Subconsulting

Z31.1 Before:

- appointing a proposed Subconsultant or
 - allowing a Subconsultant to appoint a proposed subsubconsultant
- the *Consultant* submits to the *Employer* for acceptance
- a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subconsultant or subsubconsultant or
 - other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.

Z31.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.

Z31.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.

Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under

regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

- replace the Subconsultant or
- require the Subconsultant to replace the subsubconsultant.

Clause Z32 Energy Efficiency Directive

Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Subconsultant and subsubconsultant obligations substantially similar to those set out in the Scope for

- compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and
- demonstrating to the *Employer* how in Providing the Services how the Subconsultant and subsubconsultant complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”.

Clause Z33 Compliance with statutory requirements

The *Consultant* Provides the Services in compliance with all relevant:

- acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;
- European Directives or Regulations legally enforceable in England and Wales;
- rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
- permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*.

Clause Z34 Negotiation and mediation

Z34.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.

Z34.2 If any dispute is not resolved within ten Working Days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.

Z34.3 If any dispute cannot be resolved within ten Working Days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute

to mediation.

Clause Z35 Collateral Warranty Agreements

Z35.1 Add the following sub-clauses to option X8:

- X8.2 The *Consultant* procures that the Subconsultants referred to in the Contract Data enter into the *subconsultant collateral warranties*.
- X8.3 The *Consultant* shall provide the *Employer* with duly completed *collateral warranty agreements* and / or *subconsultant collateral warranties* in accordance with clauses X8.1 and X8.2 (as appropriate) no later than ten (10) Working Days after the *Employer* has provided the *Consultant* with appropriate forms suitable for execution.
- X8.4 If the *Consultant* fails to deliver the required *collateral warranty agreements* and / or *subconsultant collateral warranties* (or any one of them) in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has remedied the failure.

Clause Z36 Not used

**Clause Not used
Z37**

Clause Intellectual Property Rights

Z38

Z38.1 In this clause Z38:

- “**Intellectual Property Rights**” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and
- “**Material**” means all Material prepared by or on behalf of the *Consultant*.

Z38.2 The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Employer* and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes. Such licence entitles the *Employer* and the Authority to grant sub-licences to third parties in the same terms as this licence.

Z38.3 The *Consultant* shall not be liable to any licensee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or



Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

- Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.
- Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.
- Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.
- Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer's* other contractors and consultants (including the Estates Delivery Partner) for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Clause Financial Distress

Z39

- Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any *Guarantor*.
- Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a *Guarantor*
- its Credit Rating falls below the relevant *credit rating*,
 - a further fall in its Credit Rating below the relevant credit rating,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,



- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

Z39.3 If any of the events listed in clause Z39.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z39.2 has occurred.

Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z39.3 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z39.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z39.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z39.3,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z39.3 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Clause Change of Control – new guarantee

Z40

Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may



propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.

Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.

Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z40.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Z40.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
- accepted by the *Employer*.

The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Employer*.

The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.



Clause Parent Company Guarantee

Z41

Z41.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee in the form set out at Schedule 6 of this contract (with such amendments as the *Employer* may reasonably require). If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later. Parent Company Guarantees are given by

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

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

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

Clause Offshoring of data

Z42

Z42.1 In this clause

Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with the document stated in the Contract Data.

Z42.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51, MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement

- offshore or
- in any way that it could be accessed from an offshore location until the *Employer* has confirmed to the *Consultant* that either
- the *Employer* has gained approval for such storage in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51, MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement.or
- such approval is not required.

Z42.3 The *Consultant* ensures that no premises are used to Provide the Services until

- such premises have passed a Risk Assessment or



- the *Employer* confirms to the *Consultant* that no Risk Assessment is required.

Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or
- conduct a Risk Assessment for any premises for the purpose of Z42.3.

Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.

Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Payment forecast

Z43

Z43.1 Prior to the submission of the *Consultant's* first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant's* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due in relation to all Task Orders that have been instructed by the *Employer* at the date of the payment forecast.

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

Clause Responsibility for documents

Z44

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

Clause Not used

Z45

Clause Termination following prolonged suspension

Z46

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

- the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
- the *Consultant* has given the *Employer* a request for an instruction that the

services be resumed; and

- the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed.

**Clause Z47
Employer's Property**

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

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

Z47.2 The *Consultant* shall use the Employer's Property in accordance with any instructions of the Employer and/or as set out in the Scope and/or any Task Order.

Z47.3 The *Consultant* shall be liable for all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Employer as a result of any loss or damage suffered or incurred in relation to the Employer's Property whether as a result of the *Consultant's* negligence or otherwise.

Clause Z48 Building Information Modelling

Z48.1 If the Contract Data states a BIM Protocol applies, then the *Employer* and the *Consultant* shall:

- comply with their respective obligations set out in the BIM Protocol;
- have the benefit of any rights granted to them in the BIM Protocol; and
- have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.

Z48.2 The *Consultant* complies with the Digital Construction Requirements at all times and shall input into the Building Information Model in accordance with the Digital Construction Requirements and other documents developed, prepared and/or contributed towards by the *Consultant* in connection with the Project as required by the BIM Coordinator from time to time.

**Clause Z49
Task Orders**

Z49.1 (1) A Task is work within the *services* which the *Employer* may instruct the *Consultant* to carry out pursuant to, and within a stated period of time specified in, the relevant Task Order.

(2) A Task Order is the *Employer's* instruction to carry out a Task which is



substantially in the form of the Template Task Order set out at Schedule 9.

- (3) Task Completion is when the *Consultant* has done all the work in the Task and corrected Defects in the relevant *services* to which that Task Order relates.
- (4) Task Completion Date is the date for completion of an individual Task stated in the Task Order unless later changed in accordance with this contract.

Z49.2 A Task Order includes

- a detailed description of the work in the Task,
- a priced list of items of work in the Task in which items taken from the Task Schedule are identified,
- the Task Milestones and (as applicable) such lump sum prices forming part of the overall price for the Task Order attributable to it,
- the Task Milestone Payment Cap for any Task Milestone that is to be priced (and to be payable) on a Time Charge basis,
- the Task Start Date, Task Completion Date and the Task Milestone(s) for the Task,
- the basis upon which the Task is priced, whether by reference to Time Charges, lump sum prices or a combination of both, and
- the tendered total of the Prices for the Task (where the Task Order is subject to a lump sum pricing model).

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

When a Task Order is issued

- the priced list of items for the Task is added to the Prices, and
- the work involved is added to the Scope.

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

Z49.3 The Prices for items in the Task price list which are not taken from Schedule 4 are assessed in the same way as compensation events.

Z49.4 The *Consultant* does not start any work included in the Task until the *Employer* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. The *Employer* may issue an instruction changing a Task Order.



Z49.5 The *Consultant* submits a Task Order programme to the *Employer* for acceptance within the period stated in the Contract Data.

Z49.6 The *Consultant* shows on each Task Order programme which he submits for acceptance

- the Task starting date and the Task Completion Date,
- planned Task Completion,
- the order and timing of the operations which the *Consultant* plans to do in order to complete the Task,
- provisions for
 - float,
 - time risk allowances,
 - health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Consultant* will need
 - access to any relevant property,
 - acceptances,
 - Plant and Materials, equipment and other things to be provided by the *Employer* and
 - information from Others,
- for each operation, a statement of how the *Consultant* plans to do the work identifying the principal Equipment and other resources which he plans to use and
- other information which the Scope requires the *Consultant* to show on a Task Order programme submitted for acceptance.

Z49.7 Within one week of the *Consultant* submitting a Task Order programme to him for acceptance, the *Employer* either accepts the programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which this contract requires, or
- it does not comply with the Scope.



Z49.8 The *Consultant* shows on each revised Task Order programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- how the *Consultant* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Consultant* proposes to make to the Task Order programme.

Z49.9 The *Consultant* submits a revised Task Order programme to the *Employer* for acceptance

- within the period for reply after the Employer has instructed him to and
- when the Consultant chooses to.

The latest programme accepted by the *Employer* supersedes previous accepted programmes.

Z49.10 If, due to the compensation event, planned Task Completion is delayed, the delay to the Task Completion Date is stated in the *Consultant's* quotation for the event and a programme is submitted with details of the assessment of the delay.

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

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

Z49.11 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Employer's* notification implementing a compensation event.

Z49.12 The Consultant does not commence (nor have any entitlement under this contract to any payment in connection with) any services included in a Task until both the Employer and the Consultant have countersigned a Task Order.

Clause Agreeing Task Orders
Z49A

Z49A.1 Each Task Order must be agreed between the Parties prior to its implementation.



- Z49A.2 If the *Employer* intends to instruct the *Consultant* to undertake a Task pursuant to and in accordance with a new Task Order, it will first issue a draft version of the relevant Task Order to the *Consultant* in writing (a "draft Task Order" for the purposes of this clause Z49A).
- Z49A.3 As soon as reasonably practicable (but, in any event, no later than three (3) Working Days after receiving a draft Task Order issued by the *Employer* pursuant to clause Z49A.2 or within such longer period as may be specified in the draft Task Order), the *Consultant* shall issue a written response to the *Employer* in respect of such draft Task Order.
- Z49A.4 A response to a draft Task Order issued by the *Consultant* to the *Employer* pursuant to clause Z49A.3
- states the *Consultant* accepts the draft Task Order as originally prepared,
 - responds to any queries raised by the *Employer* in connection with such Task Order and populates any sections of the draft Task Order that are identified as having to be populated by the *Consultant* (and includes any proposals of the *Consultant* in response to such queries as appropriate),
 - proposes any modifications to the draft Task Order as the *Consultant* (acting reasonably) considers necessary in order to clarify the content of the Task Order and/or to reflect the scope and nature of the Task and the *Consultant's* pricing proposal for delivering the Task and/or
 - advises on the *Consultant's* proposed subcontracting and other third party arrangements in respect of the Task Order (if any) and the *Consultant's* anticipated timescales for procuring any such subcontractors and/or anything else from any third parties necessary in order to allow the *Consultant* to undertake the Task, proposing any modifications to the Task Completion Date and/or any Task Milestones as the *Consultant* may consider appropriate in connection with the same.
- Z49A.5 If the *Consultant* does not respond to a draft Task Order as required by clause Z49A.3, the *Employer* may withdraw the Task Order with no cost or liability to the *Consultant*.
- Z49A.6 Following the receipt by the *Employer* of the *Consultant's* response to a draft Task Order in accordance with clause Z49A.4 and clause Z49A.5, the Parties shall, as soon as reasonably practicable after such receipt by the *Employer* (or within such other period that the *Employer* notifies the *Consultant* of in writing, acting reasonably), work together to develop and finalise the Task Order (which may involve the revision of the original draft Task Order to take into account comments made by the *Consultant* in its response to the same), following which the *Employer* shall issue a final version of the Task Order to the *Consultant* for acceptance



that reflects the outcome of such discussions (a "final Task Order" for the purposes of this clause Z49A).

Z49A.7 If a final Task Order is

- agreed between the Parties pursuant to clause Z49A.6, the *Employer* will issue such final Task Order to the *Consultant* in writing for its final acceptance and signature, following which the *Consultant* shall sign and return the final Task Order to the *Employer* no later than three (3) Working Days after its receipt of the final Task Order (failing which the *Employer* may withdraw the Task Order at its sole discretion at no cost or liability to the *Consultant*) or
- not agreed between the Parties, the *Employer* has the discretion to reissue a further draft Task Order to the *Consultant* pursuant to clause Z49A.2 in connection with the proposed Task or to withdraw the draft Task Order at its sole discretion and at no cost or liability to the *Consultant*.

Z49A.8 If a draft Task Order issued by the *Employer* pursuant to clause Z49A.2 requires the *Consultant* to perform any services as a precursor (or prior) to that Task Order being issued,

- the *Employer* states this in the draft Task Order and the basis upon which it will remunerate the *Consultant* for undertaking such services,
- in the *Consultant's* response to the draft Task Order as issued pursuant to clause Z49A.4, the costs of such services shall be identified in the response and form part of the *Consultant's* proposal for the overall Task Order and
- if a final Task Order is
 - agreed between the Parties pursuant to clause Z49A.7, such costs will be paid to the *Consultant* on the basis set out in the Task Order by reference to an initial Task Milestone or
 - not agreed or is withdrawn by the *Employer*, the *Consultant* shall be entitled to include in its next application for payment issued pursuant to clause 50.1 an amount equal to the agreed value of such services.

Z49A.9 Without prejudice to the generality of clause Z58, the *Consultant* acknowledges and agrees that the decision to issue any Task Order shall be at the sole and absolute discretion of the *Employer* and that the *Employer* shall be entitled without payment of any compensation to the *Consultant*, to elect not to issue Task Orders for, or to elect to award to another person or persons a contract or contracts in respect of, the whole or any part of the services contemplated by this contract.



Z49A.10 No general terms and conditions contained in any Task Order or other document customarily required by the *Consultant* in connection with any request, quotation, proposal and/or acceptance of a request to provide services and/or works (including where referred and/or annexed to any notice issued by the *Consultant* to the *Employer* under this clause Z49A) shall be binding on the *Employer*.

Clause Convictions
Z50

- Z50.1 Unless agreed in writing in advance by the *Employer*, the *Consultant* shall procure that, in respect of all potential persons performing any of the *services*, whether an employee of the *Consultant* or any Subconsultant (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *services* are being or are to be carried out in connection with this contract
- each Named Employee is questioned as to whether they have any Relevant Convictions,
 - a Disclosure and Barring Services check is undertaken in respect of each Named Employee and
 - save to the extent prohibited by applicable law, a copy of the results of such check are notified to the *Employer*.
- Z50.2 The *Consultant* shall procure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the results of a Disclosure and Barring Services check is employed without the *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed).
- Z50.3 Save to the extent prohibited by applicable law, the *Consultant* shall procure that the *Employer* is informed if any member of staff of the *Consultant* (or any employee of a Subconsultant), whether a Named Employee or otherwise, involved in the provision of the *services* who, subsequent to their commencement of employment as a member of staff, receives a Relevant Conviction or whose previous Relevant Convictions become known to the *Consultant*.
- Z50.4 Without prejudice to clause Z50.1 to clause Z50.3 (inclusive), where the *Employer* notifies the *Consultant* that the *Consultant* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer*, the *Consultant* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *services* to the *Employer*, which may include (without limitation)
- asking any person acting for or on behalf of the *Consultant* in connection with this contract for details of any Relevant Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
 - complying with the HM Government Baseline Personnel Security

Standard or similar standard,
and the results of such disclosures shall be shared with the *Employer* in writing.

Clause Whistleblowing
Z51

The *Consultant* shall ensure that staff engaged by the *Consultant* in connection with any of the *services* (and use reasonable endeavours to ensure that any staff engaged by any Subconsultant, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Consultant* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998.

Clause Sustainability
Z52

Z52.1 The *Consultant* shall

- comply with the applicable Government Buying Standards,
- provide, from time to time, in a format reasonably required by the *Employer*, reports on the environmental effects of providing the *services*,
- maintain ISO 14001 (as the family of standards related to environmental management published by the International Organisation for Standardisation) or BS 8555 (as the standard published to help organisations improve their environmental performance by the British Standards Institution) or an equivalent standard intended to manage its environmental responsibilities and
- perform its obligations under this contract in a way that
 - supports the *Employer's* achievement of the Greening Government Commitments,
 - conserves energy, water, wood, paper and other resources,
 - reduces waste and avoids the use of ozone depleting substances and
 - minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

Clause Security Provisions
Z53

Z53.1 Where the *Employer* advises the *Consultant* that Consultant Personnel are required to have a pass for admission to any Project Site and such Consultant Personnel are identified by the *Consultant* (provided always that the *Consultant* first notifies the *Employer* in writing of such Consultant Personnel within a reasonable period ahead of their scheduled attendance(s) at any such Project Site), the *Employer*, subject to its satisfactory completion of its own approval procedures in respect of such admission by Consultant Personnel, shall arrange for passes to be issued. Consultant Personnel who cannot produce a proper pass when required to do so by any of the *Employer's* personnel, or who contravene



- any conditions on the basis of which a pass was issued, may be refused admission to the relevant Project Site or required to leave that Project Site if already there.
- Z53.2 The *Consultant* shall promptly return any pass issued to any Consultant Personnel pursuant to clause Z53.1 if at any time the *Employer* so requires or if the person to whom the pass was issued ceases to be involved in the performance of the services at a Project Site. The *Consultant* shall promptly return such passes on completion or earlier termination of their appointment under this contract.
- Z53.3 Consultant Personnel attending a Project Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Employer* under the same rules and conditions applying to the *Employer's* personnel. The *Consultant* is deemed to be familiar with the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 and all other applicable law in this regard.
- Z53.4 The *Employer*, whose decision is final and conclusive, reserves the right to refuse admission to, or to withdraw permission to remain on, a Project Site or any premises occupied by or on behalf of the *Employer*, any Consultant Personnel whose admission or continued presence is, in the opinion of the *Employer*, undesirable.
- Z53.5 If and when directed by the *Employer*, the *Consultant* shall provide a list of the names and addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the contract to a Project Site or any premises occupied by or on behalf of the *Employer*, specifying the capacities in which they are concerned with the Project and giving such other particulars as the *Employer* may reasonably require.
- Z53.6 The *Consultant* shall ensure that its Consultant Personnel undertaking services and/or works within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Consultant Personnel when at that establishment and when outside that establishment.
- Z53.7 If the *Consultant* fails to comply with clause Z53.2 and/or clause Z53.5, the *Employer*, (whose decision shall be final and conclusive in the matter) may decide that such failure is prejudicial to the interests of the Crown and if that the *Consultant* does not comply with the *Employer's* reasonable requests within four (4) weeks of the date of a written notice from the *Employer* so to do, then the *Employer* may terminate the appointment of all or any part of the *Consultant's* appointment under this contract (including under any individual Task Order(s)) without providing the *Consultant* with a further period of time within which to remedy the default, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Employer*.
- Z53.8 The *Consultant* shall bear the costs of complying with the requirements, notices, instructions or decisions received from the *Employer* in relation to its obligations



in respect of information relating to Consultant Personnel pursuant to this clause Z53.

- Z53.9 The *Consultant* shall not employ any person that it knows, or by reason of the circumstances which it might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the *Consultant*. The *Consultant* shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of social security fraud, evasion of tax or otherwise.
- Z53.10 The *Consultant* shall comply with the *Employer's* procedures for the vetting of Consultant Personnel in respect of all persons to be employed or engaged to carry out and complete any part(s) of the Project. The *Consultant* shall confirm that all persons employed or engaged by it or that will be employed or engaged by it in relation to the contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedure.
- Z53.11 Without prejudice to the generality of this clause Z53, the *Employer* may require the *Consultant* to ensure that any person engaged by it in connection with the Project has undertaken a DBS Check as per the Personnel Vetting Procedure (or as otherwise requested by the *Employer*), with the level of DBS Check to be determined by the *Employer* at its sole discretion, or any other security check as may be required by the *Employer* from time to time. The *Consultant* shall ensure that no person who discloses that they have a Relevant Conviction, or is found by that *Consultant* to have a Relevant Conviction (whether as a result of a police check or through the DBS Check or otherwise) is employed or engaged in connection with the Project.
- Z53.12 Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Employer* deems it necessary, the *Consultant* shall provide a list of Consultant Personnel who are engaged by it in connection with the services that are vetted by the Disclosure and Barring Service. The *Employer* may in its sole discretion refuse access to a Project Site by any Consultant Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- Z53.13 Whilst on a Project Site, the *Consultant* must ensure that its Consultant Personnel comply with all Security Measures implemented by the *Employer* in respect of staff and other persons attending a Project Site. The *Employer* shall provide copies of its written security procedure to the *Consultant* on request. The *Consultant* and all of its Consultant Personnel shall be prohibited from taking any photographs on a Project Site unless the *Employer* has given prior written consent and a representative of the *Employer* is present so as to have full control over the subject matter of each photograph to be taken.
- Z53.14 The *Employer* shall have the right to carry out any search of any Consultant Personnel or of vehicles used by the *Consultant* at a Project Site at its sole discretion from time to time.
- Z53.14 The *Consultant* shall co-operate with any investigation relating to security which



is carried out by the *Employer* or by any person who is responsible to the *Employer* for security matters, and when required by the *Employer*

- take all reasonable measures to make any Consultant Personnel identified by the *Employer* available to be interviewed by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation (and all Consultant Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the *Employer*) and
- subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the *Consultant* from carrying out and completing the *services* (and the *Employer* has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the *Consultant* with a copy of any material retained).

Clause Modern Slavery

Z54

Z54.1 The *Consultant* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Employer* that neither the *Consultant* nor any of its employees, agents and/or Subconsultants (as far as the *Consultant* is aware, having made reasonable enquiries of each Sub consultant prior to the date of their sub-consultant agreement and having also included wording in their sub-consultant agreement that is no less onerous than this clause Z54) has

- committed an MSA Offence,
- been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015 and/or
- is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

Z54.2 The *Consultant* shall notify the *Employer* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Subconsultants have, breached or potentially breached any of the *Consultant's* obligations under clause Z54.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Consultant's* obligations under clause Z54.1.

Z54.3 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z54.

Clause COVID-19 management and mitigation



Z55 Z55.1 For the purposes of this clause Z55, the term "**impact of COVID-19**" includes but is not limited to the following events

- the infection or suspected infection of any person engaged by the *Consultant* (or any Subconsultant) in connection with the *services* by COVID-19,
- the implementation by the *Consultant* (or any Subconsultant) of any public health measures mandated by the United Kingdom government (including Public Health England) in relation to COVID-19, including any
 - preventative measures intended to minimise the transmission of COVID-19 which result in shortages of labour and/or supervision in relation to the *services* (including pursuant to any self-isolation measures and the restricted use of public transport) and
 - measures to contain COVID-19 resulting in the mandatory closure of any Project Site and/or any office(s) of the *Consultant* (or any Subconsultant), restricted access to such site(s) and/or offices and/or amended working hours and/or methods that impact the delivery of the *services* and the performance by the *Consultant* of its duties and obligations under this contract,
- the exercise by the United Kingdom government of any statutory power in connection with COVID-19 that is not occasioned by a default of the *Consultant* or any person for whom the *Consultant* is responsible, and
- the shortage of equipment, plant and/or materials intended for use by the *Consultant* in connection with the *services* due to a delay in their manufacture, importation and/or transportation as a consequence of COVID-19.

Z55.2 Without prejudice to the generality of clause 60.1(11) the *Consultant* acknowledges and agrees that it

- has complied (and will comply) with any requirements set out in the Scope (or specified by the *Employer* in writing from time to time, acting reasonably) in connection with the management of and/or reporting by the *Consultant* in connection with the management and mitigation of the potential and actual impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract),
- has and will maintain at all times during the performance of the *services* suitable business continuity and absence management programmes in relation to the management and mitigation of the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract),
- (without prejudice to the generality of clause 15) will notify the *Employer* as soon as reasonably practicable upon the *Consultant* becoming aware of any potential and/or actual adverse impact on the delivery of the



services (and the performance of the *Consultant's* other duties and obligations under this contract) attributable to the impact of COVID-19,

- shall at all times use the standard of care referred to in clause 21.2 to mitigate the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract), and
- shall, if requested by the *Employer* from time to time (acting reasonably), confirm in writing what measures the *Consultant* has (and its Subconsultants have) in place (or proposes to put in place) in order to so manage and mitigate the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract).

Z55.3 The *Consultant* shall ensure that all subcontracts with its Subconsultants reflect the requirements of this clause Z55 on a mutatis mutandis basis.

Clause Collaboration
Z56

Z56.1 The *Consultant* shall, using the standard of care set out at clause 21.2

- promote collaborative behaviours throughout its organisation and its supply chain in connection with the Project and act collaboratively with the Project Consultants, the Estates Delivery Partner and the Contractor(s) at all times,
- comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Project Consultants, the Estates Delivery Partner and the Contractor(s) in connection with the Project,
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Consultant*, the Project Consultants, the Estates Delivery Partner and the Contractor(s), and
- proactively consult the Project Consultants, the Estates Delivery Partner and the Contractor(s) when seeking to make decisions in relation to the Project,

in each case so far as reasonably practicable on a Project Focused basis.

Z56.2 The *Consultant* shall work with the Project Consultants, the Estates Delivery Partner and the Contractor(s) (and using the standard of care set out at clause 21.2) to

- (to the extent reasonably within the *Consultant's* control) assist the Project Consultants, the Estates Delivery Partner and the Contractor(s) in performing their obligations under their respective Project Appointments, Estates Delivery Partner Appointment or Building Contract (as the context permits) in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Consultant* in connection with the *services*,



- share best practice in connection with the Project, and
- collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project,

on a Project Focused basis.

Z56.3 The *Consultant* agrees, for the purposes referred to in this clause Z56, to promptly supply or allow each Project Consultant, Estates Delivery Partner and Contractor access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant, Estates Delivery Partner or Contractor in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions under applicable law or this contract and
- reasonably required by a Project Consultant, Estates Delivery Partner or Contractor to properly perform its obligations under its Project Appointment, Estates Delivery Partner Appointment or Building Contract as the case may be.

Z56.4 The *Consultant* shall, in complying with its obligations under this clause Z56, consult with each Project Consultant, Estates Delivery Partner, Contractor and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this contract, any Project Appointment, Estates Delivery Partner Appointment, Building Contract and/or in relation to any part(s) of the Project.

Z56.5 Nothing in this clause Z56 shall require the *Consultant* to perform tasks and/or duties which are the responsibility of a Project Consultant, Estates Delivery Partner or Building Contractor under its Project Appointment, Estates Delivery Partner Appointment or Building Contract as the case may be.

Clause Basis of engagement

Z57

Z57.1 The *Consultant* acknowledges and agrees that

- it is appointed by the *Employer* under this contract solely to provide the *services* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any services and/or works on behalf of the *Employer* in connection with the Project (whether forming part of the Scope or otherwise) and the *Employer* may, at its sole discretion, instruct any other party to carry out services and/or works which are the same as or are similar to those to be undertaken by the *Consultant* under this contract,
- the *Employer* makes no guarantee to the *Consultant* in relation to any minimum value or volume of services and/or works that the *Consultant* will be required to undertake under this contract, pursuant to one (1) or more Task Orders or otherwise and
- the *Consultant* shall have no entitlement to make any claim against the *Employer* whatsoever (whether in contract, tort or any other basis of law)



in respect of, without limitation, any costs, damages, expenses and/or losses arising out of or in connection with it not undertaking any minimum value or volume of services and/or works under or in relation to this contract or the Project generally (including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind),

- provided that nothing in this clause Z57.1 shall affect the entitlement of the *Consultant* to be paid for *services* properly performed under this contract.

SCHEDULE 3

SCOPE

SCHEDULE 4

PRICES [REDACTED]

SCHEDULE 5

TEMPLATE FORM OF COLLATERAL WARRANTY IN FAVOUR OF A BENEFICIARY

[REDACTED]



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SCHEDULE 6

TEMPLATE FORM OF DEED OF GUARANTEE [REDACTED]



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SCHEDULE 7

SECURITY ASPECTS LETTER [REDACTED]



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SCHEDULE 8

NOT USED



SCHEDULE 9

TEMPLATE FORM OF TASK ORDER

EMPLOYER:	THE SECRETARY OF STATE FOR JUSTICE of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
CONSULTANT:	[] (company number []) whose registered office is situated at []
CONTRACT:	An NEC3 Professional Services Contract: Option G (as amended) between (1) the Employer and (2) the Consultant dated [INSERT DATE] 20[]
DATE:	[INSERT DATE]

Unless otherwise stated, capitalised terms used in this Task Order shall have the meaning given to such terms in the contract as identified above (the "**Contract**"). Any attachments referenced in this Task Order form part of the Task Order. The Parties acknowledge and agree that this Task Order is issued pursuant to, forms part of and shall be subject to the terms and conditions of the Contract.

SECTION 1 – KEY INFORMATION

Task Order number:	[INSERT NUMBER]
Purchase order number:	[INSERT NUMBER]
Task Order title:	[INSERT DESCRIPTION]
Consultant's representative:	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
Employer's representative:	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
BIM Coordinator:	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])

SECTION 2 – SCOPE

The services:	[INSERT DESCRIPTION]
Task-specific Scope:	[INSERT DETAILS (INCLUDING DELIVERABLES)]
Physical works required:	[Yes – the requirements in respect of which are more particularly described in [INSERT LOCATION]] [No]
Project Site(s):	[Insert details of the relevant Project Site(s), whether by reference to the original Scope in the contract or otherwise]
Security requirements:	[Any additional security and/or site requirements not covered in the Security Aspects Letter or the other terms and conditions to be inserted. This may include requirements from any 4.20 meeting held on site with the Establishment]



SECTION 3 – START DATE, COMPLETION DATE & MILESTONES

Task Start Date:	[INSERT NUMBER]
Task Completion Date:	[INSERT NUMBER]
Task Milestones: ¹	[INSERT DESCRIPTION][Not used]
Key Dates and Conditions:	[Details of the Key Dates and their associated Conditions are set out at [INSERT LOCATION]][Not used]
Access Dates:	[INSERT DETAILS][Not used]

SECTION 4 – PAYMENT

Basis of payment:	[Lump sum / Time Charge / Combination of lump sum and Time Charge] as set out below
[Agreed lump sum:	[INSERT SUM IN WORDS] pounds (£[INSERT NUMBER])]
[Agreed Time Charge rates:	As set out at [INSERT LOCATION]]
[Task Milestone(s) breakdown: ²	[INSERT DETAILS OF ANY BREAKDOWN OF THE AGREED PRICES ACROSS THE MILESTONES]
[Task Milestone Payment Cap(s): ³	[INSERT NUMBER]]

SECTION 5 – OTHER

Key Persons:	[INSERT DETAILS]
Risk Register:	The following matters will be included in the Risk Register
Additional information:	[INSERT DETAILS]

SECTION 6 – TASK ORDER ACCEPTANCE BY THE EMPLOYER

This Task Order is accepted by the <i>Employer</i> acting by its authorised representative:	
Print name:	_____
Signature:	_____
Position:	_____

¹ **TASK ORDER DRAFTING NOTE** – These are milestones that are to be completed as part of the Task and need to be completed in order for the Consultant to claim payment for the relevant milestone. The contract assumes that milestones will be used as default.

² **TASK ORDER DRAFTING NOTE** – If Task Milestones are used in conjunction with a lump sum (or lump sums), the lump sum(s) can be split across multiple Task Milestones as required.

³ **TASK ORDER DRAFTING NOTE** – If any Task(s) will be paid on a Time Charge basis, the amount payable to the Consultant can be capped by allocating a fixed (cap) amount to each specified milestone.



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Date:

SECTION 7 – TASK ORDER ACCEPTANCE BY THE CONSULTANT

This Task Order is accepted by the *Consultant* acting by its authorised representative:

Print name:

Signature:

Position:

Date:



ANNEX 1

PART 1 – ANCILLARY DETAILS AND INFORMATION

[INSERT ANY ANCILLARY DETAILS AND INFORMATION REFERRED TO IN THE BODY OF THE TASK ORDER HERE] **[REDACTED]**

PART 2 – TASK SCHEDULE

[THIS IS A LIST OF TASKS BUT NOT A LIST OF DATES] **[REDACTED]**



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SCHEDULE 10

DATA PROTECTION SCHEDULE [REDACTED]



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SCHEDULE 11

BIM PROTOCOL

**CIC STANDARD PROTOCOL SECOND EDITION 2018 TO BE INCORPORATED INTO SIGNATURE COPY
[REDACTED]**



SCHEDULE 12

KEY PERFORMANCE INDICATOR SCHEDULE [REDACTED]



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SCHEDULE 13

TEMPLATE FORM OF VALID INVOICE