

**Schedule 1 of Contract C326558**

Agreement incorporating NEC4 Facilities Management Contract June 2021  
(with amendments January 2023)

Between

The Secretary of State for Health and Social Care and CBRE Managed  
Services Limited

For the provision of

Hard Facilities Management Services under the NHS Shared Business  
Services framework (SBS/17/MN/PZJ/8874) at properties at Colindale, Chilton,  
Leeds, Glasgow and Harlow

# Contents

AGREEMENT .....	3
BACKGROUND.....	3
AGREED TERMS .....	3
CONTRACT DATA.....	5
<b>PART ONE – DATA PROVIDED BY THE CLIENT</b> .....	5
2 The <i>Service Provider's</i> main responsibilities.....	8
3 Time .....	8
4 Quality management.....	8
5 Payment .....	8
6 Compensation events .....	9
8 Liabilities and insurance .....	9
Resolving and avoiding disputes .....	11
X1: Price adjustment for inflation (used only with Options A and C).....	12
X18: Limitation of liability .....	15
X19: Termination by either Party (not used with Option X11).....	15
X23: Extending the Service Period.....	16
X24: The accounting periods .....	16
X27: Project Orders .....	16
X28: Change of Control .....	17
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996 .....	17
<b>PART TWO – DATA PROVIDED BY THE SERVICE PROVIDER</b> .....	19
Data for the Short Schedule of Cost Components (used only with Option A) .....	23
OPTION Z SCHEDULE.....	25
SECONDARY OPTIONS CLAUSES .....	49
OPTION X2 CHANGES IN THE LAW .....	49
OPTION X18 LIMITATION OF LIABILITY .....	49
OPTION X27 PROJECT ORDERS .....	50
OPTION Z: <i>ADDITIONAL CONDITIONS OF CONTRACT</i> .....	50
Z13 GDPR .....	54
Z21 TUPE .....	58
APPENDICES.....	65
APPENDIX A – CLIENT'S POLICIES.....	65
APPENDIX B – DATA PROTECTION TERMS AND SCHEDULE .....	86
APPENDIX C – CYBER ESSENTIALS .....	93
APPENDIX D – FIXED PRICE.....	96
ANNEXES.....	99
ANNEX A – [REDACTED] CV.....	99
ANNEX B – [REDACTED] CV .....	100
ANNEX C – Short Schedule of Cost Components.....	101

## AGREEMENT

Dated:

## BETWEEN

- (1) **The Secretary of State for Health and Social Care** (acting as part of the Crown through UK Health Security Agency) with offices at 10 South Colonnade Canary Wharf London E14 4PU. (the **Client** which expression includes permitted assignees and successors in title)
- (2) **CBRE Managed Services Limited** (Company No. 01799580) whose registered office is at 61 Southwalk Street, London, SE1 0HL (the **Service Provider**)

## BACKGROUND

- (A) **NHS Shared Business Services**, acting as an agent on behalf of its Approved Organisations, established a framework for Hard Facilities Management services for the benefit of public sector bodies.
- (B) The *Service Provider* was appointed to the framework and executed the framework agreement (with reference number SBS/17/MN/PZJ/8874) (the “**Framework Agreement**”). In the Framework Agreement, the Service Provider is identified as the “**Supplier**” and the Client is identified as the “**Contracting Authority**”.
- (C) The *Client* wishes to appoint the *Service Provider*, using the Direct Award procedure, to provide the Service under this contract and in accordance with the Framework Agreement.
- (D) The *Service Provider* has agreed to Provide the Services and perform its obligations in accordance with the terms of this contract and the Framework Agreement.
- (E) The *Client* and the *Service Provider* have agreed to incorporate and amend the NEC4 Facilities Management Contract June 2021 (with amendments in January 2023) as set out in this Agreement.

## AGREED TERMS

1. This contract incorporates the NEC4 Facilities Management Contract June 2021 (with amendments in January 2023) and the Framework Agreement, except that:
  - 1.1. the Contract Data are replaced in their entirety by the Contract Data attached to this Agreement;
  - 1.2. the core clauses are amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement; and
  - 1.3. the clauses for Main and Secondary Options are as agreed in the Contract Data attached to this Agreement and amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement.
2. In this contract, words and expressions have the same meanings as are respectively assigned to them in the NEC4 Facilities Management Contract June 2021 (with amendments in January 2023), as amended as provided in this Agreement, the Contract Data and the Option Z Schedule attached to this Agreement.
3. The following documents form part of this contract:
  - 3.1. this Agreement and the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement;

- 3.2. the NEC4 Facilities Management Contract June 2021 (with amendments June 2023) as amended by this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement;
- 3.3. the Scope and the Appendices attached to the Scope; and
- 3.4. any other documents incorporated by or referred to in any of the above documents
- 4. In consideration of the payments to be made by the *Client* to the *Service Provider* as provided for in this contract, the *Service Provider* hereby agrees with the *Client* to perform its obligations under this contract, all in accordance with the terms of this contract.
- 5. The *Client* hereby agrees to pay the *Service Provider* in consideration of the performance of the *Service Provider's* obligations under this contract, all in accordance with the terms of this contract, such amounts as become payable under the provisions of this contract at the times and in the manner prescribed by this contract.
- 6. This contract may be executed by the Parties in separate counterparts and any single counterpart or set of counterparts executed by the Parties constitutes a full and original contract for all purposes.

**This Agreement has been executed as a contract and is delivered and takes effect on the date stated at the beginning of it.**

Executed as a contract by

**The Secretary of State for Health and Social Care**

acting by one authorised signatory

.....  
Authorised signatory signature

Executed as a contract by

**CBRE Managed Services Limited**

acting by

, a director, in the presence of:

.....  
Signature of Director

## CONTRACT DATA

# Contract Data

### PART ONE – DATA PROVIDED BY THE CLIENT

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

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Facilities Management Contract Prepublication January 2021

Main Options

A

Option for resolving and avoiding disputes

W2

Secondary Options

X1, X2, X18, X19, X23, X24, X27, X28, Y(UK)2

The *service* is

Provide Reactive and Planned Maintenance, and Variable Services works. Servicing of Mechanical, Electrical, Plumbing Services and fabric Infrastructure for Colindale, Chilton, Leeds, Glasgow and Harlow. Additionally, provide cleaning services at Harlow, Nexus House and Cunard House plus Minor Works (Extra Works) as required and/or instructed by the Client.  
Project works will be instructed on a case-by-case basis

The *Client* is

Name

The Secretary of State for Health and Social Care (acting as part of the Crown through UK Health Security Agency)

Address for communications

10 South Colonnade Canary Wharf London E14 4PU.

Address for electronic communications

The *Service Manager* is

*in relation to the Affected Property at Colindale and Harlow and the Dispersed Estate*

Name

Address for communications

61 Colindale Avenue  
London,  
NW9 5EQ

Address for electronic communications

Name 

██████████

Address for communications 

61 Colindale Avenue  
London,  
NW9 5EQ

Address for electronic communications 

████████████████████

The *Service Manager* is  
  
in relation to the Affected Property at  
Chilton, Leeds and Glasgow  
  
Name 

██████████

Address for communications 

CRCE  
Chilton,  
Didcot  
Oxon,  
OX11 0RQ

Address for electronic communications 

████████████████████

The Service Manager is  
  
in relation to the Affected Property  
across the Dispersed Estate  
  
Name 

██████████

Address for electronic communications 

████████████████████

or such other person as may be notified by the Client to the Service Provider from time to time.

The Affected Property is

The Scope is in

The *shared services* which may be carried out outside the Service Areas are

The *language of the contract* is

The *law of the contract* is the law of

The *period for reply* is  except that

• The *period for reply* for  is

• The *period for reply* for  is

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than

## 2 The *Service Provider*'s main responsibilities

If Option C or E is used

The *Service Provider* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than

## 3 Time

The *starting date* is

1<sup>st</sup> January 2025

The *service period* is

2 years

The *Service Provider* submits revised plans at intervals no longer than

monthly

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

The period after the Contract Date within which the *Service Provider* is to submit a first plan for acceptance is

4 weeks

If a mobilisation plan is required, and no mobilisation plan is identified in part two of the Contract Data

The period after the Contract Date within which the *Service Provider* is to submit a mobilisation plan for acceptance is

A week

The period after the Contract Date within which the *Service Provider* is to submit a first demobilisation plan for acceptance is

26 weeks

## 4 Quality management

The period after the Contract Date within which the *Service Provider* is to submit a quality policy statement and quality plan is

four weeks

## 5 Payment

The *currency of the contract* is the

GBP

The *assessment interval* is

Monthly

The *interest rate* is

% per annum (not less than 2) above the

Base rate

rate of the

Bank of England

bank

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

The period within which payments are made is

N/A

The *performance table* is in

Appendix H of the Schedule 3 (Scope)

If the period for certifying a final assessment is not thirteen weeks

The period for certifying a final assessment is

thirteen weeks

If Option C is used

The *Service Provider's share percentages* and the *share ranges* are

*share range*

*Service Provider's share percentages*

less than

%

%

From

% to  %

%

From

% to  %

%

greater than

%

%

The *Service Provider's share* is assessed on (dates)


If Option C or E is used

The exchange rates are those published in

--

on

(date)

## 6 Compensation events

If Option A is used

The *efficiency percentage* is 50%, unless another percentage is stated here, in which case it is

N/A %

If there are additional compensation events

These are additional compensation events

None

## 8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional *Client's* liabilities

(1)  NONE

(2)

--

(3)

--

The minimum amount of cover for insurance against loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Service Provider*) arising from or in connection with the *Service Provider* Providing the Service for any one event is


The minimum amount of cover for insurance against death of or bodily injury to employees of the *Service Provider* arising out of and in the course of their employment in connection with the contract for any one event is


If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to Plant and Materials, Equipment and the *Client's* equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

--

If the *Client* is to provide equipment

The insurance against loss of or damage to Plant and Materials, Equipment and the *Client's* equipment is to include cover for equipment provided by the *Client* for an amount of

--

If the *Service Provider* is liable for loss of or damage to the Affected Property

The *Service Provider* is liable for loss of or damage to the Affected Property arising from or in connection with the *Service Provider* Providing the Service. The minimum amount of cover for insurance for any one event is


If the *Client* is to provide any of the insurances stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

(1) Insurance against Professional Indemnity Insurance

Minimum amount of cover is

The deductibles are

(2) Insurance against

Minimum amount of cover is

The deductibles are

(3) Insurance against

Minimum amount of cover is

The deductibles are

If additional insurances are to be provided

The *Client* provides these additional insurances

(1) Insurance against N/A

Minimum amount of cover is

The deductibles are

(2) Insurance against

Minimum amount of cover is

The deductibles are

(3) Insurance against

Minimum amount of cover is

The deductibles are

The *Service Provider* provides these additional insurances

(1) Insurance against	<input type="text"/>
Minimum amount of cover is	<input type="text"/>
The deductibles are	<input type="text"/>
(2) Insurance against	<input type="text"/>
Minimum amount of cover is	<input type="text"/>
The deductibles are	<input type="text"/>
(3) Insurance against	<input type="text"/>
Minimum amount of cover is	<input type="text"/>
The deductibles are	<input type="text"/>

## Resolving and avoiding disputes

	The <i>tribunal</i> is	<input type="text" value="Litigation"/>
If the <i>tribunal</i> is arbitration	The <i>arbitration procedure</i> is	<input type="text"/>
	The place where arbitration is to be held is	<input type="text"/>
	The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator is	
		<input type="text"/>

The *Senior Representatives* of the *Client* are

Name (1)	<input type="text" value="REDACTED"/>
Address for communications	<input type="text" value="61 Colindale Avenue&lt;br/&gt;London&lt;br/&gt;NW9 5EQ"/>
Address for electronic communications	<input type="text" value="REDACTED"/>
Name (2)	<input type="text"/>
Address for communications	<input type="text"/>

Address for electronic communications	<input type="text"/>
The <i>Adjudicator</i> is	
Name	<input type="text"/>
Address for communications	<input type="text"/>
Address for electronic communications	<input type="text"/>
The <i>Adjudicator nominating body</i> is	<input type="text"/>

### X1: Price adjustment for inflation (used only with Options A and C)

If Option X1 is used

The proportions used to calculate the Price Adjustment Factor are

0.	<input type="text" value="100%"/>	linked to the index for	<input type="text"/>
0.	<input type="text"/>		
0.	<input type="text"/>		
0.	<input type="text"/>		
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>	non-adjustable	<input type="text"/>
1.00	<input type="text"/>		

The *base date* for indices is

1 January 2025 – calculation based on an average over the previous 12 months

The *inflation adjustment dates* are

The date one year after the *starting date*

The date two years after the *starting date*

These indices are

<input type="text"/>
<input type="text"/>

### X3: Multiple currencies (used only with Option A)

If Option X3 is used

The *Client* will pay for the items or activities listed below in the currencies stated

items and activities

other currency

total maximum payment  
in the currency

The *exchange rates* are those published in

on

(date)

### X4: Performance guarantee

If Option X4 is used

The *Service Provider* **provides an ultimate holding company guarantee/provides a performance bond** (Delete as applicable)

If a performance bond is  
provided

The amount of the performance bond is

### X8: Undertakings to the *Client* or Others

If Option X8 is used

The *undertakings to Others* are

provided to

The *Subcontractor undertaking to Others* are  
works

provided to

The *Subcontractor undertaking to the Client* are  
works

### X10: Information modelling

If Option X10 is used

If no *information execution  
plan* is identified in part

The period after the Contract Date within which the *Service Provider* is to submit a first  
Information Execution Plan for acceptance is

two of the Contract Data

The minimum amount of insurance cover for claims made against the *Service Provider* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

The period following the end of the Service Period or earlier termination for which the *Service Provider* maintains insurance for claims made against it arising out of its failure to use the skill and care is

## X12: Multiparty collaboration

If Option X12 is used

The *Promoter* is

The Schedule of Partners is in

The *Promoter's objective* is

The Partnering Information is in

## X15: The *Service Provider's* design

If Option X15 is used

The *period for retention* following the end of the Service Period or earlier termination is

The minimum amount of insurance cover for claims

made against the *Service Provider* arising out of its failure to use the skill and care normally used by professionals designing service similar to the service is, in respect of each claim

The period following the end of the Service Period or earlier termination for which the *Service Provider* maintains insurance for claims made against it arising out of its failure to use the skill and care is

### X18: Limitation of liability

If Option X18 is used

The *Service Provider's* liability to the *Client* for indirect or consequential loss is limited to

If the *Service Provider* is liable for loss of or damage to the Affected Property, the *Service Provider's* liability to the *Client* for loss of or damage to the Affected Property for any one event is limited to

  

If Option X15 applies, the *Service Provider's* liability for Service Failures due to its design is limited to

  

The *Service Provider's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to

The end of liability date is  years after the end of the Service Period

### X19: Termination by either Party (not used with Option X11)

If Option X19 is used

The *minimum period of service* is  after the *starting date*

The *notice period* is

## X23: Extending the Service Period

If Option X23 is used

The *maximum service period* is

2 years

years after the *starting date*

The *periods for extension* are

Order

*period for extension* (months)

*notice date*

First

12 months

6 months before expiry of the *maximum service period*

Second

12 months

6 months before expiry of the *First period for extension*

Third

Fourth

If there are *criteria for extension*

The *criteria for extension* are

(1)

(2)

(3)

## X24: The accounting periods

Option X24 is used and  
Option C is not used

The *accounting periods* are

1 April 2024 to 31 March 2025

1 April 2025 to 31 March 2026

1 April 2026 to 31 March 2027

In the event of a *First period for extension*

1 April 2027 to 31 March 2028

In the event of a *Second period for extension*

1 April 2028 to 31 March 2029

If Option X 24 is used  
with Option C

The *accounting periods* are the dates stated in the Contract Data of assessment of the *Service Provider's share*

## X27: Project Orders

If Option X27 is used

The period within which the Service Provider is to submit a Project Order programme for acceptance is

5 working days

## X28: Change of Control

If Option X28 is used

The required financial position of the controller of the *Service Provider* is

at a level to be agreed by the Client.

The *ethical principles of the Client* are in

The ethical standards for providers of public services are set out in the Public Services (Social Value) Act 2012, the Civil Service Code, Equality Act 2010 and Public Sector Equality Duty (PSED), and PPN 02/23 – Tackling Modern in Government Supply Chains.

## Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *Service Provider* is/is not to pay any charges made and to be paid any interest paid by the *project bank* (Delete as applicable)

The *account holder* is the **Service Provider/the Parties** (Delete as applicable)

## Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Y(UK)2 is used and the date on which the final payment becomes due is not fifteen weeks after the end of the Service Period

The period is

17

weeks

If Y(UK)2 is used and the final date for payment is not seven days after the date on which payment becomes due

The period for payment is

30

days after the date on which payment becomes due

## Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used

term

beneficiary

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for

term

beneficiary

Y(UK)3

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**Z: Additional conditions of contract**

If Option Z is used

The *additional conditions of contract* are

Set out in the Option Z Schedule.
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## PART TWO – DATA PROVIDED BY THE SERVICE PROVIDER

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

### 1 General

The *Service Provider* is

Name

CBRE Managed Services Limited

Address for communications

61 Southwark Street  
London  
SE1 0HL

Address for electronic communications

The *fee percentage* is

%

The *service areas* are

As Above

The *key persons* are

Name (1)

Job

Account Director

Responsibilities

Please refer to Annex A

Qualifications

Please refer to Annex A

Experience

Please refer to Annex A

Name (2)

Job

Contract Manager

Responsibilities

Please refer to Annex B

Qualifications

Please refer to Annex B

Experience

Please refer to Annex B



The following matters will be included in the Early Warning Register

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## 2 The *Service Provider's* main responsibilities

If the Service Provider is to provide Scope for its plan

The Scope provided by the Service Provider for its plan is in

--

## 3 Time

If a plan is to be identified in the Contract Data

The plan identified in the Contract Data is

--

If a mobilisation plan is to be identified in the Contract Data

The mobilisation plan identified in the Contract Data is

Appendix J of Schedule 3 (Scope)

## 5 Payment

If Option A, C or E is used

The *price list* is

Option A

If Option A or C is used

The tendered total of the Prices is

**£2,723,998**

## Resolving and avoiding disputes

The *Senior Representatives* of the *Service Provider* are

Name (1)

--

Address for communications

61 Southwark Street  
London  
SE1 0HL

Address for electronic communications

--

Name (2)

--

Address for communications

Address for electronic communications

### X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

### Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

*The project bank is*

*named suppliers are*

### Data for the Schedule of Cost Components (used only with Options C or E)

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The rates for special Equipment are

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Service Provider* are

category of person	rate
--------------------	------


The rates for people providing *shared services* outside the Service Areas are

<i>shared service</i>	category of person	rate

### Data for the Short Schedule of Cost Components (used only with Option A)

The *people rates* are located in Annex C.

category of person	unit	rate

The published list of Equipment is the edition current at the Contract Date of the list published by

The percentage for adjustment for Equipment in the published list is

 % (state plus or minus)

The rates for other Equipment are located in Annex C.

Equipment	rate

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Service Provider* are located in Annex C.

category of person	rate

--	--

The rates for people providing *shared services* outside the Service Areas are N/A

<i>shared service</i>	category of person	rate

## OPTION Z SCHEDULE

### OPTION Z – ADDITIONAL CONDITIONS OF CONTRACT

#### AMENDMENTS AND ADDITIONS TO EXISTING CLAUSES

##### Core Clauses

The core clauses are amended as follows:

Clause 11	Identified and defined terms
11.2(1)	After "is the plan" insert "or plans" and at the end of the first sentence, before the full stop, insert "in relation to each building forming part of the Affected Property".
11.2(3)	Delete and insert: "The Contract Date is the date of the Agreement."
11.2(13)	After "with the Contract" insert "and Laws"
11.2(21)	At the end of the definition insert:  Defined Cost excludes costs which: <ul style="list-style-type: none"><li>• results from an act, error, omission, negligence, breach or default by the <i>Service Provider</i> or any Subcontractor</li><li>• is a <i>Service Provider's</i> liability under clause 81</li><li>• is incurred in or in preparing for the conduct of any disputes resolution procedure</li><li>• is not justified by the <i>Service Provider's</i> accounts and records</li><li>• should not have been paid to a Subcontractor in accordance with its contract or</li><li>• was incurred only because the <i>Service Provider</i> did not follow an acceptance or procurement procedure stated in the Scope</li></ul>

Insert new clauses:

11.2(28)	<b>Agreement</b> is the attached document entitled "Agreement" and executed as a deed by the Parties.
11.2(29)	Not used.
11.2(30)	Not used.
11.2(31)	<b>Business Day</b> means any day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
11.2(32)	<b>CDM Regulations</b> means the Construction (Design and Management) Regulations 2015.
11.2(33)	<b>Client Confidential Information</b> Client Confidential Information is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the <i>Client</i> , including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

- 11.2(34) **Client Data** is the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and
- which are supplied to the *Service Provider* by or on behalf of the *Client*,
  - which the *Service Provider* is required to generate, process, store or transmit pursuant to this contract or
  - which are any Personal Data for which the *Client* is the Data Controller to the extent that such Personal Data is held or processed by the *Service Provider*.
- 11.2(35) **Client Team** means any consultant, contractor, sub-contractor or supplier appointed in respect of all or part of the Affected Property.
- 11.2(36) **Commercially Sensitive Information** is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the *Service Provider*, the charges for the *service*, its IPR or its business or which the *Service Provider* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Service Provider* significant commercial disadvantage or material financial loss.
- 11.2(37) **Confidential Information** is the Client's Confidential Information and/or the Service Provider's Confidential Information.
- 11.2(38) **Contracting Body** is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the *Client*.
- 11.2(39) **Conviction** means other than in relation to minor road traffic offences, any previous or 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 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.
- 11.2(40) **Crown Body** is any department, office or agency of the Crown.
- 11.2(41) **Data Controller** has the meaning given to it in the Data Protection Act 2018.
- 11.2(42) **Deleterious Materials** are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the *Service Provider's* trade and/or the construction industry:
- to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
  - to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Affected Property or any part thereof and/or to other structures, finishes, plant and/or machinery;
  - to reduce or possibly reduce the normal life expectancy of property of a type comparable to the Affected Property;

- to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a property of a type comparable to the Affected Property;
- not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- to be supplied or placed on the market in breach of Regulation (EU) No 305/2011 and the Construction Products Regulations 2013 (SI 2013/1387) and any similar or equivalent legislation, regulations or standards.

11.2(43) **Disclosure and Barring Services** means the body of the same name as established under the Protection of Freedoms Act 2012.

11.2(44) **DOTAS** means the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.2(45) **Emergency Service Failure** means a Service Failure which

- substantially adversely affects the performance and/or use of all or part of the Affected Property by the *Client* or any third party, including
  - any failure (whether intermittent or otherwise) of any central heating system and/or comfort cooling and/or air conditioning systems;
  - any impact on the constant availability of hot water at any time;
  - water leaks (if the water cannot or there is a danger that the water will not be contained) and/or if the water leak is causing or is likely to cause damage and/or penetration into any electrical fitting(s) and/or personal items;
  - any loss of roof and/or ridge coverings which may result in water penetration; and
  - blocked foul water drains causing flooding and/or overflowing internally and/or externally;
- requires immediate rectification in order to ensure the continuous safe occupation and/or use of all or part of the Affected Property (including its immediate surroundings) and/or to protect the health and safety of those occupying, using or visiting the Affected Property (including its immediate surroundings); and
- presents a security risk at the Affected Property or is such that a failure to rectify it immediately would be materially detrimental to the security of

any part(s) of the Affected Property (including in relation to any Security Measures).

- 11.2(46) **Environmental Information Regulations** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
- 11.2(47) **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 or relevant Government Department in relation to such legislation.
- 11.2(48) **Force Majeure Event** has the meaning set out in clause 19.
- 11.2(49) **General Anti-Abuse Rules** means
- the legislation in Part 5 of the Finance Act 2013 and
  - any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
- 11.2(50) **Good Industry Practice** is, in relation to the *Service Provider* and any circumstances, the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking within the construction industry, operating within all Laws, regulations, rules or orders of any authority and taking due account of any guidance, codes of practice or other advice from any authority.
- 11.2(51) **Government Buying Standards** are the standards published here <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs> (as updated from time to time).
- 11.2(52) **Greening Government Commitments** means the Government's policy to reduce its effects on the environment the details of which are published here <https://www.gov.uk/government/collections/greening-government-commitments> (as updated from time to time).
- 11.2(53) **Halifax Abuse Principle** means the principle explained in the CJEU Case C-255/02 Halifax and others.
- 11.2(54) **Intellectual Property Rights or "IPRs"** is
- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information,
  - applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction,
  - all other rights having equivalent or similar effect in any country or jurisdiction and
  - all or any goodwill relating or attached thereto.
- 11.2(55) **Law** is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of

section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Service Provider* is bound to comply under the *law of the contract* each as in force from time to time.

11.2(56) **MSA Offence** means an offence under the Modern Slavery Act 2015.

11.2(57) **Occasion of Tax Non-Compliance** means:

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

11.2(58) **Personal Data** has the meaning given to it in the Data Protection Act 2018.

11.2(59) **Prohibited Act** is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Client* 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;
  - defrauding, attempting to defraud or conspiring to defraud the *Client*; or
  - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

- 11.2(60) **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the *service* which facilitates or encourages objectively-assessable quality and performance outcomes and (as the *service* is publicly funded) with the intent to achieve value for money.
- 11.2(61) **Recoverable Direct Losses** means:
- extra costs incurred purchasing replacement or alternative goods and/or services;
  - costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
  - the costs of extra management time; and/or
- in each case to the extent to which such costs and/or expenses arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with the contract.
- 11.2(62) **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.
- 11.2(63) **Relevant Tax Authority** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Service Provider* is established.
- 11.2(64) **Request for Information** means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.
- 11.2(65) **Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, counter-measures 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 or personal property howsoever causing (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.

11.2(66) **Security Policy** means the *Client's* security policy attached as Appendix 1 of Schedule A as may be updated from time to time.

11.2(67) **Service Provider's Confidential Information** is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the *Service Provider*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

11.2(68) **Standard of Care** means all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified service provider experienced in exercising such responsibilities in relation to work of the same type, complexity, value and timescale as the *service*.

## **Clause 12 Interpretation and the Law**

Insert new clauses:

"12.5 References to a person include any corporate or unincorporated body and vice versa.

12.6 Unless otherwise specified, a reference to a statutory provision or code of practice is a reference to that provision or code of practice as amended, consolidated, extended, replaced or re-enacted from time to time (whether before or after the date of this contract) and to any subordinate legislation or codes made under it.

12.7 The terms "including", "include", "in particular" or any similar expression are construed as illustrative and do not limit the sense of the words preceding those terms.

12.8 Nothing in this contract

- requires the *Client* to do anything that is inconsistent with his statutory duties or obligations as a public authority or
- fetters the *Client* in discharging its statutory functions."

## **Clause 13 Communications**

Insert new clauses:

"13.2A.1 Any notice if given for the purposes of clause 5 (Payment) or clause Y2.3 (Notice of intention to pay less) may be

- i. delivered by hand or
- ii. sent by email and on the same day, sent by pre-paid first class post,

to the relevant Party in accordance with the applicable details in the Contract Data or such other details as that Party notifies to the Party giving notice from time to time;

13.2A.2 Any notice delivered or sent in accordance with clause 13.2A.1 takes effect as being served:

- a) if delivered by hand:
  - i. by 4.00pm on a Business Day, on the day of delivery, but otherwise

- ii. on the first Business Day after it is delivered,
- b) if sent by post, on the first Business Day after it is sent."

13.4 At the end of clause insert "or that the submission is not in accordance with this contract".

#### **Clause 14                    The *Service Manager***

14.1 Delete clause 14.1, and insert:

"No communication (including instructions and/or any other certificates), no acceptance of a communication from the *Service Provider*, and no acceptance and/or approval of the *Service Provider's* work, by the *Service Manager* changes the *Service Provider's* liability under this contract (including the *Service Provider's* responsibility to Provide the Services and/or its liability for Service Failures)."

#### **Clause 15                    Early warning**

15.1 In the third bullet point delete "or". In the fourth bullet point delete the full stop. Insert the following new bullet points:

- "adversely affect the performance, maintenance and/or operation of the provision of the *service* or
- constitute a Service Failure."

15.2 Delete the fourth sentence (lines 9 and 10) and insert "The *Service Manager* may invite other people to attend an early warning meeting. The *Service Provider* may request the *Service Manager* to invite other attendees to an early warning meeting (but such invitation or attendance is at the *Service Manager's* discretion acting reasonably)."

Insert new clauses:

"15.5 The Parties acknowledge and agree that the issuing of a revised Early Warning Register is not to be treated as an instruction changing the Scope and any failure of the *Service Manager* to issue an Early Warning Register (or any revisions thereto) does not constitute a compensation event. If the *Service Provider* believes that the issue of any Early Warning Register or any other instruction from the *Service Manager* (not expressed to be a change to the Scope) should be treated as an instruction changing the Scope (or otherwise gives rise to a compensation event), the *Service Provider* (save in circumstances of emergency), before acting on the revised Early Warning Register or instruction, notifies the *Service Manager* of the *Service Provider's* belief that the Early Warning Register or instruction gives rise to a change in the Scope or other compensation event and allows the *Service Manager* time to consider the impact of the revised Early Warning Register or instruction in relation to the *Service Provider's* notice.

15.6 The risks identified in the Early Warning Register from time to time shall not affect the risk allocation between the Parties as set out in the contract. Unless otherwise stated in the contract, the Prices and a Project Completion Date are not to be changed for any risks entered into the Early Warning Register or for any matter notified as an early warning."

## Clause 15A

### Prevention

Insert new clause:

"15A.1

A **Force Majeure Event** is an exceptional event neither Party is able to prevent, which is caused by the forces of nature or by other circumstances not confined in their causes or effects wholly or mainly to the Parties, to any Subcontractor (or sub-Subcontractor of any tier), to any Plant or Materials, to the Affected Property or to the *service*, and which event is not weather conditions or other event against which either Party is required to insure, the happening of which:

- stops the *Service Provider* from Providing the Service or
- stops the *Service Provider* from completing the whole of a Project by the Project Completion Date,

and which an experienced service provider would have judged at the Contract Date to have had such a small chance of happening that it would have been unreasonable to have allowed for it and which is not substantially attributable to the other Party.

15A.2

If the happening of any Force Majeure Event comes to the notice of the *Service Provider* or the *Service Manager* that Party informs the other and the *Service Manager* may give instructions to the *Service Provider* as to how the *Service Provider* is to deal with the event. The *Service Manager* may first instruct the *Service Provider* to submit proposals as to how the *Service Provider* should deal with the event and may postpone any instructions until the *Service Provider's* proposals are received."

## Clause 16

### *Service Provider's proposals*

16.3

Before the first bullet point, insert a new bullet point:

- "not at the *Client's* disposal".

## Clause 17

### Requirements for Instructions

17.1

At the end of clause 17.1, insert:

"If there is any ambiguity or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following descending order of priority:

- the *additional conditions of contract*
- Contract Data Part 1
- the Agreement
- the Appendices
- the other *conditions of contract*
- Scope
- Contract Data Part 2
- any other document forming part of this contract."

## Clause 18

### Corrupt Acts

Insert new clauses:

18.4.1

"The *Service Provider* represents and warrants that neither it, nor to the best of its knowledge any of its people, 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 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.

18.4.2

During the carrying out of the *service* the *Service Provider* does not

- commit a Prohibited Act and
- do or suffer anything to be done which would cause the *Client* or any of the *Client's* employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

18.4.3

In Providing the Services the *Service Provider*

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

18.4.4

The *Service Provider* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 18.4.1, or has reason to believe that it has or any of its people or Subcontractors 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 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.

18.4.5 If the *Service Provider* makes a notification to the *Client* pursuant to clause 18.4.4, the *Service Provider* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

18.4.6 If the *Service Provider* breaches Clause 18.4.3, the *Client* may by notice require the *Service Provider* to remove from carrying out the *service* any person whose acts or omissions have caused the *Service Provider's* breach."

#### **Clause 19A Admittance to site**

Insert new clause 19A:

19A.1 "The *Service Provider* submits to the *Service Manager* details of people who are to be employed by it and its Subcontractors in Providing the Services.

19A.2 The *Service Manager* may instruct the *Service Provider* to take measures to prevent unauthorised persons being admitted to the Affected Property.

19A.3 Employees of the *Service Provider* and its Subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Affected Property identified in the Scope.

19A.4 The *Service Provider* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Service Manager* issues the passes to the *Service Provider*. Each pass is returned to the *Service Manager* when the person no longer requires access to that part of the Affected Property or after the *Service Manager* has given notice that the person is not to be admitted to the Affected Property.

19A.5 The *Service Provider* does not take photographs of the Affected Property or of work carried out in connection with the *service* unless it has obtained the acceptance of the *Service Manager*.

19A.6 The *Service Provider* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs."

#### **Clause 20 Providing the Services**

20.1 After "Scope" insert "and this contract, and in a proper and workmanlike manner with new good quality materials which are reasonably suitable for their purposes and in accordance with Good Industry Practice".

Insert new clauses:

"20.4 "The *Service Provider* does not use and/or permit the use of and/or specify for use in or in connection with the *service* any Deleterious Materials. The *Service Provider* immediately informs the *Client* if it becomes aware of any such use, permission or specification or failure to comply with this clause.

20.5 The *Service Provider* complies with the Law in the carrying out of the *service*.

20.6 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract.

20.7 The *Service Provider* notifies its employees and its Subcontractors of their duties under these Acts.

20.8 The *Service Provider* does not infringe any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the Affected Property where details are made known to the *Service Provider*.

20.9 The *Service Provider* fully and faithfully observes and performs all of its functions and duties under and in accordance with the CDM Regulations.

Without prejudice to the above:

- where the *Service Provider* is the principal contractor, it fully and faithfully observes and performs all the functions and duties of the principal Service Provider under and in accordance with the CDM Regulations. Where the *Service Provider* is not the principal contractor, it co-operates with and provides all the information and assistance that the principal contractor reasonably requires and
- where the *Service Provider* is the principal designer, it fully and faithfully observes and performs all the functions and duties of the principal designer under and in accordance with the CDM Regulations. Where the *Service Provider* is not the principal designer, it co-operates with and provides all the information and assistance that the principal designer reasonably requires."

#### Clause 24

#### Subcontracting

24.1 At the end of the clause insert "The *Service Provider* is as responsible for the acts and omissions of Subcontractors as if they were the acts and omissions of the *Service Provider*."

24.3 Delete the first bullet point. Delete "or" from the end of the penultimate bullet point, and insert at the end of the clause:

- "the proposed Subcontractor has not been procured and selected in accordance with this contract
- the proposed subcontract documents are not consistent with this contract
- the proposed subcontract works represent too large a proportion of the total service, or the proposed subcontract does not include an obligation on the Subcontractor to novate or otherwise transfer the subcontract to the *Client* if required to do so in accordance with this contract or
- (where the Subcontractor has design responsibility) the Subcontractor is not required to throughout the duration of the service and for a period of 12 (twelve) years following the end of the Service Period maintain professional indemnity insurance cover with reputable insurers with a limit of indemnity of not less than an appropriate amount (to be stated in the relevant subcontract) in respect of any claims made against the Subcontractor."

Insert new clauses:

"24.5

#### Small and Medium Sized Enterprises (SMEs)

The *Service Provider* is required to take all reasonable steps to engage SMEs as Subcontractors and to aspire to no less than 33 percent of Subcontractors appointed being SMEs or that a similar proportion of the Defined Cost is undertaken by SMEs.

The *Service Provider* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost that has been undertaken by SMEs.

The *Service Provider* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Service Manager* not accepting subcontract documents proposed by the *Service Provider* is that they are unduly disadvantageous to the Subcontractor."

24.6

### **Apprenticeships**

The *Service Provider* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *service*.

The *Service Provider* takes all reasonable steps to ensure that no less than one person employed in relation to the *service* is on a formal apprenticeship programme or that a similar proportion of hours worked in Providing the Services, (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes.

The *Service Provider* makes available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.

The *Service Provider* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Services.

The *Service Provider* provides a report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Service Manager*

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,
- the percentage of all people taking part in an apprenticeship programme,
- if applicable, an explanation from the *Service Provider* as to why it is not managing to meet the specified percentage target,
- actions being taken to improve the take up of apprenticeships and
- other training/skills development being undertaken by people in relation to this contract, including:
  - (a) work experience placements for 14 to 16 year olds,
  - (b) work experience /work trial placements for other ages,
  - (c) student sandwich/gap year placements,
  - (d) graduate placements,
  - (e) vocational training,
  - (f) basic skills training and
  - (g) on site training provision/ facilities."

## **Clause 25**

### **Other responsibilities**

Insert new clauses:

"25.5

Subject to any provisions of the Scope and save where the *Client* only is legally empowered to obtain and maintain, the *Service Provider* obtains and maintains all approvals, licences, permissions (including planning permissions) and consents required from any public or statutory body, utility undertaker or adjoining owner or occupier and complies with their lawful requirements, for or in connection with Providing the Services.

25.6 If the *Client* only is legally empowered to obtain and maintain any approval, licence, permission or consent referred to in clause 25 above the *Service Provider* will provide all reasonable assistance to the *Client* in connection with the same, which may include (without limitation) the *Service Provider* being a joint party to such approval, licence, permission or consent."

## **Clause 26 Assignment**

26.1 Delete and insert:

"26.1 The *Service Provider* does not assign transfer or charge any benefit arising under or out of this contract without the prior written consent of the *Client* (at its absolute discretion save where such benefit is being assigned transferred or charged to any group company of the *Service Provider* with equivalent financial standing as the *Service Provider*, in which case such consent shall not be unreasonably withheld or delayed).

26.2 The *Client* may without the *Service Provider's* consent assign transfer and/or charge the benefit of all or any of the *Service Provider's* obligations under this contract and/or any benefit arising under or out of this contract:

- by absolute assignment to any government department and
- by absolute assignment on two other occasions only."

## **Clause 27 Disclosure**

Insert new clauses:

### **Freedom of Information**

"27.3 The *Service Provider* acknowledges that unless the *Service Manager* has notified the *Service Provider* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Service Provider* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

27.4 The *Service Provider*

- transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
- provides the *Service Manager* with a copy of all information in its possession, or power in the form that the *Service Manager* requires within five working days (or such other period as the *Service Manager* may specify) of the *Service Manager's* request,
- provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
- procures that its Subcontractors do likewise.

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

- 27.6 The *Service Provider* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.
- 27.7 The *Service Provider* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs' 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 *Service Provider* or despite the *Service Provider* having expressed negative views when consulted.
- 27.8 The *Service Provider* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time."

### **Confidentiality and Information Sharing**

- 27.9 "Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall
- treat the other Party's Confidential Information as confidential and safeguard it accordingly,
  - not disclose the other Party's Confidential Information to any other person without prior written consent,
  - immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
  - notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 27.10 The clause above shall not apply to the extent that
- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 27 (Freedom of Information) but the *Client* shall notify the *Service Provider* of such disclosure,
  - such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
  - such information was obtained from a third party without obligation of confidentiality,
  - such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
  - it is independently developed without access to the other party's Confidential Information.
- 27.11 The *Service Provider* may only disclose the *Client's* Confidential Information to the people who are directly involved in Providing the Services and who need to know the

information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

The *Service Provider* shall not, and shall procure that the *Service Provider's* people do not, use any of the Client Confidential Information received otherwise than for the purposes of this contract.

- 27.12 The *Service Provider* may only disclose the Client Confidential Information to *Service Provider's* people who need to know the information, and shall ensure that such people 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 *Service Provider's* people causes or contributes (or could cause or contribute) to the *Service Provider* breaching its obligations as to confidentiality under or in connection with this contract, the *Service Provider* 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 *Service Provider's* people, the *Service Provider* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Service Provider* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Service Provider's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Service Provider's* people in connection with obligations as to confidentiality.
- 27.13 At the written request of the *Client*, the *Service Provider* shall procure that those members of the *Service Provider's* people identified in the *Client's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- 27.14 Nothing in this contract shall prevent the *Client* from disclosing the *Service Provider's* Confidential Information
- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
  - to a professional adviser, Service Provider, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
  - for the purpose of the examination and certification of the *Client's* accounts,
  - for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
  - for the purpose of the exercise of its rights under this contract or
  - to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, disclosure of the Service Provider's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 27.14.

- 27.15 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or Subcontractor to whom the *Service Provider's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.
- 27.16 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 27.17 The *Client* may disclose the Confidential Information of the *Service Provider*
- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
  - to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions and the Client shall notify the *Service Provider* of such disclosure."

#### **Tax Compliance**

- "27.18 The *Service Provider* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 27.19 If, at any point prior to the *Service Failures date*, an Occasion of Tax Non-Compliance occurs, the *Service Provider*
- notifies the *Client* in writing of such fact within 5 days of its occurrence and
  - promptly provides to the *Client*
    - details of the steps which the *Service Provider* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
    - such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require."

#### **Clause 35**

##### **Access**

- 35.1 After "provides the" insert "non-exclusive".
- Insert new clauses:
- "35.2 The *Client* at all times has the right to expel or exclude from the Affected Property personnel of the *Service Provider* and Subcontractors who fail to comply with the applicable site rules or whom the *Client* reasonably believes to be working in an unsafe manner or in a manner prejudicial to the operational requirements of the Affected Property. In the event that the *Client* expels or excludes personnel under this clause then it informs the *Service Provider* and at the request of the *Service Provider* meets at the earliest convenient opportunity to discuss the reasons for such expulsion or

exclusion and whether remedial actions can be taken to allow the expulsion or exclusion to be lifted.

- 35.3 If in the provision of the *service* any personnel of a Party, affiliate, consultant and/or contractor visits the Affected Property, then the *Service Provider* is responsible for
- the provision of a safe working environment including the provision of safety, health and environmental information regarding the Affected Property, equipment and processes on which such personnel are to work and
  - advising such personnel of the rules and regulations applying to the Affected Property."

**Clause 40                      Quality management system**

- 40.2 At the end of the second sentence (in line 4), before the full stop insert ", does not comply with the contract, or is inadequately prepared, or is not practicable or does not represent a realistic approach for the *service*".

Insert new clause:

- "40.4 Any Subcontractor appointed by the *Service Provider* operates a quality management system enabling it to comply with the *Service Provider's* quality management system."

**Clause 41                      Tests and inspections**

- 41.6 After "*Client*" insert "in monitoring work to correct Service Failures and/or".

- 41.7 Insert a new clause: "The *Service Provider* allows the *Client* any person authorised by it and their respective representatives to inspect the *service* and/or the Affected Property at any reasonable time, provided they give the *Service Provider* reasonable notice prior to any such inspection."

**Clause 43                      Notifying and correcting Service Failures**

- 43.3 Delete "a time which minimises the adverse effect on the *Client* or Others" and insert "the relevant period set out in Appendix H to Schedule 3 – the Scope".

- 43.4 After the word "people" delete to the end of the clause and insert "(if the *Client* decides to do so) and the *Service Provider* pays this amount. The *Service Provider* pays the *Client* the amount of any other cost, loss, liability or damage incurred by the *Client* by reason of the Service Failure provided that the *Client* has used all reasonable endeavours to mitigate such cost, loss, liability or damage."

- 43.4 Delete "a time which minimises the adverse effect on the *Client* or Others" and insert "the relevant period set out in Appendix H to Schedule 3 – the Scope".

**Clause 50                      Assessing the amount due**

- 50.1 In the first sentence, before the full stop insert "only on receipt of an application for payment by the *Service Provider*".

Insert a new clause:

- "50.7 All sums payable by or to the *Client* or the *Service Provider* are exclusive of Value Added Tax (**VAT**). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums."

## Clause 53

### Performance measurements

53.1

In line 1 delete "From the starting date until the end of the service period" and insert "From one month after the *starting date* and thereafter"

In line 1, after "in the Performance Table", include new sentence: "The Performance Table can be found at Appendix H of Schedule 3 (Scope). For the avoidance of doubt, cell C6 on the 'performance criteria' tab is the profit margin of the tendered total of the Prices (5 – Payment)."

[REDACTED]

53.2

Insert a new clause

"In the spirit of mutual trust and collaboration, within three months of the *starting date*, the *Service Provider* agrees to develop and implement Performance Measures with the *Client*, for example, in relation to tasks requiring revisits and Call Backs, and longstanding Service Orders remaining open. The *Client* and *Service Provider* agree to collaborate to discuss suggestions for new measures at the monthly Performance Measure review meeting. Any proposed Performance Measures shall be for a pilot period of three months. After the three month pilot period, the *Client* and *Service Provider* shall review the Performance Measure for implementation for the remaining duration of the Contract.

53.4

Insert a new clause

"The Client reserves the right to publish four Performance Measures scores, including the Social Value Performance Measure. The Service Provider's Performance Measures scores shall not be considered commercially sensitive information. Performance Measure 1,2,3 and 4 shall be published quarterly in accordance with the UK Government's KPI reporting and transparency initiative.

## Clause 57

### Fair Payment

Insert a new clause:

57.1

"The *Service Provider* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Service Manager*.

57.2

The *Service Provider* includes in the contract with each Subcontractor

- a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 30 calendar days after the final date for payment in this contract and
- a provision requiring the Subcontractor to assess the amount due to a subSubcontractor without taking into account the amount paid by the *Service Provider*. "

**Clause 60****Compensation events**

Insert new clauses:

60.1(18)

Delete and insert "An event which is a Force Majeure Event which is not a compensation event under any other provision of the contract"

Insert new clause:

**Clause 61****Notifying compensation events**

61.3

In line 5 delete "eight" and insert "six".

In line 6, after "event has happened" insert "or of the date when the *Service Provider* ought reasonably to have become aware of the event".

61.4

Delete the third bullet point (line 5) and insert: "arises by reason of any act, error, omission, negligence, breach or default of the *Service Provider* or Subcontractors or any of their employees or agents,".

In the sixth bullet point delete "or".

In the seventh bullet point insert "or" at the end, followed by a new eighth bullet point:

- "is concurrent with another delay for which the *Service Provider* is responsible".

**Clause 63                      Assessing compensation events**

63.12                      Delete "by an amount calculated by multiplying the assessed effect of the compensation even by the *efficiency percentage*".

**Clause 70                      The *Client's* title to Plant and Materials**

70.1                      In line 3 after "Service areas", insert "(other than removal from one to the other)".

Insert new clauses:

"70.2                      Delete and insert: "Payment for Plant and Materials outside the Affected Property or Service Areas is only to be on the express agreement of the *Client* at its sole discretion. The ownership of Plant and Materials shall pass to the *Client* at whichever is the earlier of (a) upon delivery to the Affected Property or the Service Areas or (b) if Plant and Materials are outside the Affected Property or the Service Areas and the *Service Manager* has marked it as for this contract and (c) when the *Service Provider* becomes entitled to payment in respect of such Plant and Materials and such payment has been made. The *Service Provider* shall insert such provisions in subcontracts as will causes this to happen"

70.3                      Whenever ownership of any Plant and Materials passes to the *Client* prior to delivery to the Affected Property or the Service Areas, the *Service Provider* shall arrange for the Plant and Materials to be marked as the *Client's* property and shall ensure they are stored and handled separately from other materials.

70.4                      It is a precondition to payment for Plant and Materials outside the Affected Property or Service Areas that the *Service Provider* complies with clause 70.3 and any requirements for marking and storage in the Scope and, unless otherwise agreed in advance and in writing with the Service Manager, provides an executed Vesting Agreement in favour of the Client in the form attached to the Scope (with such amendments as the Service Manager may approve in advance, acting reasonably)."

**Clause 71                      The *Service Provider's* use of equipment, plant and material**

71.1                      After "The Service Provider may make this right available to a Subcontractor", insert:

The *Client* does not warrant or represent the accuracy, reliability, sufficiency or completeness of any such material, and the *Client* is not liable for any use of such material, which shall be used by the *Service Provider* and Subcontractors at their own risk."

**Clause 81A                      Indemnity**

Insert new clauses 81A.1 to 81A.3:

"81A.1                      The *Service Provider* at all times takes all reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights or activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker (excluding those which existed prior to the *starting date*) arising out of the carrying out of the *service* or of any obligation under or in connection with this contract (including clause

44) and assists the *Client* in defending any relevant action or proceedings which may be instituted in relation thereto howsoever such action may arise.

81A.2 The *Service Provider* is responsible for and liable to the *Client* from and against expenses, liabilities, losses, claims and proceedings whatsoever resulting from a breach of clause 81A.1 above, except only where such trespass, nuisance or interference is the consequence of an instruction of the *Client* (which is itself not the result of any act, error, omission, negligence, default or breach of contract by or on behalf of the *Service Provider* or any Subcontractor) and could not have been avoided by the *Service Provider* using all reasonable and practical means.

81A.3 The *Client* issues to the *Service Provider* such reasonable instructions in relation to the *service* as it considers necessary if any injunction is granted or court order is made in consequence of any such trespass, nuisance or interference, but (except as described above) the *Service Provider* is not entitled to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to a compensation event by reason of any such instruction where it results in a breach of clause 81A.1 above."

### **Clause 83 Insurance cover**

83.3 In line 1, delete "The insurances in the Insurance Table are in the joint names of the Parties except the third insurance stated" and insert: "The *Service Provider* shall insure and evidence that each insurance in the Insurance Table contains an indemnity to principals clause".

After "insurance stated" (line 2) insert: "or any insurances which the *Client* is to provide as stated in the Contract Data".

In line 3 after "Service Period" insert ",or such other period as set out in the Contract Data".

In line 4 before the full stop insert: "except in the case of professional indemnity insurance which need not be in the joint names of the Parties and where cover runs for the period set out in clause 87.1".

In the first row of the insurance table, under the heading "insurance against", delete "and" at the end of the second bullet point and delete the third bullet point. Under the heading "minimum amount of cover", delete "and equipment provided by the *Client*"

Clause 87 Insert a new clause:

### **"Clause 87 Professional indemnity insurance**

87.1 The *Service Provider* maintains professional indemnity insurance:

- upon customary and usual terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the United Kingdom
- with a limit of indemnity of not less than the amount stated in the Contract Data for any one occurrence or series of occurrences arising out of any one event
- for a period beginning not later than the Contract Date and ending 12 (twelve) years after the end of the Service Period

provided that such insurance is available generally in the market at commercially reasonable rates.

87.2 Such terms and conditions do not include any term or condition to the effect that the *Service Provider* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

87.3 For the purposes of this clause 87, "**commercially reasonable rates**" means such level of premium rates at which other Service Providers of a similar size and financial standing as the *Service Provider* at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the *Service Provider's* own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the *Service Provider* are deemed to be within commercially reasonable rates.

The *Service Provider* immediately informs the *Client* if such insurance ceases to be available at commercially reasonable rates so that the *Service Provider* and the *Client* can discuss means of best protecting the respective positions of the *Client* and the *Service Provider* in respect of the *service*.

87.4 Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Service Provider* submits to the *Service Manager* for acceptance a certificate which states that the insurance required by this clause is in force.

87.5 After the Service Period and on each renewal of the insurance policy until the end of the period stated in clause 87.1 for which insurance is to be maintained, the *Service Provider* submits to the *Client* for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the *Service Provider's* insurer or insurance broker.

87.6 The *Service Provider's* obligations in respect of professional indemnity insurance continue after termination of this contract (for any reason).

## Clause 90 Termination

90.2 In the Termination Table:

- insert "R10A, R15A" after "R1 – R15" and insert ",R24 or R25" after "R21" in the "Reason" column for the *Client*, and
- insert "(and P5)" against each entry in the "Procedure" column for both the *Client* and the *Service Provider*, and
- insert a new row for the *Client* as follows:

Reason	Procedure	Amount due
R23	P1, P4 and P5	A5a or A5b

## Clause 91 Reasons for Termination

91.1 Insert "and/or has entered administration" after "had an administration order made against it" in the bulleted item for "(R8)".

At the end of the penultimate bullet point, delete "or" and insert a full stop.

Delete the final bullet point and insert "commenced negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with any of its creditors (R10), or".

Insert the following new bullet point:

"applied to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986 (R10A)."

Insert new clause:

"91.3A The *Client* may terminate with thirty (30) days' prior written notice the *Service Provider's* obligation to Provide the Services if the *Service Provider* is in breach of clause 18 – Corrupt Acts (R15A)"

91.6 Delete and insert:

"The *Client* may terminate if the *Service Manager* certifies that a Force Majeure Event that is preventing the *Service Provider* from or is delaying the *Service Provider* in Providing the Services has caused or will cause Project Completion to be delayed by not less than 13 weeks (R21)."

Insert new clauses:

"91.8 The *Client* may terminate the *Service Provider's* obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply (R23).

If the *Client* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Service Provider at the Contract Date, the procedures and amounts due on termination are the same as if the *Service Provider* has substantially failed to comply with his obligations as set out in A1 and A3 (A5a).

If the *Client* otherwise terminates under the provisions of 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the reason for termination was R17 (A5b).

91.9 The *Client* may terminate if

- the *Service Provider* or anyone the *Service Provider* employs or a Subcontractor or anyone acting on the *Service Provider's* or Subcontractor's behalf (whether without or with the knowledge of the *Service Provider* or the Subcontractor) commits any offence under the Bribery Act 2010
- the *Service Provider* breaches its obligations relating to bribes, gifts, considerations, financial advantages or payments of undisclosed commission (R24)

91.10 The *Client* may terminate if there is a conflict of interest between the *Service Provider* and the *Client* and the *Client* is not satisfied that the conflict of interest can be dealt with by other measures (R25)"

## **Clause 92 Procedure on Termination**

92.2 Insert the following as a new paragraph under "P4":

"P5 The *Service Provider* provides for such reasonable period as required by the *Client* following termination to answer any queries raised by the Client and supply any information required by the *Client* in connection with the service

and co-operates with the *Client*. The *Service Provider*, upon notification from the *Client*, delivers to the *Client* all Material and other items of any kind whatsoever relating to this contract and/or in respect of the *service* which is in the *Service Provider's* control, custody or possession, including those in the control, custody or possession of the Subcontractors. The *Service Provider* transfers title in all Plant and Materials to the *Client* for which the *Client* has paid or discharged payment and delivers such Plant and Materials to the Affected Property or such location as instructed by the *Client*."

## Clause 93

### Payment on termination

- 93.1 Delete the fourth subparagraph (line 5), and insert: "to which the *Client* has title, and which the *Service Provider* delivers to the Service Areas or to another location reasonably instructed by the *Service Manager*".
- 93.2 Delete A3 and insert:
- "A3 a deduction by or payment to the *Client* of the additional cost to the *Client* of Providing the Services other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the *Client* resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the *Service Provider* provided that the *Client* has used all reasonable endeavours to mitigate such cost, loss, liability or damage."

## SECONDARY OPTIONS CLAUSES

### OPTION X2

#### CHANGES IN THE LAW

- X2.1 After "Contract Date" at the end of the first sentence insert " except where the change could have been reasonably foreseeable at the Contract Date to a contractor exercising the Standard of Care. The *Service Manager* may notify the *Service Provider* of a compensation event for a change in the law and instruct him to submit quotations."

### OPTION X18

#### LIMITATION OF LIABILITY

- X18.2 Delete and insert "Neither Party shall be entitled to claim losses, damages and/or other costs and expenses under or in connection with the contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged."
- X18.5 Delete the first and second bullet points.
- At the end of the third bullet point, delete "and" and insert ",",
- At the end of the fourth bullet point delete "." and insert "and".
- Insert new fifth bullet point:
- claims relating to death or bodily injury under the indemnity set out at clause Z2.
- X18.7 Notwithstanding any other provision of the contract but subject to the overall limit of liability under Clause X18.5 the *Service Provider* accepts and acknowledges that the

Recoverable Direct Losses are not indirect losses as set out in Clause X18.2 and the *Service Provider* shall be liable for all Recoverable Direct Losses incurred by the *Client* as a result of any act, error, omission, negligence, breach or default by the *Service Provider* or any Subcontractor provided that the claiming *Client* has used all reasonable endeavours to mitigate such losses, damages and/or other costs and expenses and that they are properly evidenced by the claiming *Client*.

## **OPTION X27**

### **PROJECT ORDERS**

- X27.1 After "in the Project" insert "and complied with all obligations which this contract states are to be complied with".
- X27.2 Delete the last sentence.
- X27.3 In line 1 after "Project" insert "(which may be submitted via the "Webquote" system)".
- X27.3 In line 1, delete "three weeks" and insert "five working days". In line 3, delete "two weeks" and insert "five working days".
- X27.4 In line 3, delete "three weeks" and insert "five working days".
- X27.13 At the end of the sentence insert "or such other period as the Parties may agree".
- X27.18 After "*Client* provides" insert "non-exclusive".
- X27.19 Delete "The" and replace with "In addition to the compensation events in clause 60.1, the". After "events" insert "in relation to a Project only"

## **OPTION Z:**

### **ADDITIONAL CONDITIONS OF CONTRACT**

Insert the following further *additional conditions of contract*:

#### **Z2**

##### **Indemnity**

- Z2.1 The *Service Provider* indemnifies the *Client* against claims, proceedings, compensation and costs arising from any claims against the *Client* by any of the *Service Provider's* employees or agents, or any Subcontractors or any of their employees or agents Subcontractor save where such claims, proceedings, compensation and costs are due to any act, omission or negligence of the *Client*.

#### **Z3**

##### **Intellectual Property Rights**

- Z3.1 In this clause Z3 only "**Document**" means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Service Provider* in relation to this contract.
- Z3.2 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Service Provider* in relation to this contract and the work executed from them remains the property of the *Service Provider*. The *Service Provider* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the Affected Property. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence provided always that the *Service Provider* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Service Provider*.
- Z3.4 The *Client* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to Z3.2 to a Crown Body or to anybody (including any

private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

- Z3.5 In the event that the *Service Provider* does not own the copyright or any Intellectual Property Rights in any Document the *Service Provider* uses all reasonable endeavours to procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Service Provider* is unable to procure the right to grant to the *Client* in accordance with the foregoing the *Service Provider* procures that the third party grants a direct licence to the *Client* on industry acceptable terms.
- Z3.6 The *Service Provider* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*.
- Z3.7 In the event that any act unauthorised by the *Client* infringes a moral right of the *Service Provider* in relation to the Documents the *Service Provider* undertakes, if the *Client* so requests and at the *Client's* expense, to institute proceedings for infringement of the moral rights.
- Z3.8 The *Service Provider* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.
- Z3.9 The *Service Provider* supplies copies of the Documents to the *Service Manager* and to the *Client's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- Z3.10 After the termination or conclusion of the *Service Provider's* employment hereunder, the *Service Provider* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Client* pays the *Service Provider's* reasonable costs for producing such copies or discs.
- Z3.11 In carrying out the service the *Service Provider* does not infringe any Intellectual Property Rights of any third party. The *Service Provider* indemnifies the *Client* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party."

## **Z4 Guarantees**

- Z4.1 The *Service Provider* shall obtain manufacturer's guarantees in favour of or assignable to the *Client* and all manuals, drawings and other information in respect of all items of Plant and Materials which are included in the service as may be reasonably requested by the *Client*.
- Z4.2 Should the guarantees, manuals, drawings or other information to be provided pursuant to this clause Z4, not be delivered to the *Client* within fourteen days of a written request from the *Client* then the *Client* will be entitled to withhold all future payments to the *Service Provider* in respect of the relevant item of Plant and Materials until such time as the guarantee, manual, drawing or other information has been delivered."

## **Z5 Approvals**

Z5.1 No inspection, testing, approval or review nor any omission to inspect, test, approve or review by or on behalf of the *Client* diminishes any duty or liability of the *Service Provider* under the contract.

## **Z6 Set off**

Nothing contained in this contract (other than as to giving notices) ousts or limits any right of the *Client* under any statute or rule of law or of equity in the nature of set-off or abatement of price in respect of undisputed amounts.

## **Z7 Convictions**

Z7.1 Unless agreed in writing in advance by the *Client*, the *Service Provider* shall procure that, in respect of all potential persons performing any of the *service*, whether an employee of the *Service Provider* or any Subcontractor (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *service* is being or is to be carried out in connection with this contract:

- each Named Employee is questioned as to whether they have any Convictions;
- a Disclosure and Barring Services check is undertaken in respect of each Named Employee; and
- save to the extent prohibited by law, a copy of the results of such check are notified to the *Client*.

Z7.2 The *Service Provider* shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Services check is employed without the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).

Z7.3 Save to the extent prohibited by applicable law, the *Service Provider* shall procure that the *Client* is informed if any member of staff of the *Service Provider* (or any employee of a Subcontractor), whether a Named Employee or otherwise, involved in the provision of the *service* who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the *Service Provider*.

Z7.4 Without prejudice to clause Z7.1 to clause Z7.3 (inclusive), where the *Client* notifies the *Service Provider* that the *Service Provider* 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 *Client*, the *Service Provider* shall comply at its own cost with the *Client's* requirements to the extent relevant to the delivery of the *service* to the *Client*, which may include (without limitation):

- asking any person acting for or on behalf of the *Service Provider* in connection with this contract for details of any 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 *Client* in writing."

## **Z8 Modern Slavery**

Z8.1 The *Service Provider* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Client* that neither the

*Service Provider* nor any of its employees, agents and/or Subcontractors (as far as the *Service Provider* is aware, having made reasonable enquiries of each Subcontractor prior to the date of their subcontracts and having also included wording in their subcontracts that is no less onerous than this clause Z8) 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.

Z8.2 The *Service Provider* shall notify the *Client* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Subcontractors have, breached or potentially breached any of the *Service Provider's* obligations under clause Z8.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Service Provider's* obligations under clause Z8.1.

## **Z9 Whistle blowing**

Z9.1 The *Service Provider* shall ensure that staff engaged by the *Service Provider* in connection with any of the *work* (and use reasonable endeavours to ensure that any staff engaged by an Subcontractor, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Service Provider* 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.

## **Z10 Audit**

Z10.1 The *Service Provider* shall:

- keep and maintain during the period for retention, full and accurate records in connection with this contract, including the works and/or services supplied under it and all payments made by the *Client*
- on request, afford the *Client* or the *Client's* representatives such access to those records and processes as may be requested by the *Client* in connection with this contract
- make available to the *Client*, without charge and on request, copies of audit reports obtained by the *Service Provider* in relation to the *service*
- allow authorised representatives of the *Client* and/or the National Audit Office, the Financial Reporting Council and/or the Cabinet Office to examine the *Service Provider's* records and documents relating to this contract and provide such copies and oral or written explanations as may reasonably be required to substantiate the same and
- allow the Comptroller and Auditor General (as the head of the National Audit Office from time to time, as well as its appointed representatives) access free of charge during normal business hours on reasonable notice, to all such documents (in any medium) and other information as the Comptroller and Auditor General may reasonably require for the purposes of its financial audit of the *Client* and for carrying out examinations into the economy, efficiency and effectiveness with which the *Client* has used its resources and the *Service Provider* shall provide such explanations as are reasonably required for these purposes.

## **Z11 Conflicts of interest**

Z11.1

The *Service Provider* shall:

- take appropriate steps to ensure that neither the *Service Provider* nor any person engaged by or on behalf of it (including its Subcontractors) is placed in a position where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or potential conflict, between the pecuniary or person interests of the *Service Provider* and the duties owed to the *Client* in connection with the *service* and/or under this contract and
- notify the *Client* immediately giving full particulars of any such conflict of interest which may arise.

## **Z12**

### **Client's Policies**

Z12.1

The *Service Provider* shall comply, and ensure that its Subcontractors comply, with the *Client's* policies, procedures and standards supplied to the *Service Provider* from time to time including the policies set out in Appendix A (the "**Client's Policies**"), together with any additional policies made known to the *Service Provider* from time to time by the *Client* together with all applicable statutory rules and regulations regarding these matters. The *Service Provider* shall put in place its own policies to see that the *Service Provider*, Supplier Personnel and the Subcontractors are able to comply with the *Client's* Policies.

Z12.2

The *Client* may, in its absolute discretion, suspend the work and/or services of the *Service Provider* or any member of its professional team (including the Subcontractors and Supplier Personnel) if it has reason to believe that the *Service Provider* or such professional team member (including any such member of the Subcontractors and Supplier Personnel) is carrying out such works and/or services in a manner that is contrary to the *Client's* Policies and/or any health and safety laws, regulations or codes of practice, and such suspension shall continue until the *Client* is satisfied that any such non-compliance has been addressed by the *Service Provider* and all such works and/or services will be carried out in accordance with the *Client's* Policies and/or any health and safety laws, regulations or codes of practice. The *Service Provider* shall not be entitled to claim any additional monies whatsoever and/or any extension of time arising from the exercise of the above right of suspension by the *Client*.

Z12.3

Notwithstanding any other provision of the contract, the *Client* may terminate the *Service Provider's* obligation to Provide the Service if the *Service Provider* breaches its obligations under Clause Z12.1 (R27).

## **Z13**

### **Waiver**

Z13.1

A waiver of any right or remedy by the *Client* is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

Z13.2

A delay or failure to exercise, or the single or partial exercise of, any right or remedy by the *Client* does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy by the *Client*.

## **Z13**

### **GDPR**

Z13.1

The *Client* and the *Service Provider* shall comply with the provisions of Appendix B – Data Protection Terms and Schedule.

Z13.2

Notwithstanding any other provision of the contract, the *Client* may terminate the *Service Provider's* obligation to Provide the Service if the *Service Provider* breaches its obligations under Clause Z13.1(R26).

## **Z14**

### **Cyber Essentials**

Z14.1 Cyber Essentials.	The <i>Client</i> and the <i>Service Provider</i> shall comply with the provisions of Appendix C –
<b>Z15</b>	<b>Health and Safety</b>
Z15.1	In this clause Z16 only , " <b>Health and Safety Law</b> " shall mean all law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents, and " <b>Codes of Practice</b> " shall mean all relevant codes of practice, statutory guidance, directions and determinations including those issued by the Health and Safety Executive.
Z15.2	The <i>Service Provider</i> complies with all Health and Safety Law and Codes of Practice and his own safety policy in Providing the Service.
Z14.3	Before the <i>starting date</i> the <i>Service Provider</i> notifies the <i>Client</i> of the name of the person responsible for health and safety. When on premises owned or occupied by the <i>Client</i> , the <i>Service Provider</i> ensures that its and its Subcontractor's employees comply with the <i>Client's</i> general health and safety policy and with the lawful requirements of the <i>Service Manager</i> .
Z15.4	<p>The <i>Service Manager</i> may suspend the Providing of the Service or any part of the <i>service</i> if the <i>Service Provider</i></p> <ul style="list-style-type: none"> <li>• does not comply with Health and Safety Law</li> <li>• has not provided his health and safety policy to the <i>Client</i> or</li> <li>• has not notified the <i>Client</i> of the person responsible for health and safety.</li> </ul>
Z15.5	Following such suspension the <i>Service Provider</i> does not Provide the Service or any part of the <i>service</i> until the <i>Service Manager</i> is satisfied that the <i>Service Provider</i> has remedied the failure. An assessment of a compensation event does not include cost and time for the period of the suspension.
Z15.6	In Providing the Service the <i>Service Provider</i> adopts safe methods of work to protect the health, safety and welfare of

	<ul style="list-style-type: none"> <li>• the <i>Service Provider's</i> employees, agents, suppliers and Subcontractors</li> <li>• its Subcontractor's employees and agents,</li> <li>• employees and agents of the <i>Client</i> and</li> <li>• all other persons, including members of the public</li> </ul>
Z15.7	The <i>Service Provider</i> provides the information and documents the <i>Client</i> requires as evidence of compliance with Health and Safety Law, applicable safety Codes of Practice and its own safety policy. The <i>Contractor</i> maintains copies of all applicable Health and Safety Law, Codes of Practice and working rules applicable to Providing the Services and permits its employees to use and refer to them.
Z15.8	The <i>Service Provider</i> informs the <i>Service Manager</i> as soon as it becomes aware of any prosecution, pending or likely prosecution or conviction of the <i>Service Provider</i> , any of its employees, any Subcontractor or agent or any of the Subcontractor's employees or agents for any offence under Health and Safety Law. Following this notification the <i>Service Provider</i> provides the <i>Service Manager</i> with whatever further information and documents the <i>Service Manager</i> requires.
Z15.9	<p>The <i>Service Provider</i> permits the <i>Service Manager</i> without earlier notification and at any reasonable time</p> <ul style="list-style-type: none"> <li>• to enter and inspect any premises of the <i>Service Provider</i>, its agents or Subcontractors used or to be used in Providing the Service and</li> <li>• to inspect any Equipment or Plant and Materials</li> </ul>
<b>Z16</b>	<b>Equality legislation</b>
Z16.1	Notwithstanding any other provision of this contract, the <i>Service Provider</i> shall comply with and use all reasonable endeavours to ensure its personnel (of any type) and/or its Subcontractor comply at all times with the Human Rights Act 1998, the Employment Rights Act 1996, the Equality Act 2010 and all other applicable laws relating to non-discrimination and equality.
<b>Z17</b>	<b>Sustainability</b>
Z17.1	<p>The <i>Service Provider</i> shall</p> <ul style="list-style-type: none"> <li>• comply with the applicable Government Buying Standards</li> <li>• provide, from time to time, in a format reasonably required by the <i>Client</i>, reports on the environmental effects of Providing the Service</li> <li>• 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</li> <li>• perform its obligations under this contract in a way that: <ul style="list-style-type: none"> <li>○ supports the <i>Client's</i> achievement of the Greening Government Commitments,</li> <li>○ conserves energy, water, wood, paper and other resources,</li> <li>○ reduces waste and avoids the use of ozone depleting substances and</li> <li>○ minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.</li> </ul> </li> </ul>
<b>Z18</b>	<b>Co-operation</b>

- Z18.1                    The *Service Provider* shall, using the Standard of Care:
- promote collaborative behaviours throughout its organisation and its supply chain in connection with the *service* and act collaboratively with the Client Team at all times
  - comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Client Team in connection with the Affected Property
  - establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Service Provider* and the Client Team and
  - proactively consult the Client Team when seeking to make decisions in relation to the *service*, in each case so far as reasonably practicable on a Project Focused basis.
- Z18.2                    The *Service Provider* shall work with the Client Team so far as reasonably practicable, using the Standard of Care, to
- to the extent reasonably within the *Service Provider's* control, assist the Client Team in performing their obligations under their respective appointments in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Service Provider* in connection with the *service*
  - share best practice in connection with the *service* and all or part of the Affected Property; and
  - collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the *service*, on a Project Focused basis.
- Z18.3                    The *Service Provider* agrees, for the purposes referred to in this clause Z17, to promptly supply or allow each Client Team member access to all information and documentation in its possession or control that is reasonably requested by each Client Team member in connection with all or part of the Affected Property, insofar as the same is
- not subject to disclosure and/or confidentiality restrictions by statute or this contract and
  - reasonably required by a Client Team member to properly perform its obligations under its appointment.
- Z18.4                    The *Service Provider* shall, in complying with its obligations under this clause Z17, consult with each Client Team and the *Client* and attend such meetings (identified in paragraph 9. Contract Management of the Scope (Schedule 3) as and when reasonably requested by the *Client* to discuss any matters arising under this contract, any appointment and/or in relation to all or part of the Affected Property.
- Z18.5                    Nothing in this clause Z17 shall require the *Service Provider* to perform tasks and/or duties which are the responsibility of a Client Team member under its appointment.
- Z18.6                    The *Service Provider* plans, schedules and Provides the Service so as to minimise any interference with or hindrance of the performance of the *Client's* normal business operations and at all times refrains from carrying out any operation at all or any part of the Affected Property in a manner which is likely to cause disruption or inconvenience to the performance of the *Client's* normal business operations. Where such disruption or inconvenience is the unavoidable consequence of Providing the Service, the *Service Provider* does not Provide the Service without first giving advance notice in writing thereof to the *Client* with a view to reaching an agreed

procedure to prevent or minimise any such damage or inconvenience. Compliance with this clause does not constitute a compensation event.

**Z19**

**Site conditions**

The *Client* gives no warranty or representation as to the condition of the Affected Property or any adjoining property or any services in or under the Affected Property or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the *Service Provider* by the *Client*, or as to any recommendations or conclusions made or reached in any such document.

**Z20**

**Rights of Third Parties**

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause Z22 shall not affect or prevent any assignees who take the benefit of this contract pursuant to clause 26 or successors in title to the *Client* from enforcing the provisions of this contract.

**Z21**

**TUPE**

Z21.1

In this Clause Z21:

**"Cabinet Office Statement"** means the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;

**"Employment Liabilities"** means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;

**"Fair Deal Staff Pensions"** means guidance issued by HM Treasury entitled "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 (as amended, supplemented or replaced)

**"Former Service Provider"** means any supplier of services fundamentally the same as the *service* (either in whole or in part) immediately before the *starting date*;

**"Subsequent Transfer Date"** means the point in time, if any, at which services which are fundamentally the same as the *service* (either in whole or in part) are first provided by the *Service Provider* or the *Client*, as appropriate, giving rise to a relevant transfer under TUPE;

**"Subsequent Transferring Employees"** means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the *service* (either in whole or in part) which are to be undertaken by the Successor or *Client*, as appropriate

**"Successor"** means any third party who provides services fundamentally the same as the *service* (either in whole or in part) in immediate or subsequent succession to the *Service Provider* upon the expiry or earlier termination of the contract;

**"Supplier Personnel"** means any employee, agent, consultant and/or contractor of the *Service Provider* or Subcontractor who is either partially or fully engaged in the performance of the *service*;

**“Transfer Date”** means the *starting date* of the *service* provided by the Service Provider under the contract, giving rise to a relevant transfer under TUPE;

**“Transferring Employees”** means any employee, agent, consultant and/or contractor who, immediately prior to the Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the *service* (either in whole or in part) which are to be undertaken by the Service Provider or any Subcontractor, as appropriate;

**“TUPE”** shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law

- Z21.2 No later than twenty eight (28) days prior to the Transfer Date, the *Client* shall or shall procure that any Former Service Provider or Subcontractor shall provide a final list to the *Service Provider* or Subcontractor, as appropriate, containing the names of all the Transferring Employees whom the *Client* or Former *Service Provider* or Former Subcontractor expects will transfer to the *Service Provider* or Subcontractor (as appropriate) and all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees.
- Z21.3 The *Client* shall be liable to the *Service Provider* for, and shall indemnify and keep the *Service Provider* indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the *Client* is required to provide under Clause Z21.2.
- Z21.4 If any person who is an employee of the *Client* or a Former Service Provider claims or it is determined that their contract of employment has been transferred from the *Client* or Former Service Provider to the *Service Provider* or a Subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
- a) the *Service Provider* will, within seven (7) days of becoming aware of that fact, give notice in writing to the *Client*;
  - b) the *Client* or Former Service Provider may offer employment to such person within twenty-eight (28) days of the notification by the *Service Provider*;
  - c) if such offer of employment is accepted, the *Service Provider* or a Subcontractor shall immediately release the person from their employment;
  - d) if after that period specified in this Clause Z21.4 has elapsed, no offer of employment has been made by the *Client* or Former Service Provider, or such offer has been made by the *Client* or Former Service Provider but not accepted within a reasonable time, the *Service Provider* or Subcontractor shall (1) employ that person in accordance with its obligations and duties under TUPE, (2) be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) and (3) have the right to require an adjustment to the Charges which fairly reflects the actual Charges position and which puts the *Service Provider* or the Sub-contractor in no worse or better a position than it would have been in had the correct information been provided. The costs of employment shall include without limitation all costs and other sums payable and all liabilities assumed in

relation to the employment and termination of the employment of any Transferring Employees, including without limitation, those relating to remuneration, holidays, maternity and paternity, pension and other retirement benefits, redundancy, notice periods and all other contractual and non-contractual benefits of any kind, whether or not similar to the foregoing provided that the Service Provider takes or procures that the Subcontractor takes, all reasonable steps to minimise any such costs.

Z21.5 In accordance with TUPE, and any other policy or arrangement applicable, the *Client* shall, and will procure that any Former Service Provider or Former Subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the transfer of services which are fundamentally the same as the *service*.

Z21.6 The *Client* will and shall procure that any Former Service Provider or Former Subcontractor will on or before any Transfer Date:

- a) pay all wages, salaries and other benefits of the Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period up to and on the Transfer Date;
- b) account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period up to the Transfer Date;
- c) pay the *Service Provider* or Subcontractor as appropriate, the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date;
- d) subject to any legal requirement, provide to the *Service Provider* or Subcontractor, as appropriate, all personnel records relating to the Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The *Client* and the Former Service Provider shall for itself and any Former Subcontractor warrant that such records are accurate and up to date.

Z21.7 The *Client* will and shall procure that any Former Service Provider and Former Subcontractor will indemnify and keep indemnified the *Service Provider* in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

- a) the Former *Service Provider's* or Former Subcontractor's failure to perform and discharge its obligations under Clause Z21.6;
- b) any act or omission by the Former Service Provider or Former Subcontractor in respect of the Transferring Employees occurring on or before the Transfer Date;
- c) any allegation or claim by any person who is not a Transferring Employee but who alleges that their employment should transfer or has transferred to the *Service Provider* or any Subcontractor, as appropriate;
- d) any emoluments payable to a person employed or engaged by the Former Service Provider or Former Subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Transfer Date;

- e) any act or omission of the Former Service Provider or any Former Subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the *Service Provider* or Subcontractor's failure to comply with regulation 13(4) of TUPE.

- Z21.8 The *Client* will, or shall procure that any Former Service Provider and Former Subcontractor will, on request by the *Service Provider* provide a written and legally binding indemnity in the same terms as set out in Clause Z21.7 to the *Service Provider* or any Subcontractor in relation to any Employment Liabilities arising up to and including the Transfer Date.
- Z21.9 The *Client* will indemnify and keep indemnified the *Service Provider* in respect of any Employment Liabilities arising from any act or omission of the Former Service Provider or Former Subcontractor in relation to any other personnel of a Former Service Provider or Former Subcontractor who is not a Transferring Employee arising during any period whether before, on or after the Transfer Date.
- Z21.10 Upon the day which is no greater than nine (9) months before the expiry of the contract or as soon as the *Service Provider* is aware of the proposed termination of the Contract, the *Service Provider* shall, within twenty eight (28) days of receiving a written request from the *Client* and to the extent permitted by law, supply to the *Client* and keep updated all information required by the *Client* as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the *Service Provider* shall warrant such information is full, complete and accurate.
- Z21.11 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the *Service Provider* shall or shall procure that any Subcontractor shall provide a final list to the Successor and/or the *Client*, as appropriate, containing the names of all the Subsequent Transferring Employees whom the *Service Provider* or Subcontractor expects will transfer to the Successor or the *Client* and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- Z21.12 If the *Service Provider* shall, in the reasonable opinion of the *Client*, deliberately not comply with its obligations under Clauses Z21.10 and Z21.11 the *Client* may withhold payment in accordance with the contract.
- Z21.13 The *Service Provider* shall be liable to the *Client* for, and shall indemnify and keep the *Client* indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the *Service Provider* is required to provide under Clauses Z21.10 and Z21.11.
- Z21.14 Subject to Clauses Z21.15 and Z21.16, during the period of nine (9) months preceding the expiry of the contract or after notice of termination of the contract has been served by either Party, the *Service Provider* shall not, and shall procure that any Subcontractor shall not, without the prior written consent of the *Client*, such consent not to be unreasonably withheld or delayed:
- a) make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;

- b) increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
- c) replace any of the Supplier Personnel or increase the total number of employees providing the Services;
- d) deploy any person other than the Supplier Personnel to perform the Services;
- e) terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
- f) increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
- g) introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

- Z21.15 Clause Z21.14 shall not prevent the *Service Provider* or any Subcontractor from taking any of the steps prohibited in that Clause in circumstances where the *Service Provider* or Subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- Z21.16 Where the obligations on the *Service Provider* under Z21 are subject to the Data Protection Legislation, the *Service Provider* will, and shall procure that any Subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- Z21.17 Having as appropriate gained permission from any Subcontractor and subject to Data Protection Legislation, the *Service Provider* hereby permits the *Client* to disclose information about the Supplier Personnel to any organisation which has a legitimate interest in providing services of the same or similar nature to the *service* in immediate or proximate succession to the *Service Provider* or any Subcontractor and who had confirmed such interest in writing to the *Client* provided that the *Client* informs the such interested party in writing of the confidential nature of the information.
- Z21.18 The Parties agree that where a Successor or the *Client* provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the *Service Provider* or Subcontractor (in whole or in part) on expiry or early termination of the contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause Z21.20 to Clause Z21.23 and (where relevant) the requirements of Clause 1.13 of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.
- Z21.19 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the *Service Provider* or Subcontractor as appropriate. The *Service Provider* will, and shall procure that any Subcontractor shall, indemnify and keep

indemnified the *Client* in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

Z21.20

In accordance with TUPE, and any other policy or arrangement applicable, the *Service Provider* shall, and will procure that any Subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.

Z21.21

The *Service Provider* will and shall procure that any Subcontractor will on or before any Subsequent Transfer Date:

- a) pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- b) account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- c) pay any Successor or the *Client*, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date; and
- d) subject to any legal requirement, provide to the Successor or the *Client*, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The *Service Provider* shall for itself and any Subcontractor warrant that such records are accurate and up to date.

Z21.22

The *Service Provider* will and shall procure that any Subcontractor will indemnify and keep indemnified the *Client* and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

- a) the *Service Provider's* or Subcontractor's failure to perform and discharge its obligations under Clause Z21;
- b) any act or omission by the *Service Provider* or Subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
- c) any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the *Client*, as appropriate;
- d) any emoluments payable to a person employed or engaged by the *Service Provider* or Subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date; and
- e) any act or omission of the *Service Provider* or any Subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of

compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or *Client's* failure to comply with regulation 13(4) of TUPE.

Z21.23 The *Service Provider* will, or shall procure that any Subcontractor will, on request by the *Client* provide a written and legally binding indemnity in the same terms as set out in Clause Z21.22 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.

Z21.24 The *Service Provider* will indemnify and keep indemnified the *Client* and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the *Service Provider* or Subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

Z21.25 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the *Service Provider* or any Subcontractor to the *Client* or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:

- a) the *Client* will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the *Service Provider*;
- b) the *Service Provider* may offer (or may procure that a Subcontractor may offer) employment to such person within twenty eight (28) days of the notification by the *Client* or Successor;
- c) if such offer of employment is accepted, the *Client* will, or shall procure that the Successor will, immediately release the person from their employment; and
- d) if after the period in Clause Z21.25 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the *Client* will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016).

## **Z22 Exclusivity and work content**

Z22.1 This contract does not prevent the *Client* doing or contracting for similar work with its own labour or Others within the Affected Property. The *Service Provider* has no claim for additional costs where the *Client* does or contracts for similar work.

Z22.2 The *Service Provider* has no claim for loss of profit or loss of business or otherwise if the service or any part of the service is less in amount or value or scope than anticipated.

Z22.3 The *Client* does not use this clause as an alternative to termination. The *Service Manager* continues to instruct work throughout the Service Period

## **Z23 Fixed Price**

Z23.1 The Client and the Service Provider shall comply with the provisions of Appendix D.

# APPENDICES

## APPENDIX A – CLIENT’S POLICIES

### Baseline security requirements

#### 1. Handling Classified information

- 1.1 The Service Provider shall not handle Client information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Service Provider shall seek additional specific guidance from the Client.

#### 2. End user devices

- 2.1 When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre (“NCSC”) to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme (“CPA”). Government Data means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Client’s Confidential Information, and which:

- i) are supplied to the Service Provider by or on behalf of the Client; or
- ii) the Service Provider is required to generate, process, store or transmit pursuant to a Contract;

and Confidential Information means: any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Client or the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “**confidential**”) or which ought reasonably to be considered to be confidential;

- 2.2 Devices used to access or manage Government Data and services must be under the management authority of Client or Service Provider and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Client. Unless otherwise agreed with the Client in writing, all Service Provider devices are expected to meet the set of security requirements set out in the “End User Devices Security Guidance” (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Service Provider may wish to use, then these should be discussed with the Client and a joint decision shall be taken on whether the residual risks are acceptable. Where the Service Provider wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case-by-case basis with the Client.

#### 3. Data Processing, Storage, Management and Destruction

- 3.1 The Service Provider and Client recognise the need for the Client’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the

Service Provider must be able to state to the Client the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.

3.2 The Service Provider shall agree any change in location of data storage, processing and administration with the Client in accordance with Clause Z13. GDPR.

3.3 The Service Provider shall:

- 3.3.1 provide the Client with all Government Data on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Government Data in the event of the Service Provider ceasing to trade;
- 3.3.3 securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Government Data held by the Service Provider when requested to do so by the Client.

3.4 “Good Industry Practice shall mean: standards, practises, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.

#### **4. Ensuring secure communications**

4.1 The Client requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA (Commercial Product Assurance Scheme).

4.2 The Client requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

#### **5. Security by design**

5.1 The Service Provider shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.

5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) the Service Provider shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider).

#### **6. Security of Service Provider *Key Persons***

6.1 Service Provider *key persons* shall be subject to pre-employment checks that include, as a minimum, the requirements set out in the Security Aspects Letter (Schedule 1 of this Appendix).

- 6.2 The Service Provider shall agree on a case-by-case basis the Service Provider *key persons* who require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Government Data.
- 6.3 The Service Provider shall prevent Service Provider *key persons* who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Client in writing.
- 6.4 All Service Provider *key persons* that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Client in writing, this training must be undertaken annually.
- 6.5 Where the Service Provider or Sub-contractors grants increased ICT privileges or access rights to Service Provider *key persons*, those Service Provider *key persons* shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) working day.

## **7. Restricting and monitoring access**

- 7.1 The Service Provider shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Service Provider shall retain an audit record of accesses.
- 7.2 "ICT Environment" shall mean the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Service Provider in connection with this Contract which is owned by or licensed to the Client by a third party and which interfaces with the Service Provider's ICT system or which is necessary for the Client to receive the Services.

## **8. Audit**

- 8.1 The Service Provider shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. To facilitate effective monitoring and forensic readiness such Service Provider audit records should (as a minimum) include:
- 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Service Provider and the Client shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

8.3 The Service Provider shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 Months.

## **9. Access To Affected Property**

9.1 To work on any UKHSA site a minimum of Baseline Personnel Security Standard (BPSS) is required for any unescorted access. Additional requirements may be required on a site-by-site basis and may require employees and other individuals to show that they understand the correct procedures surrounding security, health and safety and fire safety (other additional elements may be included depending on the site and the work completed there). UKHSA also has a security policy, and all individuals working as employees or as employees or agents of contractors or sub contractors must comply with the security policy: [2024-06-27 - FINAL - Baseline Personnel Security Standard \(BPSS\) Policy - Version 7.0 \(PUBLISHED 28 JULY 2024\)](#).

9.2 Completion of BPSS ensures His Majesty's Government (HMG) organisations are employing individuals who have the right to work, with the honesty and integrity required for working within and/or for HMG.

9.3 BPSS is a series of checks conducted once a provisional offer of employment is accepted by an individual or for non-employee individuals who access site under a contract with UKHSA, prior to access to a site is granted. A formal offer of employment shall only be made once BPSS is passed. Employees or agents of contractors or sub-contractors shall only be permitted access to a site for non-escorted access, once a BPSS check is completed.

9.4 BPSS is not a national security vetting (NSV) clearance (see below). It applies to all individuals working within and for the government, such as civil servants, members of the armed forces, temporary staff and the Service Provider's employees (including sub-contractor employees). The purpose is to:

- a. Ensure that all individuals are entitled to take up employment;
- b. Protect the security of HMG estate and its assets; and
- c. Provide a basis for National Security Vetting, if a security clearance is required.

9.5 BPSS comprises four main checks for an individual:

- a. Identity (ID);
- b. Right to work (RTW) in the UK;
- c. Employment history; and
- d. Criminal record (unspent convictions).

9.6 BPSS seeks to address potential risks such as identity fraud, illegal working and falsifying employment history. Failure to address these issues could lead to financial or reputational damage, and loss of sensitive information for HMG.

9.7 Failure of a BPSS check may arise in some circumstances which will be notified to the individual. If there is failure of a BPSS check, the consequence may be that access to site or government information might be refused. UKHSA has absolute discretion as to whether

to accept the result of a BPSS check. An individual may be required to re-apply for a BPSS check and will be notified of this requirement by UKHSA.

9.8 Further to this minimum standard that is enacted across HMG, UKHSA are currently undergoing a review of the minimum-security requirements across its estate. As such, all sites that conduct science or laboratory-based work now require, as a minimum, a Counter Terrorist Check (CTC) to be completed before unescorted access can be granted. Contractors and sub-contractors will be responsible for ensuring employees and agents co-operate with the process of BPSS, CTC or NSC, as notified as being eligible for CTC.

9.10 A CTC is administered by United Kingdom Security Vetting (UKSV) (a part of the Cabinet Office) and comprises of the following checks:

- successful completion of the Baseline Personnel Security Standard
- completion, by the individual, of a Security Questionnaire
- a departmental/company records check which might include, for example personal files, staff reports, sick leave returns and security records.
- a check of both spent and unspent criminal records
- a check of Security Service records
- if there are any unresolved security concerns about the individual or if recommended by the Security Service, the individual may also be interviewed.

9.11 This work has already started across our science estate, and it is anticipated that this will take 2 years to complete across all sites. This standard is for all permanent & temporary staff and employees or agents of contractors and sub-contractors who wish to have unescorted access to our site. Contractors and sub-contractors will be responsible for ensuring employees and agents co-operate with the process of BPSS, CTC or NSC, as notified as being eligible for CTC.

9.12 Failure of a CTC is centred around having been found to have established links to a proscribed terrorist organisation. These links will have been identified during a check of Security Service (MI5) records and should something be identified of this nature or if there are any unresolved security concerns about the individual or if recommended by the Security Service, the individual *may* also be interviewed. Contractors and sub-contractors will be required to ensure the individual attends an interview, otherwise security clearance will not be granted.

#### *What is a proscribed organisation?*

9.13 Under The Terrorism Act 2000, the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do. For the purposes of the act, this means that the organisation:

- i. commits or participates in acts of terrorism.
- ii. prepares for terrorism.
- iii. promotes or encourages terrorism (including the unlawful glorification of terrorism).

- iv. is otherwise concerned in terrorism.

*What is meant by 'terrorism' in the proscription context?*

9.14 "Terrorism" as defined in the act, means the use or threat of action which: involves serious violence against a person; involves serious damage to property; endangers a person's life (other than that of the person committing the act); creates a serious risk to the health or safety of the public or section of the public or is designed seriously to interfere with or seriously to disrupt an electronic system.

The use or threat of such action must be designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public and must be undertaken for the purpose of advancing a political, religious, racial or ideological cause.

[Proscribed terrorist groups or organisations - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Further, where an application is refused or withdrawn, individuals will be informed, and provided with reasons, where possible. They will also be provided with information about the mechanisms for internal and external appeal. Where an individual is refused employment or access to a site on security grounds, the individual should preferably be told of the reasons, although considerations of national security or confidentiality may prevent this.

Should an employee or agent of a contractor or subcontractor not gain a CTC then UKHSA would expect that the individual would not be granted access to our site and that they would be withdrawn from working on any UKHSA site in future. The decision as to access is solely within the discretion of UKHSA.

9.15 Should an employee or agent of a contractor or subcontractor gain access to one of UKHSA sites and be involved in a serious breach of security policy then they may be asked to vacate the premises immediately, and consideration will be given as to whether access should be granted in future. A serious breach is one that has been considered by the UKHSA Security Advisor, or Deputy Security Advisory, as one that could have had a detrimental impact to the safety or security of that site. This will be considered on a case-by-case basis.

9.16 Where access to a site to an individual has been refused or removed for a breach of security policy, UKHSA shall not be in material breach of contract. As such, no breach of contract clause can be used for financial penalty against UKHSA in these circumstances. Failure by an employee or agent of a contractor or sub-contractor to obtain BPSS or CTC (if required) shall be a material breach of contract and UKHSA shall be entitled to terminate the contract in accordance with the material breach of contract clause. UKHSA shall be entitled to rely on the consequences of termination clause in the event of the failure to obtain BPSS or CTC.

# Schedule 1 of Appendix A– Security Aspects Letter

## UKHSA Security Aspects Letters and Contractual Security Conditions

### Introduction

1. The purpose of this note is to explain the requirement for a Security Aspects Letter and provide an overview of the standard contractual security conditions included in UKHSA Contracts.
2. Some companies (hereafter referred to as Service Providers') hold contracts which require them to access and/or safeguard classified assets. In order to protect classified assets, the UKHSA Contracting Authority (Client) shall identify the classified aspects and contractually mandate the necessary security requirements to the Service Provider. The Service Provider shall in turn flow down the relevant classified aspects and security requirements when subcontracting or collaborating with other Service Providers on classified work. For the purpose of this SAL a Service Provider subcontracting classified work is the Contracting Authority and is responsible for issuing their own Security Aspects Letter to their Subcontractor/Supplier.

### Security Aspects Letters

3. The security obligations placed upon the Service Provider become legally effective only when the Client has issued notice of them in writing; in cases where aspects of the pre- contract activity (set as Invitation to Tender (ITT) for the rest of the document) or Contract are graded OFFICIAL-SENSITIVE or above, this shall be achieved by means of a SAL. A SAL provides a contractual means of ensuring that security is addressed in the work that a Service Provider is undertaking. A SAL template is available at Annex A of this Schedule.
4. A SAL is not required if the Service Provider will only access classified assets graded at OFFICIAL (not OFFICIAL-SENSITIVE or above). In such cases, the Service Provider shall still be informed of their security obligations via security conditions included in the ITT or Contract. A SAL is also not generally required if the Service Provider will only have access to classified assets at UKHSA premises, as the Client should fulfil this notification role on a day-to-day basis.
5. The relevant security aspects about which the Service Provider shall be informed, are project specific and shall be compiled and included in the SAL by the Client. Security aspects that may require consideration for inclusion in a SAL include:
  - general project aspects covering general points such as dates/milestones, contractual information, quantities, etc.
  - performance/capabilities may cover the top-level capabilities as identified by the Client but broken down to provide more detail where available.
  - it is sometimes useful to summarise the key elements of the contract at a top level before going into sub-items.

- sub-items should follow a logical progression for the breakdown of the top-level contract. A Work Breakdown Structure (WBS) may be suitable to form its basis, if available.

6. A SAL should be graded according to what it contains/can reveal but attempts shall be made to keep it at the lowest level possible, both to ease handling and to ensure that it can be distributed to the widest audience necessary, so that it is available for use by those who need it. If a SAL contains a detailed breakdown of security aspects, then it would typically be graded OFFICIAL-SENSITIVE as it identifies all the security sensitivities of a contract and therefore would be of value to an adversary. It should be noted that saying an item is SECRET does not automatically make the SAL that classification unless the existence or inclusion of that aspect is in of itself SECRET. If it is necessary to include material graded above OFFICIAL-SENSITIVE in a SAL, then it is advisable to create a separate document or annex, rather than uplifting the classification of the entire SAL.

7. The Client shall provide the SAL, together with the ITT or Contract documentation, to the Service Provider. The Service Provider shall provide a signed acknowledgment accepting the SAL before any work begins.

8. It is important that the classified assets defined in the SAL are kept up to date and that the Service Provider is immediately notified of any changes. The Client shall therefore keep under review the level of the classified assets defined in the SAL. The SAL shall be reviewed not less than annually, and at every contract amendment. As a contractual document, up-issue of the SAL would require contract amendment.

9. Separate SALs are required for each new contract, even if they are the same as the last contract or a task continuation. The SAL shall only contain information relevant to the work the Service Provider will be undertaking. Separate SALs may therefore be required for each Service Provider.

10. All individuals involved with the planning and implementation of the security aspects should fully understand the SAL and its implications. Where issues are unclear, or it imposes unacceptable or impracticable obligations on the Service Provider, or if, for any other reason, it is open to doubt, the Service Provider shall take up the matter immediately with the Client.

11. A Service Provider may query the classification of any aspect of a contract defined in a SAL. The Service Provider should be assured that this will in no way prejudice their interests with the Client. Any Client receiving such a query on a classification shall deal with it promptly, if necessary, issuing an amendment to the SAL.

12. The contract and SAL are fundamental to the protection of classified assets, in that they make the Service Provider responsible for achieving and maintaining the required security controls for the appropriate protection of government assets. It is for the Client, to decide how to satisfy these requirements, but recognise that such

controls shall meet the various baseline objectives described in [GovS:007](#).

13. With certain contracts, the Client may define the classified aspects in a Security Grading Guide (SGG) that is referenced in the SAL.
14. The SAL (or its SGG) shall identify in as much detail as possible which components are classified and at what level. This is because classified information can be revealed in a number of ways, for example, by its shape and appearance or by some interior feature of its design which could be deduced only if the equipment in question is dismantled. It will then be necessary to allocate the appropriate levels of classification to the equipment as a whole and to its component parts. These may vary in different circumstances, such as during manufacture as against during use. For example, a radio transmitter might not attract a classification, but the frequency at which it operates could need to be classified SECRET. This would mean that:
  - during manufacture and storage of the components only those components from which the frequency can be deduced need to be protected.
  - during and after assembly, the complete equipment will become SECRET and therefore an accountable item that will require appropriate protection.
  - If the frequency cannot be deduced without dismantling the equipment, then it may only be necessary to protect it against this possibility but not against the possibility of visual access.
15. Where the size of a classified hardware asset permits, it should be stored in an approved container in the same way as a classified document. Where this is impracticable, it will be necessary to carry out a separate risk assessment. Such an assessment shall always be conducted in conjunction with the Client.

### **Contractual Security Conditions**

16. The Service Provider shall flow down all applicable contractual security conditions issued by the Client when subcontracting or collaborating with other Service Providers on classified work. Service Providers shall also seek permission to subcontract or collaborate with other Service Providers when required in accordance with the SAL.
17. A copy of the OFFICIAL and OFFICIAL-SENSITIVE Security Conditions included at Schedule 1 shall also be provided for all contracts and subcontracts.
18. Disclosure of Information requires the Service Provider to safeguard material provided by UKHSA and to ensure that its employees are aware of their responsibilities before they receive information. There is a mutual obligation to treat in confidence all information disclosed in connection with or under the contract.

19. Annexes:

A. SAL Template

B. OFFICIAL and OFFICIAL-SENSITIVE Security Conditions

**ANNEX A**

**SAL TEMPLATE**

For the attention of ..... (insert name)

Dear .....

**SUBJECT AND TENDER / SUBCONTRACT / ORDER NO:**

1. The above tender / subcontract / order arises from a United Kingdom government contract and will involve your company holding UK classified material. It is a condition of this tender / subcontract / order that this material must be protected. The standard of protection required has been notified to you separately and varies with the level of classification. Material passed to you will bear the classification appropriate to it. However, to assist you in allocating any necessary classification to material which your company may produce during the course of the tender / subcontract / order and thus enable you to provide the appropriate degree of protection to it, this letter formally advises you of the correct classification to apply to the various aspects of the tender / subcontract / order.
2. The aspects of the tender and contract documents which require to be classified are set out in Appendix 1 of this document:
3. If the subcontract / order contains a condition of contract clause referring to “Secret Matter” this Secret Matter is defined as the Aspects listed above.
4. You are requested to acknowledge receipt of this letter and to confirm that the level of classification associated with the various aspects listed above have been brought to the attention of the person directly responsible for the security of this tender / subcontract / order, that they are fully understood, and that the required security controls in the contract security conditions can and will be taken to safeguard the material concerned.
5. If you have any difficulty in interpreting the meaning of the above aspects or in safeguarding the materials, will you please let me know immediately.

## **ANNEX B**

### **UK OFFICIAL AND UK OFFICIAL-SENSITIVE CONTRACTUAL SECURITY CONDITIONS**

#### **Purpose**

1. This document provides guidance for Service Providers where classified material provided to or generated by the Service Provider is graded UK OFFICIAL or UK OFFICIAL- SENSITIVE. Where the measures requested below cannot be achieved or are not fully understood, further advice should be sought from the UKHSA Head of Security.

#### **Definitions**

2. The term "Authority" for the purposes of this Annex means the UKHSA Contracting Authority.
3. The term "Classified Material" for the purposes of this Annex means classified information and assets.

#### **Security Grading**

4. The SENSITIVE marking is used to denote UK OFFICIAL material that is of a particular sensitivity and where there is a need to reinforce the 'need to know'. The Security Aspects Letter, issued by the Authority shall define the UK OFFICIAL-SENSITIVE material that is provided to the Service Provider, or which is to be developed by it, under this Contract. The Service Provider shall mark all UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract with the applicable security grading. The Service Provider is not required to mark documents graded UK OFFICIAL unless they are transmitted overseas or generated by a Service Provider based outside the UK in a third-party country.

#### **Security Conditions**

5. The Service Provider shall take all reasonable steps to adhere to the provisions specified in the Contract or listed in this Annex. The Service Provider shall make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract.
6. The Authority shall state the data retention periods to allow the Service Provider to produce a data management policy.
7. If you are a Service Provider located in the UK, your attention is also drawn to the provisions of the Official Secrets Act 1989 and the National Security Act 2023.

#### **Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Classified Material**

8. The Service Provider shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE material provided to or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Service Provider shall take all reasonable steps to prevent the loss or compromise of classified material whether accidentally or from deliberate or opportunist attack.
9. Once the Contract has been awarded, where the Service Provider is required to store or process UKHSA classified information electronically, they shall comply with the requirements specified by NCSC Cyber Essential Plus and GovS007.
10. All UK classified material including documents, media and other assets shall be physically secured to prevent unauthorised access. When not in use UK classified material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be controlled.
11. Disclosure of UK classified material shall be strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Service Provider shall not

disclose the Contract or any provision thereof to any person other than to a person directly employed by the Service Provider or Subcontractor.

12. Except with the consent in writing of the Authority the Service Provider shall not make use of the Contract or any classified material issued or provided by or on behalf of the Authority otherwise than for the purpose of the Contract, and, same as provided for in paragraph 9 above, the Service Provider shall not make use of any article or part thereof similar to the articles for any other purpose.
13. Subject to any intellectual property rights of third parties, nothing in this Security Condition shall restrict the Service Provider from using any specifications, plans, drawings and other documents generated outside of this Contract.
14. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and shall be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 37.

## Access

15. Access to UK classified material shall be confined to those individuals who have a “*need-to-know*”, have been made aware of the requirement to protect the material and whose access is essential for the purpose of their duties.
16. The Service Provider shall ensure that all individuals requiring access to UK OFFICIAL and UK OFFICIAL-SENSITIVE material have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Service Provider; and verification of their employment record. Criminal record checks should also be undertaken where permissible under national/local laws and regulations.
17. The minimum national security vetting (NSV) level for all of our staff, contractors and sub-contractors working at our science sites (which will include but is not limited to Porton Down, Colindale and Chilton amongst others) is in the process of being raised to [Counter Terrorist Check \(CTC\)](#). As such, any new or revised contracts for staff working at these sites should include the minimum requirement of CTC within them.
18. A CTC is used across HMG for those individuals who are to be employed in posts which:
  - involve proximity to public figures assessed to be at particular risk from terrorist attack
  - give access to information or material assessed to be of value to terrorists
  - involve unescorted access to certain military, civil, industrial or commercial establishments assessed to be at particular risk from terrorist attack.
19. The checks involved in completing a CTC on individuals include:
  - successful completion of the Baseline Personnel Security Standard (the baseline standard for all NSV)
  - completion, by the individual, of a Security Questionnaire
  - a departmental/company records check which might include, for example personal files, staff reports, sick leave returns and security records
  - a check of both spent and unspent criminal records
  - a check of Security Service (MI5) records
  - if there are any unresolved security concerns about the individual or if recommended by the Security Service, the individual may also be interviewed.
20. In order to be eligible to apply for a CTC a minimum UK residence of 3 years is required.
21. Further, the CTC is to ensure that as a minimum those people that apply do not have direct links to a [proscribed terrorist organisation as outlined by HMG](#).. This list is defined under the Terrorism Act 2000.

22. The Client is responsible for submitting all vetting applications in association to this Contract. The Service Provider is responsible to allow sufficient time for the Client to process the vetting application before any new staff of the Service Provider, and the Suppliers sub-contractors undertake any work or services at our science site.

### **Hard Copy Distribution**

1. UK OFFICIAL and UK OFFICIAL-SENSITIVE documents may be distributed internally and externally of Service Provider premises. To maintain confidentiality, integrity and availability, distribution shall be controlled such that access to documents is only by authorised personnel. They may be sent by ordinary post in a single envelope. The words UK OFFICIAL or UK OFFICIAL-SENSITIVE must not appear on the envelope. The envelope must bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.
2. Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE shall be sought from the Authority.

### **Electronic Communication and Telephony and Facsimile Services**

3. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product. Details of the required CPA scheme are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

4. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so, but only with the prior approval of the Authority. However, it shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the Authority require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the information.
5. UK OFFICIAL and UK OFFICIAL-SENSITIVE information may be discussed verbally on corporate telephones and other corporate electronic devices with persons located both within the country of the Service Provider and overseas. UK OFFICIAL-SENSITIVE information should only be discussed where there is a strong business need to do so.
6. UK OFFICIAL information may be faxed to recipients located both within the country of the Service Provider and overseas, however UK OFFICIAL-SENSITIVE information may be transmitted only where there is a strong business case to do so and only with the prior approval of the Authority.

### **Use of Information Systems**

7. The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here in specific detail; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

8. The Service Provider should ensure **10 Steps to Cyber Security** (Link below) is applied in a proportionate manner for each IT and communications system storing, processing or generating UK OFFICIAL or UK OFFICIAL-SENSITIVE information.

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

9. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data. Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing UK OFFICIAL and UK OFFICIAL-SENSITIVE information on IT systems.

a. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System (Administrators) should not conduct ‘standard’ User functions using their privileged accounts.

b. Identification and Authentication (ID&A). All systems are to have the following functionality:

(1) Up-to-date lists of authorised users.

(2) Positive identification of all users at the start of each processing session

c. Passwords. Passwords are part of most ID&A security measures. Passwords are to be “strong” using an appropriate method to achieve this, e.g., including numeric and “special” characters (if permitted by the system) as well as alphabetic characters.

d. Internal Access Control. All systems are to have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e. Data Transmission. Unless the Authority authorises otherwise, UK OFFICIAL-SENSITIVE information may only be transmitted or accessed electronically (e.g., point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 20 above.

f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

(1) The following events shall always be recorded:

- (a) All log on attempts whether successful or failed,
- (b) Log off (including time out where applicable),
- (c) The creation, deletion or alteration of access rights and privileges,
- (d) The creation, deletion or alteration of passwords.

(2) For each of the events listed above, the following information is to be recorded:

- (a) Type of event,
- (b) User ID,
- (c) Date & Time,
- (d) Device ID.

(3) The accounting records are to have a facility to provide the System Manager with a hard copy of all or selected activity. There also must be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this, then the equipment must be protected by physical means when not in use i.e., locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures are to be implemented:

(1) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g., viruses and power supply variations),

(2) Defined Business Contingency Plan,

(3) Data backup with local storage,

(4) Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),

(5) Operating systems, applications and firmware should be supported,

(6) Patching of Operating Systems and Applications used are to be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners. Wherever possible, a “Logon Banner” will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be: *“Unauthorised access to this computer system may constitute a criminal offence”*.

i. Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

j. Internet Connections. Computer systems must not be connected direct to the Internet or “un-trusted” systems unless protected by a firewall (a software based personal firewall is the minimum, but risk assessment and management must be used to identify whether this is sufficient).

k. Disposal. Before IT storage media (e.g., disks) are disposed of, an erasure product must be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

### **Portable Electronic Devices**

10. Portable Electronic Devices holding any UK OFFICIAL-SENSITIVE information shall be encrypted using a CPA product or equivalent as described in paragraph 20 above.

11. Unencrypted Portable Electronic Device and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes

- all removable, recordable media e.g., memory sticks, compact flash, recordable optical media (CDs and DVDs), floppy discs and external hard drives.

12. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

13. Portable Electronic Devices holding the Authorities' data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the Portable Electronic Device is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

### **Loss and Incident Reporting**

14. The Service Provider shall immediately report any loss or otherwise compromise of any UKHSA Related Classified Material to the Authority. The term UKHSA Related Classified Material includes any information or asset that has been given a security classification by the UKHSA. The term also includes classified information and assets held by Service Providers which are owned by a third party.

15. In addition, any loss or otherwise compromise of UKHSA Related Classified Material is to be immediately reported to UKHSA Head of Security. This will assist the UKHSA in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UKHSA SIRO, as appropriate, the Service Provider concerned.

### **Subcontracts**

16. Where the Service Provider wishes to subcontract any elements of a Contract to Subcontractors within its own country or to Subcontractors located in the UK such subcontracts will be notified to the Authority. The Service Provider shall ensure that these Security Conditions are incorporated within the subcontract document.

33. The prior approval of the Authority shall be obtained should the Service Provider wish to subcontract any UK OFFICIAL-SENSITIVE elements of the Contract to a Subcontractor facility located in another (third party) country. If the subcontract is approved, the Service Provider shall flow down the Security Conditions in line with paragraph 34 above to the Subcontractor.

### **Physical Destruction**

17. As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when the classified material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Service Provider to be necessary or desirable. Unwanted UK OFFICIAL-SENSITIVE classified material which cannot be destroyed in such a way shall be returned to the Authority.

### **Publicity Material**

18. Service Providers wishing to release any publicity material or display assets that arises from a Contract to which these Security Conditions apply must seek the prior approval of the Authority. Publicity material includes open publication in the Service Provider's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the UK Government.

19. For UK Service Providers where the exhibition assets relate to multiple Delivery Teams or for Private Venture UKHSA related classified material where there is no defined Delivery Team, the Service Provider shall request clearance for exhibition from the Client.

#### **Interpretation/Guidance**

20. Advice regarding the interpretation of the above requirements should be sought from the Authority.

21. Further requirements, advice and guidance for the protection of UK classified material at the level of UK OFFICIAL and UK OFFICIAL-SENSITIVE may be found at:

[Government Security Classifications Policy June 2023.docx \(publishing.service.gov.uk\)](#)

#### **Audit**

23. Where considered necessary by the Authority the Service Provider shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Service Provider's processes and facilities by representatives of the Service Provider's National/Designated Security Authorities or the Authority to ensure compliance with these requirements.

For and on behalf of:

Signed:

## Document Classification

Document	Classification
20241121_FINAL_ C326558_ Schedule1_v1.0 & Annexes, Appendices and Schedules	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ CHILTON_v1.0	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ COLINDALE_v1.0	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ GLASGOW_v1.0	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ LEEDS_v1.0	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ HARLOW_v.1.0	Official-Sensitive
20241114_FINAL_ C326558_ AnnexC_ DISPERSED_ESTATE_v1.0	Official-Sensitive
20241216_FINAL_ C326558_ AnnexC_ SUMMARY_v1.0	Official-Sensitive
20241120_FINAL_ C326558_ Schedule3_v1.0 & Annexes, Appendices and Schedules	Official-Sensitive
20241114_FINAL_ C326558_ Schedule_3_ APPENDIX_F_ Site_Drawings_Folder_v1.0	Official-Sensitive
20241114_FINAL_ C326558_ Schedule_3_ APPENDIX_G_ H&S_Documents_v1.0	Official-Sensitive

## **Security Management Plan**

To be compliant with GOV007 and Cyber Essentials Plus, the Client must have an up-to-date Security Management Plan, which has been signed off by the Service Providers Head of Security.

REF: 20241129\_FINAL\_C326558\_CBRE\_Integrated Policy Manual (002)

## APPENDIX B – DATA PROTECTION TERMS AND SCHEDULE

The following definitions shall apply to this Appendix B:

<b>Data Protection Legislation</b>	(i) the UK GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy
<b>Data Protection Impact Assessment</b>	an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the 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.
<b>Data Subject Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>DPA 2018</b>	Data Protection Act 2018
<b>UK GDPR</b>	the UK General Data Protection Regulation
<b>Joint Controllers</b>	takes the meaning given in Article 26 of the UK GDPR.
<b>Law Enforcement Processing</b>	processing under Part 3 of the DPA 2018.
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this contract
<b>Protective Measures</b>	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Appendix A (Security).
<b>Sub-processor</b>	any third party appointed to process Personal Data on behalf of that Processor related to this contract

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

## **1. SERVICE PROVIDER AS PROCESSOR**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Service Provider* is the Processor unless otherwise specified in Schedule 1. The only processing that the Processor is authorised to do is listed in Schedule 1 by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the service;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this contract:
- (a) process that Personal Data only in accordance with Schedule 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, including the measures set out in Article 32 (1) GDPR, that are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject, having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:

- (i) the Processor Personnel do not process Personal Data except in accordance with this contract (and in particular Schedule 1);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - are aware of and comply with the Processor's duties under this clause;
  - are subject to appropriate confidentiality undertakings with the 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 Controller or as otherwise permitted by this contract; and
  - have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK and European Economic Area unless the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (v) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

#### 1.5

The Processor acknowledges that the Controller must (in accordance with UK GDPR Article 33) without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify a Personal Data Breach to the Information Commissioner's Office, unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons and where such notification is not made within 72 hours, it must be accompanied by reasons for the delay. In order to enable the Controller to comply with UK GDPR Article 33, subject to clause 1.6, the Processor shall notify the Controller immediately if it: Subject to clause 1.9, the Processor shall notify the Controller without undue delay if it:

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

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

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

1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.8 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

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

- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Personal Data processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause X such that they apply to the Sub-processor; and;
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 Those Sub-processors approved as at the commencement of this Agreement are as set out in Schedule 1 to this Appendix. The Processor must list all approved Sub-processors in Schedule 1 and include their name and location and the contact information for the person responsible for privacy and data protection compliance. The Processor shall inform the Controller of any intended changes concerning the addition or replacement of Sub-processors so that the Controller can reject or approve such changes.
- 1.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may upon giving the Processor not less than 30 working days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Schedule 1 to APPENDIX B: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

### Part 1 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

1. The contact details of the Controller's Data Protection Officer (the Controller)

Name: Lee Cramp

Email: [data\\_protection@dhsc.gov.uk](mailto:data_protection@dhsc.gov.uk)

2. The contact details of the Processor's Data Protection Officer:

Email: [emeaprivacydirector@cbre.com](mailto:emeaprivacydirector@cbre.com)

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of Data Protection Legislation, the <i>Client</i> is the Controller, and the <i>Service Provider</i> is the Processor in accordance with Clause 1.1.
Subject matter of the processing	The contract is for Hard Facilities Management Services, therefore minimal personal data will be processed by the <i>Service Provider</i> . Data processing will largely relate to compliance with Key Performance Indicators and statutory duties; however, this will be processed by the <i>Client</i> .
Duration of the processing	From 1 <sup>st</sup> January 2025 to 1 <sup>st</sup> January 2026.
Nature and purposes of the processing Data that will be processed includes management information, such as Key Performance Indicator Compliance	Data that will be processed includes management information, such as Key Performance Indicator Compliance, Service Level Agreement Compliance, compliance with statutory and non-statutory planned preventative maintenance. This processing will be done by the <i>Client</i> , so that management information reports can be produced.
Type of Personal Data being Processed	Names of Service Provider's employees or their agents.
Categories of Data Subject	<i>Service Provider's</i> employees or agents of the <i>Service Provider</i> .
Locations at which the Contractor and/or its Sub-processors process Personal Data under this Contract and international transfers and legal gateway	UK.

Plan for return and destruction of the data once the processing is complete	N/A – data will be uploaded on Planet, the <i>Client's</i> system.
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## **APPENDIX C – CYBER ESSENTIALS**

### **1. DEFINITIONS**

1.1 In this Appendix, the following words shall have the following meanings:

<b>Cyber Essentials Scheme</b>	The Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>Cyber Essentials Basic Certificate</b>	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>Cyber Essentials Certificate</b>	Cyber Essentials Basic Certificate, the Cyber Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the <i>Service Provider</i> as set out in the Framework Data Sheet;
<b>Cyber Essential Scheme Data</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
<b>Cyber Essentials Plus Certificate</b>	the certification awarded on the basis of external testing by an independent certification body of the <i>Service Provider's</i> cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### **2. CYBER ESSENTIALS OBLIGATIONS**

- 2.1 Where the Scope requires that the *Service Provider* provide a Cyber Essentials Certificate prior to the execution of the *service* the *Service Provider* shall provide a valid Cyber Essentials Certificate, then on or prior to the commencement of the *service* the *Service Provider* delivers to the *Client* evidence of the same. Where the *Service Provider* fails to comply with this paragraph it shall be prohibited from commencing the carrying out of the *service* under any contract until such time as the *Service Provider* has evidenced to the *Client* its compliance with this paragraph 2.1.
- 2.2 Where the Service Provider continues to Process Cyber Essentials Scheme Data during the carrying out of the service the Service Provider delivers to the Client evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained

by the Service Provider under paragraph 2.1.

- 2.3 Where the Service Provider is due to Process Cyber Essentials Scheme Data after the commencement of the *service* but before the end of the Service Period the *Service Provider* delivers to the *Client* evidence of:
  - 2.3.1 a valid and current Cyber Essentials Certificate before the *Service Provider* Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the *Service Provider* under paragraph 2.1.
- 2.4 In the event that the *Service Provider* fails to comply with paragraphs 2.2 or 2.3 (as applicable), the *Client* reserves the right to terminate this contract for material Default.
- 2.5 The *Service Provider* ensures that all sub-contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the *Service Provider* under this contract in respect of the Cyber Essentials Scheme under paragraph 2.1 of this Schedule
- 2.6 This Schedule shall survive termination or expiry of this contract.



## APPENDIX D – FIXED PRICE

### Fixed Price

- 1.1 The *Service Provider* shall manage and deliver the *service* for the fixed price set out in the Scope ("**Fixed Price**").
- 1.2 The *Service Provider* shall invoice one twelfth (1/12) of the annual Fixed Price charges payable in accordance with clauses 50 to 54 of the contract.
- 1.3
- 1.4 The Parties acknowledge that in accordance with the *Client's* tendering instructions, the *Service Provider's* Fixed Price for the *service* was submitted and based on the *Client's* historic data and therefore is subject to change and validation. During the mobilisation period and the period of 90 days after the *starting date* ("**Defects Reporting Period**") the *Service Provider* shall conduct its own examination of the TUPE lists and associated employee liability data, sub-contractor, assets, functionality and documentation for the purpose of verifying accuracy, their condition and maintenance requirements. The *Service Provider* shall:
- 1.4.1 in the event that the *Service Provider* identifies any material issues concerning any asset listed on the *Client's* asset register(s) or any asset not listed on the *Client's* asset register(s) ("**Discovered Assets**") the *Service Provider* shall promptly inform the *Client* and shall:
- (a) provide a full detailed list of the Discovered Assets and transparent calculation of any additional costs arising;
  - (b) include provision for such asset(s) within the asset replacement plan as required; or
  - (c) notify the *Client* if in the *Service Provider* reasonable opinion such asset(s) requires replacement.
- For the avoidance of doubt, (and where clause 1.3.1 (c) applies to any asset listed on the *Client's* asset register(s) then provided that the *Client* or the *Service Manager* agrees that the relevant asset(s) requires replacement), the *Service Provider* shall not be obliged to maintain or be liable for the costs of maintaining the Discovered Assets as part of the Fixed Price until changed in accordance with the contract; and
- 1.4.2 in the event that the *Service Provider* identifies that the TUPE lists and any element of the employee liability data is different to the information the *Service Provider* priced against in accordance with the *Client's* tendering instructions, both Parties acknowledge there may need to be an adjustment to the Fixed Price. No later than 90 days after the *starting date* the *Service Provider* shall send to the *Client* the Transferring Employees list along with the *Service Provider's* assessment of any resulting change to the Fixed Price. Such assessment (hereinafter referred to as the "Service Provider's Assessment") shall contain the total proposed adjustment to the Fixed Price, itemised and broken down to clearly demonstrate in relation to each Transferring Employee how the Fixed Price adjustment was calculated. The *Service Provider* shall issue a compensation event in accordance with the contract.
- 1.5 In accordance with the Defects Reporting Period, the *Service Provider* shall further promptly inform the *Client* if the *Service Provider* becomes aware of any material inaccuracies in any information provided by the *Client* which materially and adversely affects the *Service Provider's* ability to perform the Services or meet the agreed target KPIs in accordance with the contract. Both the *Client* and the *Service Provider* shall review any material inaccuracies identified in good faith and agree any adjustments to the Fixed Price in accordance with the contract.

- 1.6 The Parties acknowledge that the Transferring Employees may be eligible to apply or subsequently apply and participate in the NHS Pension Scheme under the Fair Deal Staff Pensions that does not form part of the Fixed Price. The *Client* agrees to indemnify the *Service Provider* against any future pension liability as a result of a bona fide eligible employee making a subsequent application. In the event of such an application during the term of this Agreement, the *Service Provider* shall promptly notify and provide the *Client* a Service Provider Assessment containing the total proposed adjustment to the Fixed Price as a direct result of such an application. The *Service Provider* shall issue a compensation event in accordance with the contract.
- 1.7 The Parties acknowledge the Affected Property and associated service may increase, decrease, temporarily close or permanently close. If any such event were to arise, the *Service Provider* shall submit a quotation detailing the impact to the Fixed Price including the cost of change in accordance with the contract. The *Service Provider* shall detail that if it is a requirement that the *Service Provider's* employees working exclusively at those buildings are to be made redundant by reason solely of *Client's* decision to decrease the scope of the Services or to close or reduce the size of the Affected Property, then the *Client* shall, provided the *Service Provider* has used all reasonable endeavours to re-deploy the relevant employees, indemnify the *Service Provider* against 100% the redundancy costs in relation to those employees.
- 1.8 Provided that the *Service Provider* complies with the obligation in clause 1.8 below, the *Client* acknowledges and confirms that the *Service Provider* shall not be held liable for any pre-existing conditions prior to the starting date which impact the compliance and performance of the Services save where such conditions are dealt with in accordance with clause 1.3 above or instructed in accordance with clause X27.
- 1.9 The *Service Provider* accepts that it has an obligation to notify the *Client* and/or the *Service Manager* of any such pre-existing conditions for the *Client's* immediate attention upon the *Service Provider* becoming aware of the same.

#### **Variable Services (Reactive / Minor Works / Projects)**

- 1.10 Pursuant to Scope, the *Service Provider* shall provide services which are not Fixed Price Services under the contract ("**Variable Services**") and therefore recoverable from the *Client* in accordance with Option X27 – Project Orders.
- 1.11 The *Service Provider* shall price Variable Services in accordance with Option X27. [REDACTED]  
[REDACTED]  
[REDACTED] All Variable Services shall be invoiced upon satisfactory completion in accordance with clauses 50 to 54 of this contract.
- 1.12 For the avoidance of doubt, any reactive or remedial services shall be considered Variable Services.
- 1.13 Service Orders under Variable Services shall be classified along three tiers: Tier 1, Tier 2 and Tier 3.
- 1.14 Tier 1 works are small works service orders under £10,000.
- 1.15 Tier 2 works are reactive works service orders from £10,000 to £30,000.
- 1.16 Tier 3 works are project orders above £30,000.
- 1.17 Tier 1 works require the Service Provider to submit at least one quotation to the Service Manager for acceptance.
- 1.18 Tier 2 works require the Service Provider to submit at least two quotations to the Service Manager for acceptance.
- 1.19 The route to market for Service Orders over £30,000 (tier 3 works) shall be determined by the Client.
- 1.20 The Client reserves the rights to alter the number of quotations required for Variable Services works to maximise value for money.

#### **Managed Fund Allowance**



## ANNEXES



REF: 20241114\_FINAL\_C326558\_AnnexA\_v1.0



REF: 20241114\_FINAL\_C326558\_AnnexB\_v1.0

## **ANNEX C – Short Schedule of Cost Components**

**Chilton** - REF: 20241114\_FINAL\_C326558\_AnnexC\_CHILTON\_v1.0

**Colindale** – REF: 20241114\_FINAL\_C326558\_AnnexC\_COLINDALE\_v1.0

**Glasgow** – REF: 20241114\_FINAL\_C326558\_AnnexC\_GLASGOW\_v1.0

**Leeds** – REF: 20241114\_FINAL\_C326558\_AnnexC\_LEEDS\_v1.0

**Harlow** – REF: 20241114\_FINAL\_C326558\_AnnexC\_HARLOW\_v.1.0

**Dispersed Estate** - 20241114\_FINAL\_C326558\_AnnexC\_DISPERSED\_ESTATE\_v1.0

**Summary** - 20241216\_FINAL\_C326558\_AnnexC\_SUMMARY\_v1.0