
**TRAFFIC MANAGEMENT TECHNOLOGY FRAMEWORK SCHEDULE 4C –
TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3
PROFESSIONAL SERVICES CONTRACT), CONTRACT DATA AND Z
CLAUSES**

**TMTii 05 - Management of the SMCALo
and its Website for Highways England SMCALo Operations**

(Smart Motorway Calibration and Optimisation Services)

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Date.....

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract

Between

HIGHWAYS ENGLAND COMPANY LIMITED

And

.....
For the provision of:

**TMTii 05 - Management of the SMCALo
and its Website for Highways England SMCALo Operations**

(Smart Motorway Calibration and Optimisation Services)

A. PROFESSIONAL SERVICES CONTRACT ANNEX A - FORM OF AGREEMENT

- This whole section will be completed and issued by Highways England at the Award Stage to the successful *Consultant* who will sign and return to Highways England.

THIS AGREEMENT is made the [.....]day of [.....]

PARTIES:

1. **HIGHWAYS ENGLAND COMPANY LIMITED** which is a company registered in [] (under company number 09346363) and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ **OR** [acting as part of the Crown] (the "**Employer**"); and
2. **[FRAMEWORK SUPPLIER NAME]** which is a company incorporated in and in accordance with the laws of [] (Company No. [] whose registered office address is at [] (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 traffic management technology and associated services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM1089**) which is dated **[insert date of framework agreement with the Consultant]** (the "**Framework Agreement**").
- (C) On the **[insert date of issue of tender]** the *Employer*, acting as part of the Crown, invited the *Consultant* along with other framework suppliers to tender for the *Employer's* traffic management technology and associated services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the **[insert date of tender response]** the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to carry out the *services* in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

This agreement (the "Call Off Contract") incorporates the conditions set out below of:

- The core clauses of the: NEC3 Professional Services Contract (April 2013)
the clauses for main Option **G**
dispute resolution Option **W1**

secondary Options **X1, X18**

Y(UK)1, Y(UK)3

and option Z (being the amendments identified in the Contract Data),
which are supplemented and amended in accordance with such information
and supplementary provisions as are provided in the Contract Schedules.

Together the “Conditions”

The “Contract Schedules” means any one, or all, of the annexes appended to this
Call Off Contract.

2. Entire Agreement

- 2.1. 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.
- 2.2. Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract.
- 2.3. Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

3. Documents

- 3.1 The documents forming part of this Call Off Contract are:
 1. this form of agreement duly executed by the Parties
 2. the Conditions
 3. the Contract Data
 4. the Scope
 5. *the staff rate card*
 6. Collaborative Performance Framework v3.0 - TMT2
 7. *Consultant's* submitted Quality Submission
 8. *Consultant's* submitted Risk Register
 9. *Consultant's* submitted Information Assurance Requirements
 10. *Consultant's* submitted *key people* schedule and accompanying CVs
 11. The following online Bravo Forms completed by the *Consultant*:
 - a) Anti-Collusion Certificate
 - b) Fair Payment Charter
 - c) Anti-Bribery Code of Conduct
 - d) Anti-Fraud Code of Conduct
 - e) Tender Questions and Answers
 - f) Tender Clarifications, validations, sustainability and all other checks (to be listed at the award stage)

Delivered on the date of this document.] =

Signed for and on behalf of Highways England

By:

Name:

Title : **Authorised Signatory**

Date :

Signed for and on behalf of the *Consultant*

By :

Name :

Title : Company Secretary / Director

Date :

B. PROFESSIONAL SERVICES CONTRACT ANNEX B - CONDITIONS OF CONTRACT

NEC3 PROFESSIONAL SERVICES CONTRACT (APRIL 2013) CORE CLAUSES

- Optional Clauses are listed in the Contract Data at Annex C
- Z Clauses for this contract are listed at Annex D

C. PROFESSIONAL SERVICES CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO

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 **G**, dispute resolution Option **W1** and secondary Options **X1**, **X18**, **Y(UK)1**, **Y(UK)3** and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is Highways England Company Limited a company incorporated in and in accordance with the laws of England and Wales having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ
 - The *Adjudicator* is the person chosen by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators for non-engineering services
 - The *services* are detailed in the Scope
 - The Scope is the document titled “TMTii 05 - Scope.docx”
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England, subject to the jurisdiction of the Courts of England.
 - The *period for reply* is two weeks.
 - The *period for retention* is **6** years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the Chartered Institute of Arbitrators
 - The *tribunal* is arbitration

The following matters will be included in the Risk Register: see the *Consultant's* completed Risk Register

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things
 - access to *access date*

access to	<i>access date</i>
All existing programme & project documentation.	2 weeks from the <i>starting date</i> .

- 3 Time**
- *The starting date* is 'Contract Date'
 - The *Consultant* submits revised programmes at intervals no longer than **one month**.

- 4 Quality**
- The quality policy statement and quality plan are provided within **4 weeks** of the Contract Date.
 - The *defects date* is **12 months** after Completion of the whole of the *services*.

- 5 Payment**
- The *assessment interval* is **one month**
 - The *currency of this contract* is the pound sterling (£).
 - The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.
 - The *staff rates* are the rates calculated using the method set out in the document entitled "TMTii 05 – price schedule".
 - The expenses stated by the Employer are in the Travelling and subsistence Highways England document

8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
<p>failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i></p>	<p>A limit of indemnity of not less than £1 million in respect of any one claim without limit to the number of claims in any annual policy period, but £1 million any one claim and in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and £1 million pounds any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant policy).</p>	<p>from the <i>starting date</i> until six years following completion of the whole of the <i>services</i> or earlier termination</p>
<p>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></p>	<p>A limit of indemnity of not less than £1 million in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £1 million any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy)</p> <p>In respect of use of motor vehicles a limit of indemnity as required by statute.</p>	<p>from the <i>starting date</i> until all notified Defects have been corrected or earlier termination</p>

death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	<i>Employers</i> Liability Insurance with a limit of indemnity of £1 million any one occurrence the number of occurrences being unlimited in any annual policy period or as required by statute whichever is the higher.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
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- *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 **£1 million**.

Optional Statements

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

- The *completion date* for the whole of the *services* is **2 years**.
(there are two + 6 month extension options)

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

- The *Consultant* is to submit a first programme for acceptance within **4 weeks** of the Contract Date.

If the *tribunal* is arbitration

- The *arbitration procedure* is the Chartered Institution of Arbitrators' Arbitration Rules (2000)
- The place where arbitration is to be held is London
- The person or organisation who will choose an arbitrator
 - if the Parties cannot agree a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator is the President or Vice President of the Chartered Institute of Arbitrators

If Option C, E or G is used:

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than **one month**.
- The *exchange rates* are those published in the Financial Times on the *assessment date* when payment in another currency is included in the Price for Services Provided to Date.

Option X1 If Option X1 is used

- The *index* is the Consumer Prices Index (CPIY)

Option X18 If Option X18 is used

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to **£0**.
- The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to **3 Months**.
- The *end of liability* date is **6 years** after Completion of the whole of the *services*.
- The *Consultant* is not liable to the *Employer* for loss or damage to the *Employer's* property in excess of **£1 million**.

Option Y(UK)1 If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the project bank

- The *Employer* is to pay and charges made and is paid any interest paid by the *project bank*

Option Y(UK)3 • If Options Y(UK)1 and Y(UK)3 are being used

term	person or organization
The provisions of Option Y(UK)1	Named Suppliers

Contract Data relating to Z Clauses

If Clause Z34 applies

- the *failure level* is **6**
- The *relevant services* and the *relevant service conditions* are in the TMTii 05 Scope.

Option Z • The additional conditions of contract are clauses Z1 to Z52 set

Part two – Data provided by the *Consultant*

- 1 General**
- The *Consultant* is
 - Name
 - Address

- 2 The Parties' main responsibilities**
- The *key people* are the people listed in the *Consultant's* completed *key people* schedule.
 - The following matters will be included in the Risk Register - see the *Consultant's* completed Risk Register

- 4 Quality**
- The Quality Statement is

- Optional statements**
- The key people are the people listed in the key people schedule.
 - The staff rates are as per the submitted price schedule
 - The task schedule is as per the submitted price schedule
 - The following matters will be included in the Risk Register - see submitted Risk Register

If Option Y(UK)1 is used

- The *project bank* is
- The *named suppliers* are
- If Options Y(UK)1 and Y(UK)3 are being used**

term	person or organization
The provisions of Option Y(UK)1	Named Suppliers

If Clause Z48 applies

- The *relevant services* and the *relevant service conditions* are:

<i>Relevant Service</i>	<i>Relevant Service Condition</i>
Supply, deliver and operation of SMCALo to tasks T02,T03 and T05 including for TMTii 05 Scope term contract Section 3 employer's requirements.	Operational performance of SMCALo to tasks T02,T03 and T05 including for TMTii 05 Scope term contract Section 3 employer's requirements.
Provision and maintenance of a technical repository in ESCROW	Technical repository in ESCROW established for the duration of the service

Contract Data **If clause Z49 applies**

related to Z clauses:

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

party	rating agency	<i>credit rating</i>
[Consultant]		
[Consortium Member]		
[Guarantor]		

D. PROFESSIONAL SERVICES CONTRACT ANNEX D – OPTIONAL Z CLAUSES

Professional Services Contract

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.

Clause Z2 Corrupt practices

Z2.1 The *Consultant* does not:

- offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*; or
- enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z2.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z3 Recovery of sums due from *Consultant*

Z3.1 Where under this contract or any other contract between the *Consultant* and the *Employer* any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Employer*.

Clause Z4 Assignment

Z4.1 The *Consultant* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.

Z4.2 The *Employer's* ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.

Z4.3 If requested by the *Employer*, the *Consultant* executes a novation agreement transferring the benefit and burden of this contract to

-
- a consultant engaged by the *Employer* for the design and construction of works to which the *services* relate,
 - another Department or Office of Her Majesty's Government,
 - a local authority
 - an organisation established to take over the *Employer's* functions or part of them or
 - any other body (including private sector body) exercising similar functions

The novation agreement is in the form set out in the Scope or such other form as the *Employer* may reasonably require.

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 Providing 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 employed by the *Consultant* is required to carry out any activity alongside the *Employer's* employees in any premises, 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.

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z49 [Financial Distress] and Z50 [Change of Control – new guarantee] and Z51 [Parent Company Guarantee]

- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
- **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
- **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
- **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
- **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into
- **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope.

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- Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
 - the composition of the *Consultant*. A change is material if it
 - directly or indirectly affects the performance of this contract by the *Consultant* or
 - is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.
- 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 NEC3 *Adjudicator's* Contract (April 2013) 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 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 Option Y(UK)1 from the NEC3 Professional Services Contract (April 2013) applies to this contract.
- 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 Prevention of fraud and bribery

- Z10.1 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.
- Z10.2 In this clause Z10, Prohibited Act means any of the following:
- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* 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;
 - committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - under legislation creating offences concerning fraud; or
 - at common law concerning fraud; or
 - committing (or attempting or conspiring to commit) fraud.

Clause Z11 *Employer's Codes of Conduct*

Z11.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct, collectively 'the Codes'. The *Consultant* complies with the Codes until Completion and with

- paragraph 4 of the *Employer's* Anti Bribery Code of Conduct and
- paragraph 3 of the *Employer's* Anti Fraud Code of Conduct

for a period of 6 years after Completion.

Z11.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z12 *Payment for subcontracted services*

Z12.1 In assessing the amount due at an assessment date, the Time Charge for *services* provided by a Subconsultant (other than a Named Supplier) is retained from the *Consultant* unless, at the assessment date, the *Consultant* has paid the Subconsultant for the *services*.

Z12.2 An amount retained is included in the amount due at the assessment date after the *Consultant* has paid the Subconsultant for the *services*.

Z12.3 When submitting an invoice, the *Consultant* demonstrates that payment has been made for the Time Charge included in the invoice in respect of *services* provided by a Subconsultant.

Clause Z13 *Fair payment*

Z13.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z13.2 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*.

Z13.3 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.

Z13.4 A failure to comply with this condition is treated as a substantial failure

by the *Consultant* to comply with his obligations.

Clause Z14 Confidentiality

Z14.1 A new clause 70.3 is deleted and replaced by the following:

“The *Consultant* keeps (and ensures that his employees and Subconsultants keep) confidential and does not:

- disclose to any person the terms of this contract nor
- use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Services

except that the *Consultant* may disclose information

- to his legal or other professional advisers,
- to his employees and Subconsultants as needed to enable the *Consultant* to Provide the Services,
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Employer* and takes full account of the *Employer's* views about whether (and if so to what extent) the information should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
- with the consent of the *Employer*.

Z14.2 The *Consultant* may only disclose the *Employer's* Confidential Information to its personnel who are directly involved in Providing the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.

Z14.3 The *Consultant* may only disclose the *Employer's* Confidential Information to its personnel who need to know the information, and shall ensure that its 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 of the *Consultant's* 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 of the *Consultant's* 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 the *Consultant's* personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges

with the *Consultant's* personnel in connection with obligations as to confidentiality.

Z14.4 At the written request of the *Employer*, the *Consultant* shall procure that those members of the *Consultant's* personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z14.5 Where the *Employer* supplies the *Consultant* with press cuttings provided to the *Employer* under the terms of the *Employer's* licence with the Newspaper Licensing Agency ("NLA"), the *Consultant* does not reproduce the cuttings or forward them to any third party unless the *Consultant* has first entered into an agreement with NLA authorising it to do so.

Clause Z15 Not Used

Clause Z16 Official Secrets Act

Z16.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.

Z16.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.

Z16.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z17 Data protection

Z17.1

(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*.

Z17.2 For the purposes of this contract and the Data Protection Acts

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

Z17.3 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.

Z17.4 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.

Z17.5 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.

Z17.6 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.

Z17.7 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.

Z17.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z17.9 The *Consultant* does not process Personal Data outside the European Economic Area (the "EEA") without the prior written agreement of the *Employer*.

Z17.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Consultant* sends the *Employer* details of:

Z17.10.1 the Personal Data which will be processed outside the EEA;

Z17.10.2 the countries where the Personal Data will be processed;

Z17.10.3 any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and

Z17.10.4 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.

Z17.11 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 Z18 Disclosure of information

Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

Z18.2 The *Consultant* acknowledges that the *Employer* may receive

Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.

- Z18.3 When requested to do so by the *Employer*, the *Consultant* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.
- Z18.4 The *Consultant* promptly passes any Disclosure Request which it receives to the *Employer*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.
- Z18.5 The *Consultant* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled “Transparency – Publication of New Central Government Contracts” dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Employer* has the final decision. The *Consultant* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer’s* obligation.

Clause Z19 Records and Audit Access

- Z19.1 The *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with the contract for a period of 6 years after the completion
- Z19.2 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.
- Z19.3 The *Consultant* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary.
- Z19.4 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. The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any Subconsultant. The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary.

Clause Z20 Reporting: Small and Medium Enterprises

Z20.1 In this clause Z17 SME is

- a Subconsultant or
- a subconsultant to a Subconsultant

and

- is autonomous,
- is a European Union enterprise not owned or controlled by a 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.

Z20.2 For each SME employed on the *services*, the *Consultant* reports to the *Employer* each quarter 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 of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

Z20.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z20.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z20 to any Government Department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z20.4 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 Z20.2 and
- obligations substantially similar to those set out in this clause Z20.

Z20.5 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 Z20.4.

Z20.6 Not used

Clause Z21 Changes to rates and prices

Z21.1 The Parties may at any time agree a reduction to the Prices.

Z21.2 The reduced Prices apply to any *services* performed after the reduction is agreed.

Z21.3 If the *Consultant* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Consultant's* obligation to Provide the *Services* by notifying the *Consultant*.

Clause Z22 Euro functionality

Z22.1 The *Consultant* Provides the *Services* in such a way that the services

- would not be prejudiced by the implementation of the Euro,
- comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97,
- are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
- are in accordance with the *Employer's* requirements both for Sterling and for the Euro.

Clause Z23 Not used

Clause Z24 The *Employer's* liability

Z24.1 The *Employer's* total liability to the *Consultant* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **£2.5 million**, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.

Z24.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for

- the total of the Prices for all Tasks instructed under this contract for Option G, and
- the *Consultant's* share under clause Z31.2, if Option G applies, for each Task to which that clause applies.

Z24.3 The *Employer's* liability to the *Consultant* is limited to that proportion of the *Consultant's* losses for which the *Employer* is responsible under this contract.

Clause Z25 Tax Non-Compliance – not used

Clause Z26 Quality Management Points

-
- Z26.1 Quality Management Points are points accrued by the *Consultant* in accordance with the Quality Table. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Consultant*, the *Employer* or the relevant accreditation body
- Z26.2 If the *Consultant* fails to comply with his quality management system, the *Consultant* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table.
- Z26.3 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.
- Z26.4 If the number of Quality Management Points in effect at any time is more than 25 points, the *Consultant* and the *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Consultant* submits a report to the *Employer* within one week of the meeting setting out
- the actions agreed at the meeting and
 - any other actions which the *Consultant* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.
- Z26.5 If the *Employer* does not accept the *Consultant's* proposals or the *Consultant* does not take the agreed actions, the *Employer* serves a quality warning notice on the *Consultant*. Within one week of receipt of the quality warning notice, the *Consultant* submits a report to the *Employer* setting out the actions which the *Consultant* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.
- Z26.6 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Consultant* takes the actions detailed in his reports and submits weekly update reports to the *Employer* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.
- Z26.7 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as a substantial failure by the *Consultant* to comply with his obligations.

Quality Table

Failure	Quality Management Points	Period of effect
Failure to have a complete Quality Plan in place and operating	25	Until audit confirms that Quality Plan complete and operating
The Quality Plan does not comply with the requirements of this contract	10 per failure	Until audit confirms that Quality Plan complies
Failure to raise a Non-Conformity report	5 per Non-Conformity	6 months
Failure to raise a corrective action report	5 per Non-Conformity	6 months
Failure to correct Quality Plan in manner set out in a corrective action report (see note 1 below)	10 per failure	Until failure corrected
Failure to implement recommendations in [audit report] (see note 1 below)	5 per recommendation	Until audit confirms that recommendation implemented
Failure to carry out internal audit	25 per audit	Until audit carried out
Carrying out work without [release of hold point]	10 per item	6 months
Failure to make records available for inspection by the <i>Employer</i>	10 per failure	Until the records are made available
Failure to allow access for <i>Employer</i> audits	10 per failure	Until <i>Employer</i> audit is carried out
Failure by Consultant to accrue Quality Management Points that should have been accrued	The number of Quality Management Points that should have been accrued	Applicable to the failure that should have accrued Quality Management Points
	plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued	6 months
Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

Clause Z27 Transfer of work

Z27.1 If the *Employer* wishes to have work carried out within the Scope and

- the *Employer* is unable to issue a Task Order to the *Consultant* due to a conflict of interest,
- the *Consultant's* average monthly performance threshold score has been below six for a period of three months or more,
- the *Consultant's* proposals for improvement have not been accepted,
- the *Employer* does not accept the *Consultant's* resources or the *Consultant's* forecast of the Prices for a proposed Task,
- the *Consultant* has more than 25 Quality Management Points in effect,

the *Employer* may issue a Task Order for the work to another *Consultant*.

Clause Z28 Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

Z28.1 The *Consultant* provides to the *Employer* within 10 days of the *Employer's* request such information in connection with TUPE as the *Employer* may require. The *Consultant* promptly notifies the *Employer* of any later change to information provided by it.

Z28.2 The *Consultant* acknowledges that the *Employer* may disclose information provided by the *Consultant* to

- any replacement provider of services similar to the services and
- any person tendering to become a replacement provider.

The *Employer* obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).

Z28.3 During the 8 month period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Employer* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this contract,
- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or
- move or deploy any key person away from the performance of the services.

The *Employer* may withhold acceptance if the proposal would increase the cost to the *Employer* of this or any future contract for the services.

Z28.4 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the services.

Clause Z29 Extension of the contract

Z29.1 The *Employer* may notify the *Consultant* that the Completion Date is to be delayed by **up to one year in two six month increments**.

Z29.2 The *Employer* does not notify the *Consultant* of any delay to the Completion Date later than **18 months** after the Contract Date.

Clause Z30 Changes to *staff rates* and *Subconsultants*

Z30.1 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) 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.

Z30.2 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*.

Z30.3 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*.

Z30.4 The *Consultant* includes in the conditions of contract for each Subconsultant

- provisions substantially similar to those set out in clause Z30.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z30,

-
- 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 Z31 Payment options

Z31.1 The *Employer* may notify the *Consultant* that the total of the Prices for a proposed Task Order be treated as a lump sum or target price.

Z31.2 If the *Employer* notifies the *Consultant* that the total of the Prices for a proposed Task Order be treated as a target price,

- If the effect of a compensation event is to reduce the total Time Charge and the event is a change to the Task, other than a change to the Task which the *Consultant* proposed and the *Employer* has accepted, the Prices are reduced.
- The *Employer* assesses the *Consultant's* share of the difference between the total of the Prices and the Time Charge for the Task. The difference is divided into increments falling within each of the share ranges. The limits of a share range are the Time Charge divided by the total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each share range and the corresponding *Consultant's share percentage*.
- If the Time Charge is less than the total of the Prices, the *Consultant* is paid his share of the saving. If the Time Charge is greater than the total of the Prices, the *Consultant* pays his share of the excess.
- The *Employer* makes a preliminary assessment of the *Consultant's* share at Completion of the whole of the services in the Task Order using his forecasts of the final Time Charge and the final total of the Prices. This share is included in the amount due following Completion of the whole of the services in the Task Order.
- The *Employer* makes a final assessment of the *Consultant's* share using the final Time Charge and the final total of the Prices. This share is included in the final amount due for the services in the Task Order.
- If, prior to Completion of the whole of the services in the Task Order, the Time Charge for the Task exceeds the total of the Prices, the *Employer* makes an assessment of the *Consultant's* share of the difference between the total of the Prices and the Time Charge for the Task at each assessment date. The total of the Prices includes the *Employer's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.

If there is a termination, the *Employer* assesses the *Consultant's* share. His assessment uses the total of the Time Charge which the *Consultant* has paid and which he is committed to pay for work done before termination and a

proportion of the total of the Prices which is the proportion of the work which has been completed. The *Employer's* assessment of the *Consultant's* share is added to the amount due to the *Consultant* on termination if there has been a saving or deducted if there has been an excess.

Clause Z32 Not Used

Clause Z33 Not Used

Clause Z34 Termination and omission of work

Z34.1 If the *Employer* instructs a change to the Scope which involves the omission of part of the services, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the services.

Z34.2 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*”.

Z34.3 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*, or
- the *Consultant's* performance as measured in accordance with the current edition of the collaborative performance framework (or any replacement for it) is below the *failure level*.

Clause Z35 Not Used

Clause Z36 Termination – PCRs, Regulation 73

Z36.1 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if one 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. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Z36.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services 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 Z37 Value Added Tax (VAT) Recovery

Z37.1 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 Z38 Tax Arrangements of Public Appointees

Z38.1 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.

Z38.2 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.

Z38.3 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.

Z38.4 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 Z38.2 and Z38.3 or why those clauses do not apply to it.

Z38.5 If the *Consultant* fails to provide information in response to a request under clause Z38.4

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z38.2 and Z38.3 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

Z38.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z38.2 and Z38.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z38.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z38.4 or Z38.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs [or Revenue Scotland]^[1] for the purpose of the collection and management of revenue for which they are responsible.

Clause Z39 Consortia

Z39.1 Where two or more Consortium Members comprise the *Consultant*, each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Consultant's* obligations under this contract.

Z39.2 If the joint venture arrangement is terminated for any reason, the *Employer* may

- terminate this contract with immediate effect and
- treat the termination of this contract as a substantial failure by the *Consultant* to comply with his obligations.

Z39.3 Clause 90.1 of the conditions of contract is amended by inserting after "the other Party" in each of the second, third and fourth places where it appears the words "(or, in the case of the *Consultant*, any Consortium Member)".

Clause Z40 Subconsulting

Z40.1 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.

Z40.2 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.

Z40.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z40.1.

Z40.4 If, following the acceptance of a submission under clause Z40.2, 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 Z41 Energy Efficiency Directive

Not used

Clause Z42 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 Z43 Not Used

Clause Z44 Not Used

Clause Z45 Not Used

Clause Z46 Not Used

Clause Z47 Not Used

Clause Z48 Intellectual Property Rights

Z48.1 In this clause Z48:

Affiliate is in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

Central Government Body is a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- Government Department;
- Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- Non-Ministerial Department; or
- an Executive Agency of one of the above

and any body corporate that is a wholly owned subsidiary of one of the above.

Commission Date for a *relevant service* is the day on which the commissioning of a *relevant service* is successfully completed and its *relevant service conditions* are met.

Confidential Information is

- information, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party in connection with this contract that relates to
 - the Disclosing Party Group or
 - the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how and/or personnel of the Disclosing Party Group,
- other information provided by the disclosing Party in accordance this contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this contract,
- discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this contract and all matters arising therefrom; and
- information derived from any of the above, but not including any information which
- was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the disclosing Party,
- the Recipient obtained on a non-confidential basis from a third

party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the Recipient,

- was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this contract or breach of a duty of confidentiality or
- was independently developed without access to the Confidential Information.

Consultant Background IPR is IPR owned by the *Consultant* or a third party before the Contract Date or created by the *Consultant* or a third party independently of this contract, which in each case is or will be used before or during the Contract Period for designing, testing, implementing or Providing the Services, but excluding IPRs owned by the *Consultant* subsisting in the Consultant Software or by any third party in Third Party Software.

Consultant Equipment is the hardware, computer and telecoms devices and equipment used by the *Consultant* or its Subconsultants (or any subconsultant of any tier to the *Consultant*) (but not hired, leased or loaned from the *Employer*) for the Providing the Services.

Consultant Software is software which is proprietary to the *Consultant* (or an Affiliate of the *Consultant*) and which is or will be used by the *Consultant* for the purposes of Providing the Services, including the software specified as such in the Software Schedule.

Consultant System is the information and communications technology system used by the *Consultant* in implementing and performing the *services* including the Software, the Consultant Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Employer System).

Contract Period is the period commencing on the *starting date* and ending on the Completion Date or on the date of earlier termination of this contract.

Control is the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **Controls** and **Controlled** are to be interpreted accordingly.

Deposited Software is the Software the Source Code of which is to be placed in escrow as required by the *Employer* and notified to the *Consultant* from time to time including as identified in the Software Schedule.

Disclosing Party Group is where the disclosing Party is

- the *Consultant*, the *Consultant* and any Affiliates of the *Consultant*; and
- the *Employer*, the *Employer* and any Central Government Body with which the *Employer* or the *Consultant* interacts in

connection with this contract.

Documentation is descriptions of the *services*, the *Consultant's services* solution, performance measures, details of the Consultant System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as

- is required to be supplied by the *Consultant* to the *Employer* under this contract,
- would reasonably be required by a competent third party capable of Good Industry Practice contracted by the *Employer* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *service* or make use of the *service*,
- is required by the *Consultant* in order to Provide the Services and/or
- has been or is generated in order to Provide the Services.

Employer Background IPR is IPR owned by the *Employer* before the Contract Date, or created by the *Employer* independently of this contract, and Crown Copyright which is not available to the *Consultant* otherwise than under this contract, but excluding IPRs owned by the *Employer* subsisting in the Employer Software.

Employer Software is software which is owned by or licensed to the *Employer* (other than under or pursuant to this contract) and which is or will be used by the *Consultant* in order to Provide the Services.

Employer System is the *Employer's* computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the *Employer* or the *Consultant* in connection with this contract which is owned by the *Employer* or licensed to it by a third party and which interfaces with the Consultant System or which is necessary for the *Employer* to receive the *service*.

Good Industry Practice is at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the *service* to a customer like the *Employer*, such supplier seeking to comply with its contractual obligations in full and complying with any applicable laws.

Indemnified Person is the *Employer* and each and every person to whom the *Employer* (or any direct or indirect sub-licensee of the *Employer*) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this contract.

Intellectual Property Rights or IPRs are:

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;
- applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction; and
- all other rights having equivalent or similar effect in any country or jurisdiction.

IPRs Claim is any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Employer Software by or on behalf of the *Consultant*, in either case for a purpose not reasonably to be inferred from the Scope or the provisions of this contract.

Object Code is software and/or data in machine-readable, compiled object code form.

Open Source Software is software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.

OSS is the Open Source Software listed in the Software Schedule.

Recipient is the Party which receives or obtains directly or indirectly Confidential Information.

Relevant IPR is IPRs used to Provide the Service or as otherwise provided and/or licensed by the *Consultant* (or to which the *Consultant* has provided access) to the *Employer* or a third party in the fulfilment of the *Consultant's* obligations under this contract including IPRs in the Specially Written Software, the Consultant Software, the Consultant Background IPRs and the Third Party Software but excluding any IPRs in the Employer Software and the Employer Background IPRs.

Software is Specially Written Software, Consultant Software and Third Party Software.

Software Schedule is the Software Schedule unless later changed in accordance with this contract.

Source Code is computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use,

reproduction, maintenance, modification and enhancement of such software.

Specially Written Software is any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the *Consultant* (or by a Subconsultant (or any subconsultant of any tier to the *Consultant*) or other third party on behalf of the *Consultant*) specifically for the purposes of this contract, including

- any Consultant Background IPRs that are embedded in or which are an integral part of such software; and
- any modifications or enhancements to Consultant Software or Third Party Software created specifically for the purposes of this contract.

Third Party Software is software which is proprietary to any third party (other than an Affiliate of the *Consultant*) which in any case is, will be or is proposed to be used by the *Consultant* for the purposes of Providing the Services, including the software specified as such in the Schedule Software and including OSS.

Z48.2 All Intellectual Property Rights in:

- Employer Background IPR;
- Employer Software; and
- documents and other materials created by or on behalf of the Employer in connection with the contract

are and remain the property of the *Employer* or the Crown, and the *Consultant* does not acquire any right, title or interest therein or thereto.

Z48.3 All Intellectual Property Rights in:

- Consultant Background IPR,
- Consultant Software and
- Specially Written Software

are and remain the property of the *Consultant*, and neither the *Employer* nor the Crown acquire any right, title or interest therein or thereto.

Z48.4 The *Consultant* hereby assigns to the *Employer*, with full title guarantee, title to and all rights interest in all present and future Intellectual Property Rights in all documents and other materials (excluding Specially Written Software) created by or on behalf of the *Consultant* or any Subconsultant (or any subconsultant of any tier to the *Consultant*) in performing its obligations under, or otherwise in connection with, this contract, or procures that the first owner thereof assigns them to the *Employer* on the same basis. The *Consultant* obtains from Subconsultants (or any subconsultant of any tier to the *Consultant*) equivalent rights over all documents and other materials

(excluding Specially Written Software) prepared by the Subconsultant (or any subconsultant of any tier to the *Consultant*). This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.

Z48.5 The *Consultant* waives or procures a waiver of any moral rights in any copyright works assigned to the *Employer* pursuant to this contract.

Z48.6 The *Consultant* hereby grants, or procures the direct grant, to the *Employer* a perpetual, royalty-free, non-exclusive and irrevocable licences to use (to include the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the:

- Consultant Software;
- Consultant Background IPR; and
- Third Party Software

for any purpose relating to the *services* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer's* (or any other Central Government Body's) business or function. The licence granted under this clause Z48.6 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees or any third party.

Z48.7 The *Consultant* hereby grants to the *Employer*, or procures the direct grant to the *Employer* of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use for any purpose (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate)

- the Documentation, Source Code and the Object Code of the Specially Written Software; and
- all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”).

The licence granted under this clause Z48.7 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees.

Z48.8 The *Consultant* delivers to the *Employer* the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials as necessary to meet its obligations under the contract and upon request by the *Employer* at any time, and provides updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is acceptable to the *Employer*. The *Consultant* acknowledges and agrees

that the ownership of the media referred to in clause in this clause Z48.8 vests in the *Employer* upon their receipt.

Z48.9 The *Employer* is freely entitled to sub-license the rights granted to the *Employer* under clauses Z48.6 and Z48.7 to any third party on terms no broader than those granted to the *Employer*. Without prejudice to the generality of the foregoing, the terms of any sub-licence granted pursuant to this clause may, in the *Employer's* absolute discretion, permit any sub- licensee to further sub-licence the sub-licensed rights. In respect of any sub-licence of the rights granted to the *Employer* under clauses Z48.6, if requested by the *Consultant* the sub- licensee executes a confidentiality undertaking in favour of the *Consultant* or third party owner of the relevant rights in such reasonable form as the *Consultant* requires and the *Employer* approves in writing.

Z48.10 The *Consultant* informs the *Employer* of all Specially Written Software that constitutes a modification or enhancement to Consultant Software or Third Party Software.

Z48.11 The *Consultant* warrants that

- the Software does not contain any Open Source Software other than OSS and
- the OSS is licensed upon terms which permit the use of such Open Source Software by the *Consultant*, the *Employer* and the *Employer's* end users for all purposes contemplated by this contract.

Z48.12 The *Consultant* warrants to the *Employer* that all components of the Software:

- are free from material design and programming errors,
- provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Statement,
 - the Documentation and
- do not infringe any Intellectual Property Rights,

Z48.13 The *Employer* grants to the *Consultant*, or procures the direct grant to the *Consultant* of, a royalty-free, non-exclusive, non-transferable, revocable licence to use all Employer Software and Employer Background IPR reasonably required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of this contract only and solely to enable the *Consultant* to comply with its obligations under this contract.

Z48.14 The *Consultant* at all times, during and after the Contract Period, indemnifies the *Employer* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid

by an Indemnified Person arising from an IPRs Claim.

Z48.15 If an IPRs Claim is made, or the *Consultant* anticipates that an IPRs Claim might be made, the *Consultant*, at its own expense and sole option, either

- procures for the *Employer* or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim or
- replaces or modifies the relevant item with non-infringing substitutes provided that:
 - the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item,
 - the replaced or modified item does not have an adverse effect on any other services, or the Employer System or the Consultant System,
 - there is no additional cost to the *Employer* or relevant Indemnified Person (as the case may be) and
 - the terms and conditions of this contract apply to the replaced or modified *service*.

Z48.16 If the *Consultant*

- procures a licence or
- modifies or replaces an item

in accordance with clause Z48.15 but this has not avoided or resolved the IPRs Claim, then

- the *Employer* may treat this IPRs Claim as the *Consultant* having substantially failed to Provide the Services; and
- without prejudice to the indemnity set out in clause Z48.14, the *Consultant* is liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

Z48.17 The *Consultant* keeps the Software Schedule up to date to reflect the Software used to Provide the Service. The *Consultant* provides the *Employer* a copy of the updated Software Schedule within 5 days of any change to the Software.

Z48.18 The *Consultant* deposits, and procures that each owner of the Deposited Software deposits, not less than fourteen (14) days following the relevant Commissioning Date or at such other times as the *Employer* may require, the Source Code of such part of the software that consists of Deposited Software in escrow with the National Computing Centre ("NCC") (or equivalent approved by the *Employer*) on the basis of their standard single or multi licensee escrow agreement (as applicable) unless another form is stated in the Scope, modified as necessary, and where applicable, to be consistent

with the provisions clause Z48.19. The *Consultant* ensures that (and procures that each owner of the Deposited Software ensures that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The *Consultant* pays, or procures that each owner of Deposited Software pays, the initial storage fees and any annual fees under the escrow agreement and the *Employer* pays any release fees.

Z48.19 Where Deposited Software includes Specially Written Software, without prejudice to the provisions of clause Z48.8, the *Consultant* ensures there are no restrictions on the release to the *Employer* of Specially Written Software from escrow, which is released whenever required by the *Employer* and without payment of any release fee, unless the *Employer* has agreed otherwise.

Z48.20 Where the *Consultant* is unable to procure compliance with the provisions of clause Z48.18 in respect of any Third Party Software that is Deposited Software, it provides the *Employer* with written evidence of its inability to comply with these provisions and agrees with the *Employer* a suitable alternative to escrow that affords the *Employer* the nearest equivalent protection. The *Consultant* is excused from its obligations under clause Z48.18 only to the extent that the *Consultant* and the *Employer* have agreed on a suitable alternative.

Z48.21 In circumstances where the *Employer* obtains the release of the Source Code from escrow, the *Consultant* hereby grants (and procures that any owner of Deposited Software grants) to the *Employer* a perpetual, worldwide, assignable, royalty-free, irrevocable and non-exclusive licence to use and support (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate) the Source Code version of the Deposited Software to the extent necessary for the receipt of the *services* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer's* (or any other Central Government Body's) business or function. The licence granted under this clause Z48.21 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees or any third party.

Clause 49 Financial Distress

Z49.1 In this clause Z49 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.

Z49.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium

Member or a Guarantor

- its Credit Rating falls below the relevant *credit rating*,
- a further fall in its Credit Rating below the relevant credit rating,
- it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
- it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

Z49.3 If any of the events listed in clause Z49.2 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)

- meets the Credit Rating Test and
- has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z49.2 has occurred.

Z49.4 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 Z49.3 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.

Z49.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z49.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z49.3,
- 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 Z49.3 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 Z50 New Guarantee

Z50.1 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
 - meets the Credit Rating Test and
 - 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).

Z50.2 If the Controller does not comply with the tests in clause Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z50.1 and (if applicable) the legal opinion required in clause Z50.6 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 Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6.

Z50.3 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*.

Z50.4 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 Z50.1 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.

Z50.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z50.1 or provides the legal opinion required by clause Z50.6,
- 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 Z50.1 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.

Z50.6 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 Z51 Parent Company Guarantee

Z51.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later. Parent Company Guarantees are given by

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

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

Z51.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z52 Offshoring of data

Z52.1 In this clause

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 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement.

Z52.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with "Government Security Classifications" dated April 2014 (or any later revision or replacement)

- offshore or
- in any way that it could be accessed from an offshore location

until the *Employer* has confirmed to the *Consultant* that either

- the *Employer* has gained approval for such storage in accordance with "Offshoring information assets classified at OFFICIAL" dated November 2015 (or any later revision or replacement) or
- such approval is not required.

Z52.3 The *Consultant* ensures that no premises are used in Providing the Services until

- such premises have passed a Risk Assessment or
- the *Employer* confirms to the *Consultant* that no Risk Assessment is required.

Z52.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z52.2 or
- conduct a Risk Assessment for any premises in accordance with Z52.3.

Z52.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.

Z52.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

E. PROFESSIONAL SERVICES CONTRACT ANNEX E – THE SCOPE

See “TMTii 05 – Scope”

F. PROFESSIONAL SERVICES CONTRACT ANNEX F – PRICE LIST

See “TMTii 05 – price schedule”

G. NOT USED

H. NOT USED