
Crown Commercial Service

**PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES FRAMEWORK SCHEDULE 4 –
TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL
SERVICES CONTRACT APRIL 2013), CONTRACT DATA AND Z CLAUSES**

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Date.....

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

The Secretary of State for Justice (of the Ministry of Justice)

And

Mace Limited

For the provision of

a Multi-Disciplinary Team relating to the provision of Category D Modular Accommodation

THIS AGREEMENT BY DEED is made on

2021

PARTIES:

1. **The Secretary of State for Justice** of the Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (the "**Employer**", with such term including its successors in title and permitted assigns); and
2. **Mace Limited** which is a company incorporated in and in accordance with the laws of England (Company No. 02410626) whose registered office address is at 155 Moorgate, London, EC2M 6XB (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated 03 May 2017 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the 14th October 2020 the *Employer*, acting as part of the Crown, and in the Framework Agreement identified as a "Contracting Authority" invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 11 November 2020 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

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

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5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
 6. The Contract Schedules are:
 1. Template collateral warranty in favour of a beneficiary
 2. Template Deed of Guarantee
 3. Security Policy
 4. Data Protection Schedule
 5. BIM Requirements

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

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

Authorised by the [REDACTED]
Secretary of
State
.....

Full name (Block [REDACTED]
Capitals)
.....

Executed as a deed by
Mace Limited
acting by a director, in the presence of:

.....[REDACTED].....

SIGNATURE OF DIRECTOR

..... [REDACTED].....

SIGNATURE OF WITNESS

..... [REDACTED].....

NAME OF WITNESS (IN BLOCK CAPITALS)

..... [REDACTED].....

ADDRESS OF WITNESS

..... [REDACTED].....

OCCUPATION OF WITNESS

Professional Services Contract Contract Data

Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X1, X2 (as amended), X8, X9, X11, X18, X20, Y(UK)2 and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is The Secretary of State for Justice of the Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Chartered Institute of Arbitrators or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The *services* are to provide Client representation in the form of a Multi-Disciplinary Team (MDT) for the management of the awarded modular Contractors for each of the three awarded lots within the Category D estate. The MDT is to provide programme assurance and oversight across all packages and sites, which will cover the RIBA Plan of Work stages: 3 through to the completion of Stage 7.
 - The Scope is in Annex 1.

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- The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.
 - The *period for reply* is two weeks.
 - The *period for retention* is 12 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the Chartered Institute of Arbitrators
 - The *tribunal* is arbitration
 - The matters set out in Annex 4 will be included in the Risk Register

2 The Parties' main responsibilities

- The *Employer* will provide access for the *Consultant* to the sites at *access dates* to be confirmed in writing by the *Employer*

3 Time

- *The starting date* is 01 February 2021.
- The *Consultant* submits revised programmes at intervals no longer than one month.

4 Quality

- The quality policy statement and quality plan are provided within 2 weeks of the Contract Date.
- The *defects date* is 52 weeks after
 - the last date on which the *Consultant* performed any *services* in connection with the Project,
 - the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of that Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with the Project (if entered into) and
 - the termination of the engagement of the *Consultant* under this contract,

whichever occurs first

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- 5 Payment**
- The *assessment interval* is monthly
 - The *currency of this contract* is the pound sterling (£).
 - The *interest rate* is 3% per annum above the Bank of England base rate in force from time to time.

- 8 Indemnity, insurance and liability**
- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	[REDACTED] in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Schedule 14 (Annex 1 - Part A)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract

As required under Framework Schedule 14 (Annex 1 - Part C)

from the *starting date* until all notified Defects have been corrected or earlier termination

- *The Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to [REDACTED] for each and every claim

Optional Statements

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

- The *Consultant* is to submit a first programme for acceptance within 2 weeks of the Contract Date.

If the *Employer* has identified work which is to meet a *stated condition by a key date*

- The *key dates* and *conditions* to be met are

Hatfield

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021
Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021
Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	21/06/2022
Practical Completion Certificate issued for second block	21/06/2022

Sudbury

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021
Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021

Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	21/06/2022
Practical Completion Certificate issued for second block	21/06/2022

Leyhill

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021
Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021
Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	22/06/2022
Practical Completion Certificate issued for second block	22/06/2022

HMP Springhill

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021
Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021
Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	22/06/2022
Practical Completion Certificate issued for second block	22/06/2022

HMP Ford

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021
Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021
Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	24/05/2022
Practical Completion Certificate issued for second block	22/06/2022

HMP Stanford Hill

<i>condition to be met</i>	<i>key date</i>
Submit all required information to planning agents to inform planning application / submission	27/04/2021

Completion of RIBA Stage 3 Cost Plan to inform drafting of Full Business Case (FBC)	06/05/2021
Issue of RIBA Stage 4 Consultant Recommendation	06/08/2021
Full Business Case (FBC) approval granted	06/09/2021
NEC ECC Contract Execution	20/09/2021
Practical Completion Certificate issued for first block	02/06/2022
Practical Completion Certificate issued for second block	27/06/2022

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

- The period for payment is 14 days after the due date, or after receipt of a valid invoice (whichever is later)

If the *tribunal* is arbitration

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- The number of arbitrators shall be one
- The place where arbitration is to be held is London
- The language to be used in the arbitration proceedings shall be English
- If the parties cannot agree the identity of the arbitrator then the nominating body shall be: Chartered Institute of Arbitrators

If Option A is used:

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 2 weeks.

Option X1 If Option X1 is used

- The *index* is the Average Weekly Earnings (AWE) index

Option X2 Option X2 is used (as amended by clause Z51)

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

Option X8 If Option X8 is used

- The *collateral warranty agreements* are in the form(s) contained in the Scope or if not contained in the Scope the form(s) attached as a Contract Schedule and shall be made in favour of

third party

To be notified by the *Employer* in writing up to a maximum of three collateral warranties

- The *subconsultant collateral warranties* are in the form(s) contained in the Scope or if not contained in the Scope the form(s) attached as a Contract Schedule and shall be made in favour of the *Employer* and

third party

To be notified by the *Employer* in writing up to a maximum of three collateral warranties from each subconsultant

Option X18 If Option X18 is used

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to [REDACTED] [REDACTED] in the aggregate.
- The *Consultant's* liability to the *Employer* for Defects that are not found until after the defects date is to be contained within the overall liability cap referred to in Clause 82.
- The end of liability date is 12 years after Completion of the whole of the services.

Option X20 If Option X20 is used (but not if Option X12 is also used)

- A report of performance against each Key Performance Indicator is provided at intervals of one month.

Option Z • The *additional conditions of contract* are clauses Z1 to Z57

**Contract Data
relating to Z clauses**

Clause Z35 Collateral Warranty Agreements

If Clause Z35 applies

- the *Consultant* provides *collateral warranty agreements* in favour of any third parties notified by the *Employer* in writing up to a maximum of three collateral warranties
- the *Consultant* procures *collateral warranty agreements* from the following Subconsultants:

any Subconsultant with a material design input in favour any third parties notified by the *Employer* in writing up to a maximum of three collateral warranties per Subconsultant

Clause Z39 Financial Distress

If Clause Z39 applies

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

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

Clause Z45 Apprenticeships

The percentage of the *Consultant's* employees require to be on formal apprenticeship programmes is [REDACTED]

Clause Z48 Building Information Modelling

A BIM Protocol applies. Without prejudice and subject always to clause 21.4, the *Consultant* shall comply with the BIM Requirements at all times in the provision of the *services*. The *Employer* will be receiving the BIM Execution Plan (BEP) as part of the contractor tender return. The *Employer* requires the *Consultant* to support the production of the final agreed BEP between the *Employer* and proposed contractor.

Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is
 - Name Mace Limited
 - Address 155 Moorgate, London, EC2M 6XB
- The *key people* are:
 - Name [REDACTED]
 - Job [REDACTED]
 - Responsibilities [REDACTED]
 - Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]
- Experience [REDACTED]
- Name [REDACTED]
- Job [REDACTED]
- Responsibilities [REDACTED]

-
- Experience [REDACTED]
 - Name [REDACTED]
 - Job [REDACTED]
 - Responsibilities [REDACTED]
 - Experience [REDACTED]

- The *staff rates* are:

Name/job title	Rate
• Director / Partner	[REDACTED]
• Senior Professional	[REDACTED]
• Professional	[REDACTED]
• Senior Technician	[REDACTED]
• Technician	[REDACTED]
• Admin / Junior / Apprentice	[REDACTED]

- The following matters will be included in the Risk Register
As set out in Annex 4

Optional statements **If the *Consultant* is to decide the *completion date* for the whole of the *services***

The *completion date* for the whole of the *services* is 1 August 2023

If the programme is to be identified in the Contract Data

The *Consultant* is to submit a first programme for acceptance within 2 weeks of the Contract Date

If the *Consultant* states any *expenses*

There are no additional *expenses*

If Option A or C is used

- The *activity schedule* is set out at Annex 2
- The tendered total of the Prices is £1,904,014.95 excl. VAT

Additional conditions of contract – clauses Z1 to Z57

The following provisions supplement, modify or replace the normal published provisions of the NEC3 Professional Services Contract (the “NEC3 PSC”). Where there is any discrepancy, ambiguity, error or omission between these Z clauses and any other provisions of this Contract, the Z clauses shall prevail.

Clause Z1 Interpretation and the law

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

- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
- the words "includes" or "including" are construed without limitation.

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

Authority means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

BIM Requirements are the requirements set out in Contract Schedule 5;

Confidential Information is any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the service, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA 2018);

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

Contracting Authority is any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Employer and "Contracting Authorities" shall be construed accordingly;

Controller has the meaning given to "data controller" in the DPA 2018;

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;

COVID-19 Event means the occurrence after the date of this Contract of further actions of the UK Government and/or any UK public health authority in response to coronavirus disease (COVID-19) but only to the extent that the actions directly and materially affect Providing the Service, including but not limited to:

1. a change in the Construction Leadership Council's publication "Construction Sector - Site Operating Procedures: Protecting Your Workforce During Coronavirus (Covid-19)" version 7 dated 7 January 2021; or
2. any suspension of the *services*, closure, or restricted access to the Site or off-site working areas where manufacturing of the modular units is being undertaken or amended working methods (howsoever arising)

save where the impact upon the execution of the *services*, including any suspension of the *services*, has arisen as a result of the negligence or default of the *Consultant* (howsoever arising) and provided that other consultants engaged in projects of a similar complexity to the *services* under the contract in the same geographic region are generally affected in the same way.

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

Data Protection Law means (i) the GDPR; (ii) the LED; (iii) the DPA 2018; (iv) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003; (v) all applicable Statutory Requirements about the processing of Personal Data and privacy; (vi) any laws which implement such laws; and (vii) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Data Protection Officer has the meaning given to it in the GDPR and DPA 2018;

Data Protection Schedule means the schedule identified as such in the Contract Data

Data Subject has the meaning given to it in the DPA 2018 and GDPR;

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

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 *Consultant'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 works to which the *services* relate or any part thereof and/or to other structures, finishes, plant and/or machinery;
- to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works to which the *services* relate;
- to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works to which the *services* relate;
- 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 the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC).

DPA 2018 means the Data Protection Act 2018;

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

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

Commissioner in relation to such legislation;

Force Majeure Event means an exceptional event for which neither Party is responsible or able to prevent, and 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 and which event is not weather conditions or other event against which either Party is required to insure, the happening of which:

- stops the *Consultant* from completing the whole of the *services*; or
- stops the *Consultant* from completing the whole of the *services* by the Completion Date

and which a competent and experienced consultant 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;

Former Consultant is the *Consultant* supplying services to the *Employer* before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant);

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

LED means Law Enforcement Directive (*Directive (EU) 2016/680*);

MSA Offence means an offence under the Modern Slavery Act 2015

Personal Data has the meaning given to it in the DPA 2018 and where used in this contract refers to any such Personal Data processed by the *Consultant* on behalf of the *Employer* under this contract;

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

Processor has the meaning given to it in the DPA 2018;

A Prohibited Act is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority or any other public body a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;

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

Project means the provision of new Category D accommodation across multiple custodian facilities;

Project Appointment means any appointment entered into by the *Employer* with a Project Consultant as notified by the *Employer* to the *Consultant* from time to time

Project Consultant means any consultant identified as such in the Contract Data or as notified by the *Employer* to the *Consultant* from time to time in writing

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

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

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

Request for Information is a request for information or an apparent

request under the FOIA or the Environmental Information Regulations;

Security Management Plan means the plan to be prepared by the *Consultant* in accordance with the Security Aspects Letter (including paragraphs 4.1 and 14);

Security Policy means the *Employer's Security Aspects Letter* attached as a Contract Schedule as may be updated from time to time;

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

Clause Z2 Prevention of fraud and bribery

(i) Insert new clauses:

Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

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

Z2.2. Throughout the period in which the *services* are performed the *Consultant* does not:

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

Z2.3 Throughout the period in which the *services* are performed the *Consultant*:

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

Z.2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or

has reason to believe that it has or any of the its employees or Subconsultants have:

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

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

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

Clause Z3 Recovery of sums due from *Consultant*

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

Clause Z4 Assignment and Novation

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

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

been performed by the *Employer*
up to a maximum of two assignments.

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

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

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

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

Z4.5 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

Z4.6 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*.

Clause Z5 Discrimination

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

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

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

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

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Employer* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- cooperates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

Clause Z6 Conflict of interest

Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Z6.3 The *Consultant* must take positive steps to mitigate any conflict of interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a conflict of interest under Z6.2.

Z6.4 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level, *the Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z30 (Consortia), Z39 (Financial Distress) and

Z40 (Change of Control – new guarantee)

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

Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

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

Clause Z8 Appointment of Adjudicator

Z8.1 The *Adjudicator's* appointment under the NEC Adjudicator's Contract current at the *starting date* includes the following additional conditions of contract

"The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Clause Z9 Project Bank Account

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

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

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

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

Clause Z10 Employer's Codes of Conduct

Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct to the extent one is included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

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

Clause Z11 Fair payment

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

Z11.2 The *Consultant* includes in the contract with each Subconsultant

- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the

amount paid by the *Consultant*.

Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.

Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z12 Confidentiality

Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- not disclose the other party's Confidential Information to any other person without that other party's prior written consent.

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

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- it is independently developed without access to the other party's Confidential Information.

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

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to

confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.

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

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

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

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

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

Z12.8 Nothing in this clause shall prevent either party from using any

techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.

Clause Z13 Security Requirements

Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:

- the Security Policy;
- the Security Management Plan produced pursuant to the Security Provisions; and
- the Security Provisions contained within the Security Policy or the Scope.

Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy.

Z13.3 Without prejudice to Z13.1 and/or Z13.2 the *Consultant* complies with, and procures the compliance of its personnel, with the requirements of the Security Aspects Letter in the performance of the *services*.

Z13.4 The *Consultant* acknowledges that the Security Aspects Letter is a standard template and as such cannot be directly amended and agrees that it shall be interpreted as follows for the purposes of this contract:

- (a) any references to "Contractor" shall be construed as the "*Consultant*"; and
- (b) any references to "MOJ" shall be construed as the "*Employer*" as appropriate.

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

Clause Z14 Official Secrets Act

Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.

Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.

Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Z14.4 The *Consultant* complies with the staff vetting and training

requirements stated in the Scope, if any.

Clause Z15 Data protection

Z15.1

(1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.

(2) Personal Data is information collected by the *Consultant* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified

- from that information or
- from that information combined with other details in (or likely to come into) the possession of the *Employer*.

Z15.2 For the purposes of this contract and the Data Protection Acts

- the *Employer* is the Data Controller and
- the *Consultant* is the Data Processor.

Z15.3 The *Consultant* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.

Z15.4 The *Consultant* has in place for as long as it holds the Personal Data

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z15.5 The *Consultant* immediately notifies the *Employer* if it receives

- a request from any person whose Personal Data it holds to access his Personal Data or
- a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.

Z15.6 The *Consultant* assists and co-operates with the *Employer* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of

the *Employer* and

- promptly providing the *Employer* with any Personal Data and other information requested by him.

Z15.7 The *Consultant* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.

Z15.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z15.9 The *Consultant* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Employer*.

Z15.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Consultant* sends the *Employer* details of:

- the Personal Data which will be processed outside the EEA;
- the countries where the Personal Data will be processed;
- any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and
- proposals to ensure the *Consultant* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.

Z15.11 Where the *Employer* agrees to the *Consultant* processing or transferring Personal Data outside the EEA the *Consultant* complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts

Clause Z16 Freedom of Information

Z16.1. The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.

Z16.2 The *Consultant*:

- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the

form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;

- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subconsultants do likewise.

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

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

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

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

Clause Z17 Records and Audit Access

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

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

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

Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly

complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

Clause Z18 Reporting: Small and Medium Enterprises

Z18.1 In this clause “SME” is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

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

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

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

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

- publish the information supplied under clause Z18.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z18 to any

government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

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

- a term allowing the *Employer* to publish the information supplied under Z18.2 and
- obligations substantially similar to those set out in this clause Z18.

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

Clause Z19 Not used

Clause Z20 Tax Non-Compliance

Z20.1

(1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

(2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).

(3) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance

contributions.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z25.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information requested by the *Employer*.

Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if

- the warranty given by the *Consultant* under clause Z20.2 is untrue,
- the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
- the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable.

Clause Z21 NOT USED

Clause Z22 Whistleblowing

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

Clause Z23 Changes to *staff rates* and Subconsultants

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the

Consultant's (or if appropriate Consortium Member's – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

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

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

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

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

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

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

- provisions substantially similar to those set out in clause Z23.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z23,
- an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant,

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

Clause Z24 Insurance cover

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

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

Clause Z25 Professional indemnity insurance

Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim

against the insurers.

Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.

Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z26 Termination and omission of work

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

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

“unless instructed otherwise by the *Employer*”.

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

- a key resource needed by the *Consultant* to Provide the *Services* is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*
- the *Consultant* breaching the terms of its obligations in clause 22.1 of the *conditions of contract* or
- any conflict of interest under this contract cannot be resolved to the *Employer's* satisfaction.

Z26.4 The *Employer* may terminate the *Consultant's* obligation to

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

Clause Z27 Termination – PCRs, Regulation 73

Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply with his obligations:

- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if

- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

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

Clause Z28 Value Added Tax (VAT) Recovery

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

Clause Z29 Tax Arrangements of Public Appointees

Z29.1 For the purposes of this clause

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

Consultant, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

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

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

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

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

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it

the *Employer* may

- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
- instruct the *Consultant* to replace the relevant member of Staff

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

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

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

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

Clause Z30 Not used

Clause Z31 Subconsulting

Z31.1 Before:

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

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

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

Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

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

Clause Z32 Energy Efficiency Directive

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

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

“Implementing Article 6 of the Energy Efficiency Directive”.

Clause Z33 Compliance with statutory requirements

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

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

Clause Z34 Negotiation and mediation

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

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

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

Clause Z35 Collateral Warranty Agreements

Z35.1 If Option X8 applies add the following sub-clauses to option X8:

X8.2 The *Consultant* procures that the Subconsultants referred to in the Contract Data enter into the *subconsultant collateral warranties*.

X8.3 The *Consultant* shall provide the *Employer* with duly completed *collateral warranty agreements* and / or *subconsultant collateral*

warranties in accordance with clauses X8.1 and X8.2 (as appropriate) no later than ten Working Days after the *Employer* has provided the *Consultant* with appropriate forms suitable for execution.

X8.4 If the *Consultant* fails to deliver the required *collateral warranty agreements* and / or *subconsultant collateral warranties* (or any one of them) in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has remedied the failure.

Clause Z36 Modern Slavery

Z36.1 The *Consultant* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Employer* that neither the *Consultant* nor any of its employees, agents and/or Subcontractors (as far as the *Consultant* 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 Z10) 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.

Z36.2 The *Consultant* shall notify the *Employer* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Subcontractors have, breached or potentially breached any of the *Consultant's* obligations under clause Z36.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Consultant's* obligations under clause Z36.1.

Clause Z37 Convictions

Z37.1 Unless agreed in writing in advance by the *Employer*, the *Consultant* shall procure that, in respect of all potential persons performing any of the *services*, whether an employee of the *Consultant* or any Subcontractor (each a "Named Employee"), before a Named Employee begins to attend any site at which the *services* are being or are to be carried out in connection with this contract

- each Named Employee is questioned as to whether they have any Convictions,

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- 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 *Employer*.

Z37.2 The *Consultant* 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 *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed

Z37.3 Save to the extent prohibited by applicable law, the *Consultant* shall procure that the *Employer* is informed if any member of staff of the *Consultant* (or any employee of a Subcontractor), whether a Named Employee or otherwise, involved in the provision of the *services* who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the *Consultant*.

Z37.4 Without prejudice to clause Z37.1 to clause Z37.3 (inclusive), where the *Employer* notifies the *Consultant* that the *Consultant* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer* and/or the *Employer*, the *Consultant* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *services* to the *Employer*, which may include (without limitation)

- asking any person acting for or on behalf of the *Consultant* in connection with this contract for details of any Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
- complying with the HM Government Baseline Personnel Security Standard or similar standard,

and the results of such disclosures shall be shared with the *Employer* in writing.

Clause Z38 Intellectual Property Rights

Z38.1 In this clause Z38:

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

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

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

Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.

Z38.6 In the event that any act unauthorised by the *Employer* infringes

a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.

Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.

Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related *services*.

Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.

Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Clause Z39 Financial Distress

Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any *Guarantor*.

Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a *Guarantor*

- its Credit Rating falls below the relevant *credit rating*,
- a further fall in its Credit Rating below the relevant credit rating,
- it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,

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- it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

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

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

Z39.5 If

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

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

Clause Z40 Change of Control – new guarantee

- Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).
- Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.
- Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.
- Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.
- Z40.5 If
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in

clause Z40.1 or provides the legal opinion required by clause Z40.6,

- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the Employer to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

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

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

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

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

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

Clause Z41 **Not used**

Clause Z42 **Off Shoring of Data**

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

Clause Z43**Payment forecast**

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

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

Clause Z44**Responsibility for documents**

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

Clause Z45**Apprenticeships**

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

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

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

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

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

- the number of people during the reporting period employed on this contract, including support staff and Subconsultants,

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

Clause Z46

Termination following prolonged suspension

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

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

Clause Z47

Employer's Property

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

- All Employer's Property remains the property of the *Employer*.

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

Clause Z48

Building Information Modelling

Where a BIM Protocol Applies

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

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

Where a BIM Protocol Does Not Apply

Z48.2 If the Contract Data states that a BIM Protocol does not apply then:

- if it is stated in the Contract Data that the Consultant is to act as the BIM Information Manager, the Consultant shall act as the BIM Information Manager for the Project as more fully set out in the BIM Documents;
- if it is not stated in the Contract Data that the Consultant is to act as the BIM Information Manager, the Consultant shall comply with the reasonable instructions of the BIM Information Manager in relation to the BIM Documents;
- The Employer grants to the Consultant, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (or, as the case may be, sub-licence) including the right to grant sub-licences (or, as the case may be, sub-sub-licences), to copy and make full use of the Material produced in accordance with the BIM Documents by or on behalf of the Employer (including any produced by the Consultant or another member of the professional team) for the purpose of providing the services and complying with the BIM Documents;
- Clause Z38.3 shall have no effect and neither Party shall be liable to the other for:

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- any use of Material created by (or on behalf of) it for any purpose other than that for which that Material was prepared and/or provided; or
 - any amendment or modification of the Material produced in accordance with the BIM Documents, except where such amendment or modification:
 - was made with the consent (not to be unreasonably withheld) of the party that produced it (or on whose behalf it was produced);
 - was permitted by the BIM Documents; or
 - was made for a Permitted Use following termination of the engagement of the party that produced it (or on whose behalf it was produced) in relation to this contract.

Clause Z49

Sustainability

The *Consultant* shall

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

Clause Z50

Co-operation

Z50.1 The *Consultant* shall use the standard of skill and care required in clause 21.4

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

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

Z50.2 The *Consultant* shall work with the Project Consultants so far as reasonably practicable, using the standard of skill and care required by clause 21.4, to

- to the extent reasonably within the *Consultant's* control, assist the Project Consultants in performing their obligations under their respective Project Appointments in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Consultants* in connection with the works to which the *services* relate,
- share best practice in connection with the Project; and
- collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project, on a Project Focussed basis.

Z50.3 The *Consultant* agrees, for the purposes referred to in this clause Z50, to promptly supply or allow each Project Consultant access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions by statute or this contract; and
- reasonably required by a Project Consultant to properly perform its obligations under its Project Appointment.

Z50.4 The *Consultant* shall, in complying with its obligations under this clause Z50, consult with each Project Consultant and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this contract, any Project Appointment and/or in relation to the Project.

Z50.5 Nothing in this clause Z50 shall require the *Consultant* to perform tasks and/or duties which are the responsibility of a Project Consultant under its Project Appointment.

Clause Z51 Ambiguities and Inconsistencies

In the case of any ambiguity or inconsistency between two or more of the documents forming this Contract, each prevails over or is subordinate to the other(s) in descending order as follows:

- Option Z – Additional Conditions of Contract (**z clauses**)
- the conditions of contract other than the z clauses
- the Contract Data Part 1
- the *programme*
- the Risk Register
- the Scope
- the Contract Data Part 2
- the *activity schedule*
- any other contract documents

Clause Z52 Amendment to Option X2 (Change in Law)

Z52.1 Delete existing clause X2 and replace with:

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

- it occurs after the Contract Date; and
- an experienced *Consultant* using the Contract Standard as set out in clause 21.4 would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

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

Clause Z53 Amendment to clause 18 (Prevention)

Z53.1 Delete existing clause 18.1 and replace with:

"If a Force Majeure Event comes to the notice of a Party it notifies the other Party and the *Employer* may give the *Consultant* an instruction as to how the *Consultant* is to respond to the Force Majeure Event. The *Employer* may first instruct the *Consultant* to submit proposals as to how

the *Consultant* should respond and may postpone giving any further instruction until after he has received the *Consultant's* proposals.”

Clause Z54

Amendment to clause 21 (The *Consultant's* obligations)

Z54.1 Insert new clauses:

- "21.3 Subject always to the Contract Standard referred to in clause 21.4, the *Consultant* warrants to the *Employer* that to the extent it either is obliged to specify or approve materials, products or goods for use in the project or does so specify or approve, it shall not specify or approve anything that is Deleterious Materials.
- 21.4 Notwithstanding the requirements of clause 21.2, the *Consultant's* obligation is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Consultant's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope, character, and complexity as the *services*, herein referred to as the "**Contract Standard**".
- 21.5 The *Consultant* designs those parts of the *service* which the Scope states that it is to design.
- 21.6 In respect of all designs which the *Consultant* carries out and those for which it is responsible under the contract, the *Consultant* warrants to the *Employer* that it has exercised and will exercise the Contract Standard.
- 21.7 No inspection, approval or review by or on behalf of the *Employer* or any Beneficiary, and no omission to inspect or review or to disapprove negates or diminishes any duty or liability of the *Consultant* under the contract. "

Clause Z55

Amendment to clause 22 (People)

Z55.1 Insert new clauses:

- 22.3 The *Consultant* shall notify the *Employer* of any proposed new or replacement *key persons* as soon as he becomes aware of the same.

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- 22.4 The *Employer* may interview any proposed new or replacement *key persons*.
- 22.5 The *Employer* notifies the *Consultant* in writing of any objections to the proposed new or replacement *key persons* within two (2) weeks of receipt of the *Consultant's* notice given under clause 22.3. If the *Employer* notifies the *Consultant* of objections, the *Consultant* does not engage the proposed *key person* and may propose another *key person*.
- 22.6 The *Consultant* uses all reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any key persons to ensure continuity in Providing the Services. The *Consultant* shall use all reasonable endeavours to ensure that, where feasible and within the reasonable control of the *Consultant*, there is a handover period of not less than four (4) weeks from the outgoing *key person* to the incoming one.
- 22.7 The *Consultant*, at all relevant times, engages an adequate number of competent, suitably qualified and experienced Consultant Personnel to Provide the Services.
- 22.8 The *Employer* (acting reasonably) may require any member of the Consultant Personnel be replaced if in the reasonable opinion of the *Employer* their performance is unsatisfactory and/or they have breached any security-related requirements referred to in this contract and/or as specified by the *Employer* from time to time, in which case the *Consultant* shall ensure that the relevant member of the Consultant Personnel be replaced by an alternative person / party with at least the same experience and expertise as the outbound member of the Consultant Personnel at no additional cost to the *Employer* (subject always to the *Employer's* prior written approval)."

Clause Z56

Amendment to clause 60 (Compensation events)

- Z56.1 Substitute "The *Employer*" with "Subject to clause 60A the *Employer*"
- Z56.2 Delete clause 60.1(11) and substitute:
- "60.1(11) A Force Majeure Event which is not any other compensation event stated in this contract, provided that there is no change to the Prices on account of a Force Majeure Event unless (and in

that case only to the extent that) the *Client's* instructions under clause 18 vary the Scope."

Z56.3
Insert
new

clause:

"60.1(13) a COVID-19 Event."

Z56.4

Insert new clause:

"60A If the *Employer* instructs a change to a Key Date connected to a 1st Block or 2nd Block Completion Certificate Issue (a "Completion Key Date") and the revised Completion Key Date is on or before the equivalent Completion Key Date set out in the original Invitation to Tender programme, the *Employer* and the *Consultant* agree there shall be no change to the Prices

Clause Z57

Key Performance Indicators

Z57.1 Delete existing clause X20.1 and replace with:
"The Key Performance Indicators are set out in Annex 3."

Z57.2 In clause X20.3, delete "Incentive Schedule" and replace with
"Key Performance Indicator schedule attached at Annex 3"

Z57.3 Delete X20.4.

ANNEX 1 THE SCOPE

ANNEX 2 – ACTIVITY SCHEDULE [REDACTED]

ANNEX 3 – KEY PERFORMANCE INDICATORS [REDACTED]

ANNEX 4 – MINIMUM INFORMATION FOR INCLUSION IN THE RISK REGISTER
[REDACTED]

**CONTRACT SCHEDULE 1 – TEMPLATE FORM OF COLLATERAL WARRANTY IN FAVOUR OF
A BENEFICIARY [REDACTED]**

CONTRACT SCHEDULE 2 – TEMPLATE FORM OF DEED OF GUARANTEE [REDACTED]

CONTRACT SCHEDULE 3 – SECURITY POLICY [REDACTED]

CONTRACT SCHEDULE 5 – BIM REQUIREMENTS [REDACTED]