

Crown Commercial Service

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

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THE FORM OF CONTRACT

We propose to use Framework Schedule 4 A (NEC3 PSC Template Call Off Agreement) with a schedule of amendments, as detailed below. Please confirm acceptance of the proposed form of agreement as part of your tender submissions.

Date...18/01/2021.....

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

The Ministry of Defence (MOD), Defence Infrastructure Organisation (DIO)

And

.....ARCADIS LLP.....

For the provision of Establishment Management Plans for Hyde Park Barracks, Sir John Moore's Barracks, Brize Norton and High Wycombe

DIO Contract Number: DIOCB4/344

ECAM TASKING REFERENCE: DIOECAM/SE/006

CCS Reference: PMFDTS-0380-2018

THIS AGREEMENT is made the 18 day of January 2021

PARTIES:

1. The Defence Infrastructure Organisation (DIO) acting as part of the Secretary of State (the "*Employer*"); and
2. **ARCADIS LLP** which is a company incorporated in, and in accordance with the laws of England and Wales (Company No. **OC368843** whose registered office address is at **Arcadis House, 34 York Way, London, N1 9AB** (the "*Consultant*").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "Authority"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM3741) which is dated 03 May 2017 (the "Framework Agreement"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the 11th March 2019, the *Employer*, acting as part of the Crown, and in the Framework Agreement is identified as a "Contracting Authority" invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 23rd April 2019, the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Call Off Contract is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. The Contract Schedules are:

1. Form of Agreement
2. Contract Data – Part One (Data provided by the Employer)
3. Contract Data – Part Two (Data provided by the Consultant)
4. Additional conditions of contract – clauses Z1 to Z48

Professional Services Contract

Contract Data

Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Option X20, Y(UK)2, Y(UK)3 and Z Clauses of the NEC3 Professional Services Contract (April 2013) as listed below.
 - The *Employer* is Ministry of Defence (MOD) Defence Infrastructure Organisation (DIO).
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Institution of Civil Engineers or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The *services* are defined in the attached Schedule of Services, and Statement of Requirement. REDACTED
 - The Scope is in Lot 1 of the Framework Agreement RM3741.
 - The *language of this contract* is English.
 - The *law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.
 - The *period for reply* is two weeks.
 - The *period for retention* is 6 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the *Chartered Institute of Arbitrators*
 - The *tribunal* is arbitration
 - As agreed, the defect date is 52 weeks from Completion of the whole of the Works

- 2 The Parties' main responsibilities**
- As per the attached Schedule of Services, and Statement of Requirement.
 - The *Employer* provides access to the following persons, places and things

- access to RAF Brize Norton and High Wycombe, Sir John Moore's Barracks and Hyde Park Barracks in accordance with the contractually accepted programme.

3 Time • *The starting date* is the date of contract award.

- The *Consultant* submits revised programmes at intervals no longer than one month.

4 Quality • The quality policy statement and quality plan are not applicable.

5 Payment • The *assessment interval* is 30 days.

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

8 Indemnity, insurance and liability • The amounts of insurance and the periods for which the *Consultant* maintains insurance are shown below.

Event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	REDACTED in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate	from the <i>starting date</i> until 6 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Schedule 14 (Annex 1 - Part A)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

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

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

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

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

Optional Statements

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

- The *completion date* for the whole of the *services* is: 17 May 2021

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

The *Consultant* is to submit a first programme for acceptance within one month of the Contract Date.

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

- The period within which payments are made is one month.

If the *tribunal* is arbitration

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

Option X2 If Option X2 is used

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

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

- *The incentive schedule* for Key Performance Indicators is in Appendix 1.
- A report of performance against each Key Performance Indicator is provided at intervals of one month.
- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.

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
Not applicable	

Option Z The additional conditions of the contract are clauses Z1 to Z48 set out with this contract save for: Z9, Z19 ,Z21, Z22, Z23, Z38, Z39, Z40, Z41, Z42, Z45, and Z46.

The NEC3 Z clauses full narrative is at Annex A to Volume 5.

AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

MOD Additional Conditions of Contract (DEFCONS) are:

1. DEFCON 5J (Edn 18/11/16) - Unique Identifiers
2. DEFCON 76 (Edn 12/06) - Contractor's Personnel at Government Establishments
3. DEFCON 129J (Edn 18/11/16) - Use of Electronic Business Delivery Form
4. DEFCON 501 (Edn 11/17) - Definitions & Interpretations
5. DEFCON 502 (Edn 05/17) - Specifications Changes
6. DEFCON 503 (Edn 12/14) - Formal Amendments to Contract
7. DEFCON 507 (Edn 10/18) - Delivery
8. DEFCON 513 (Edn 11/16) - Value Added Tax
9. DEFCON 514 (Edn 08/15) - Material Breach
10. DEFCON 515 (Edn 02/17) - Bankruptcy and Insolvency
11. DEFCON 516 (Edn 04/12) - Equality
12. DEFCON 518 (Edn 02/17) - Transfer
13. DEFCON 520 (Edn 05/18) - Corrupt Gifts and Payments of Commission
14. DEFCON 522 (Edn 11/17) - Payment and Recovery of Sums Dues
15. DEFCON 526 (Edn 08/02) - Notices
16. DEFCON 527 (Edn 09/97) - Waiver
17. DEFCON 529 (Edn 09/97) - Law (English)
18. DEFCON 531 (Edn 11/14) - Disclosure of Information
19. DEFCON 532A (Edn 04/20) - Protection of Personal Data
20. DEFCON 534 (Edn 06/17) - Sub Contracting and Prompt Payment
21. DEFCON 537 (Edn 06/02) - Rights of Third Parties
22. DEFCON 538 (Edn 06/02) - Severability
23. DEFCON 539 (Edn 08/13) - Transparency
24. DEFCON 550 (Edn 02/14) - Child Labour and Employment Law
25. DEFCON 566 (Edn 12/18) - Change of Control of Contractor
26. DEFCON 602B (Edn 12/06) - Quality Assurance (without Deliverable Quality Plan)
27. DEFCON 604 (Edn 06/14) - Progress Reports

- 28. DEFCON 605 (Edn 06/14) - Financial Reports**
- 29. DEFCON 609 (Edn 08/18) - Contractor's Records**
- 30. DEFCON 620 (Edn 05/17) - Contract Change Control Procedure**
- 31. DEFCON 632 (Edn 08/12) - Third Party Intellectual Property – Rights & Restrictions**
- 32. DEFCON 642 (Edn 06/14) - Progress Meetings**
- 33. DEFCON 658 (Edn 11/17) - Cyber**
- 34. DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5M**
- 35. DEFCON 656B (Edn 08/16) - Termination for Convenience – £5m and Over**
- 36. DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements**
- 37. DEFCON 670 (Edn 02/17) - Tax Compliance**
- 38. DEFCON 694 (Edn 07/18) - Accounting For Property of the Authority**
- 39. DEFCON 703 (Edn 08/13) - Intellectual Property Rights – Vesting in the Authority**

In the event of a conflict between the NEC3 Z Clauses and the above DEFCONs, the DEFCONs shall take precedence.

The following DEFFORMs shall be used:

- 1. DEFFORM 94 – Bidders Confidentiality Agreement**
- 2. DEFFORM 539A - Tenderers Commercially Sensitive Information Form**

Part two – Data provided by the *Consultant*

REDACTED

Additional conditions of contract – clauses Z1 to Z49

Clause Z1 Interpretation and the law

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

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

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

Acquired Rights Directive is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time

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

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

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

Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive

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

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

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

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

A **Prohibited Act** is:

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

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

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

Relevant Transfer is a transfer of employment to which the Employment Regulations applies

Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place

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

Security Policy means the *Employer's* security policy attached as a Contract Schedule as may be updated from time to time

Transferring Employer Employees are those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date

Transferring Former Consultant Employees are, in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date

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

Clause Z2 Prevention of fraud and bribery

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

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

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

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

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

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

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

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

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

any other relevant documentation in accordance with this contract.

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

Clause Z3 Recovery of sums due from *Consultant*

Where the Employer is a Crown Body, then Z3.1 applies to the exclusion of Z3.2. Otherwise, Z3.2 applies to the exclusion of Z3.1.

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

Z3.2 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 and Novation

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

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

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

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

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

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

Z4.5 Any change in the legal status of the *Employer* such that it ceases to be a

Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

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

Clause Z5 Discrimination

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

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

Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer’s* employees, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer’s* employment policies and codes of practice relating to discrimination and equal opportunities.

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

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

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

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

Clause Z6 Conflict of interest

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

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the

Consultant and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

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

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

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z30 (Consortia), Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)

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

Scope, the template form attached to this contract.

- Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
 - the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.
- Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.
- Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.8 In this clause Z7 a Change of Control in relation to
- material change in the ownership of shares in, or
 - change in the name or status of
- a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

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

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

Clause Z9 Project Bank Account - NOT USED

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

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

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

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

Clause *Employer’s Codes of Conduct*

Z10

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

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

Clause *Fair payment*

Z11

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

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

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

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

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

Clause *Confidentiality*

Z12

Z12.1 Except to the extent set out in this clause or where disclosure is expressly

permitted elsewhere in this contract, each party shall:

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

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

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

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

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

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

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

- to any Crown Body or any other Contracting Authorities. All Crown Bodies

or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

- to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer* 's accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

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

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

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

Clause Security Requirements

Z13

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

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

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

Clause Official Secrets Act

Z14

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

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

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

Consultant to comply with his obligations.

Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any.

Clause Data protection

Z15

Z15.1

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

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

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

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

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

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

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

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

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

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

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

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and
- promptly providing the *Employer* with any Personal Data and other information requested by him.

Z15.7 The *Consultant* complies with the requirements of the *Employer* in relation

to the storage, dispatch and disposal of Personal Data in any form or medium.

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

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

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

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

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

Clause Freedom of Information

Z16

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

Z16.2 The *Consultant*:

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

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

Z16.4 The *Consultant* does not respond directly to a Request for Information

unless authorised to do so by the *Employer*.

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

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

Clause Records and Audit Access

Z17

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

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

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

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

Clause Reporting: Small and Medium Enterprises

Z18

Z18.1 In this clause "SME" is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

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

turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and

- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

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

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

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

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

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

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

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

Clause The Employer's liability - NOT USED

Z19

~~Z19.1 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 the amount stated in the Contract Data, and applies in contract, tort or delict or otherwise to the extent allowed under the law of the contract.~~

~~Z19.2 The excluded matters are the amounts payable to the Consultant as stated in this contract for~~

- ~~• the total of the Prices if Option A applies,~~
- ~~• the Price for Services Provided to Date adjusted by the Consultant's share if Option C applies.~~
- ~~• the Price for Services Provided to Date if Option E applies.~~
- ~~• the amount of any expenses properly spent by the Consultant in Providing~~

~~the Services.~~

- ~~Any tax which the law requires the *Employer* to pay to the *Consultant*.~~

Clause Tax Non-Compliance

Z20

Z20.1

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

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

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

(3) General Anti-Abuse Rule is

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

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

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

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

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

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

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

obligations if

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

Clause Z21 **Quality Management Points - NOT USED**

~~Z21.1 Quality Management Points are points accrued by the *Consultant* in accordance with the Quality Table set out below. 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~~

~~Z21.2 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.~~

~~Z21.3 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.~~

~~Z21.4 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.~~

~~Z21.5 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.~~

~~Z21.6 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 up date 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.

Z21.7 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
Garrying 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 <i>Consultant</i> to accrue Quality	The number of Quality	Applicable to the failure that should

Management Points that should have been accrued	Management Points that should have been accrued	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 Z22 Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") - NOT USED

Z22.1 The Parties agree that:

- ~~where the commencement of the provision of the service or any part thereof results in one or more Relevant Transfers, Contract Schedule 1 shall apply as follows:~~
- ~~where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of Contract Schedule 1 shall apply;~~
- ~~where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Contract Schedule 1 shall apply;~~
- ~~where the Relevant Transfer involves the transfer of Transferring Employer Employees and Transferring Former Consultant Employees, Parts A and B of Contract Schedule 1; and~~
- ~~Part C of Contract Schedule 1 shall not apply;~~
- ~~where commencement of the provision of the service or a part of thereof does not result in a Relevant Transfer, Part C of Contract Schedule 1 shall apply and Parts A and B of Contract Schedule 1 shall not apply; and~~
- ~~Part D of Contract Schedule 1 shall apply on the expiry or termination of the service or any part of thereof.~~
-

Clause Z23 Changes to *staff rates* and Subconsultants - NOT USED

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

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

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

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

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

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

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

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

Clause Insurance cover

Z24

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

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

Clause Professional indemnity insurance

Z25

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

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

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

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

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

Clause Termination and omission of work - NOT USED

Z26

~~Z26.1 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.~~

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

~~“unless instructed otherwise by the Employer”.~~

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

- ~~• a key resource needed by the Consultant to Provide the Services is no longer available and the Consultant does not propose an alternative resource acceptable to the Employer~~
- ~~• the Consultant's performance as measured in accordance with the current edition of the Collaborative Performance Framework is below the failure level~~
- ~~• the Consultant breaching the terms of its obligations in clause 22.1 of the conditions of contract or~~
- ~~• any conflict of interest under this contract cannot be resolved to the Employer's satisfaction.~~

~~Z26.4 The Employer may terminate the Consultant's obligation to Provide the Services by notifying the Consultant if in the Employer's opinion the known or anticipated cost of the project, which the services are performed (or to be performed) in connection with, has significantly increased.~~

Clause Termination – PCRs, Regulation 73

Z27

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

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

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

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

serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

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

Clause Value Added Tax (VAT) Recovery

Z28

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

Clause Tax Arrangements of Public Appointees

Z29

Z29.1 For the purposes of this clause

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

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

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

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

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

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

apply to it
the *Employer* may

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

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

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

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

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

Clause Z30 Consortia

Z30.1 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.

Z30.2 If the joint venture arrangement between any Consortium Members which comprise the *Consultant* 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.

Z30.3 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 Z31 Subconsulting

Z31.1 Before:

- appointing a proposed Subconsultant or
- allowing a Subconsultant to appoint a proposed subsubconsultant

the *Consultant* submits to the *Employer* for acceptance

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

subsubconsultant.

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

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

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

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

Clause Energy Efficiency Directive

Z32

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

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

Clause Compliance with statutory requirements

Z33

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 Negotiation and mediation

Z34

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

and resolution.

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

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

Clause Collateral Warranty Agreements

Z35

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

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

X8.3 The *Consultant* shall provide the *Employer* with duly completed *collateral warranty agreements* and / or *subconsultant collateral warranties* in accordance with clauses X8.1 and X8.2 (as appropriate) no later than ten Working Days after the *Employer* has provided the *Consultant* with appropriate forms suitable for execution.

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

Clause Access to MOD sites

Z36

Z36.1 In this clause only:

- "Site" includes any of Her Majesty's Ships or Vessels and Service Stations; and
- "Officer in charge" includes Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

Z36.2 The *Employer* issues passes for those representatives of the *Consultant* who are approved for admission to the Site and a representative is not admitted unless in possession of such a pass. Passes remain the property of the *Employer* and are surrendered on demand or on completion of the *service*.

Z36.3 The *Consultant's* representatives when employed within the boundaries of a Site comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance is with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements are provided on request to the Officer in charge.

Z36.4 The *Consultant* is responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the *Employer* wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. The status accorded to the *Consultant's* personnel for messing purposes is at the discretion of the Officer in charge who, wherever possible, gives his decision before the commencement of this contract where so asked by the *Consultant*. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the *Employer* and is obtained by the *Consultant* from the Officer in charge. Such certificate is presented to the *Employer* with other evidence relating to the costs of this contract.

Z36.5. The *Consultant* makes such arrangements through the Technical Branch named for this purpose in this contract. When such transport is not available within a reasonable time or in circumstances where the *Consultant* wishes its representatives to accompany material for installation which it is to arrange to be delivered, the *Consultant* makes its own transport arrangements. The *Employer* reimburses the *Consultant's* reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the *Consultant's* representatives locally overseas which is necessary for the purpose of this contract is provided wherever possible by the Ministry of Defence or by the Officer in charge and, where so provided, is free of charge.

Z36.6. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the *Consultant's* representatives back to the United Kingdom, or elsewhere, for medical reasons, is charged to the *Consultant* at rates fixed in accordance with current Ministry of Defence regulations.

Z36.7 Accidents to the *Consultant's* representatives which ordinarily require to be reported in accordance with Health and Safety at Work Act 1974 are reported to the Officer in charge so that the Inspector of Factories may be informed.

Z36.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas is provided for dependants or members of the families of the *Consultant's* representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.

Clause MoD DEFCON Requirements

Z37

Z37.1 If this Clause Z37 applies, then the Ministry of Defence terms and conditions listed in the MOD DEFCONS and DEFFORMS stated in the Contract Data shall apply to this contract and the *Consultant* Provides the Services in accordance with such MOD DEFCONS and DEFFORMS.

Z37.2 The *Consultant* confirms that it has had the opportunity to review the MOD DEFCONS and DEFFORMS and has raised all due diligence questions in relation

to those documents with the Employer prior to the *starting date*.

Z37.3 Where required by the *Employer*, the *Consultant* shall take such actions as are necessary to ensure that the MOD DEFCONS and DEFFORMS constitute legal, valid, binding and enforceable obligations on the *Consultant*.

Clause Intellectual Property Rights - NOT USED

Z38

~~Z38.1 In this clause Z38:~~

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

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

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

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

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

~~Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.~~

~~Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and~~

shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.

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

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

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

Clause Z39 Financial Distress – If Clause Z39 applies- - NOT USED

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

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

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

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

~~Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who~~

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

~~Z39.5—If~~

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

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

Clause Change of Control – new guarantee - NOT USED
Z40

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

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

~~Z40.2—If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.~~

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

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

~~Z40.5 — If~~

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

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

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

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

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

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

Clause Parent Company Guarantee - NOT USED

Z41

~~Z41.1 — 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 joint venture (more than one party) the Controller of each Consortium Member or~~
- ~~• for an incorporated joint venture the Controller of each Consortium Member.~~

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

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

Clause ~~Offshoring of data~~

Z42

Z42.1 In this clause

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

Z42.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with "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.

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

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

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

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or

conduct a risk assessment for any premises for the purpose of Z42.3.

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

clause.

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

Clause Payment forecast

Z43

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

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

Clause Responsibility for documents

Z44

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

Clause Apprenticeships - NOT USED

Z45

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

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

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

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

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

- ~~• the number of people during the reporting period employed on this~~

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

Clause Termination following prolonged suspension - NOT USED

Z46

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

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

Clause Employer's Property

Z47

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

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

Clause Building Information Modelling

Z48

Where a BIM Protocol Applies

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

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

Where a BIM Protocol Does Not Apply

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

- if it is stated in the Contract Data that the Consultant is to act as the BIM Information Manager, the Consultant shall act as a the BIM Information Manager for the Project as more fully set out in the BIM Documents;
- if it is not stated in the Contract Data that the Consultant is to act as the BIM Information Manager, the Consultant shall comply with the reasonable instructions of the BIM Information Manager in relation to the BIM Documents;
- The Employer grants to the Consultant, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (or, as the case may be, sub-licence) including the right to grant sub-licences (or, as the case may be, sub-sub-licences), to copy and make full use of the Material produced in accordance with the BIM Documents by or on behalf of the Employer (including any produced by the Consultant or another member of the professional team) for the purpose of providing the services and complying with the BIM Documents;

Clause Z38.3 shall have no effect and neither Party shall be liable to the other for:

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

**Identified and
defined terms**

X19

X19.1

(1) A Task is work within the service which the Service Manager may i instructs the Contractor to carry out within a stated period of time.

		<p>(2) A Task Order is the Service Manager's instruction to carry out a Task.</p> <p>(3) Task Completion is when the <i>Contractor</i> has done all the work in the Task and corrected Defects which would have prevented the <i>Employer</i> or Others from using the Affected Property and Others from doing their work.</p> <p>(4) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.</p>
Providing the Service	X19.2	<p>A Task Order includes</p> <ul style="list-style-type: none"> • a detailed description of the work in the Task, • a priced list of items of work in the Task in which items taken from the Price List are identified, • the starting and completion dates for the Task, • the amount of delay damages for the late completion of the Task and • the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used. <p>The <i>Service Manager</i> consults the <i>Contractor</i> about the contents of a Task Order before he issues it.</p> <p>When a Task Order is issued</p> <ul style="list-style-type: none"> • the priced list of items for the Task is inserted in the Price List, and • the work involved is added to the Service Information. <p>An instruction to carry out a Task is not a compensation event.</p>
	X19.3	<p>The delay damages in a Task Order, if any, are not more than the estimated cost to the <i>Employer</i> of late completion of the Task. If Task Completion is later than the Task Completion Date, the <i>Contractor</i> pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.</p> <p>The Prices for items in the Task price list which are not taken from the Price List are assessed in the same way as compensation events.</p>
Time	X19.4	<p>The <i>Contractor</i> does not start any work included in the Task until the <i>Service Manager</i> has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the <i>service period</i>.</p> <p>If Task Completion is after the end of the <i>service period</i>, the <i>service period</i> is extended until Task Completion. The <i>Service Manager</i> does not issue a Task Order during this extended period.</p> <p>The <i>Service Manager</i> may issue an instruction changing a Task Order.</p>
Task Order programme	X19.5	<p>The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p>
	X19.6	<p>The <i>Contractor</i> shows on each Task Order programme which he submits for acceptance</p>

		<ul style="list-style-type: none"> • the Task starting date and the Task Completion Date, • planned Task Completion, • the order and timing of the operations which the <i>Contractor</i> plans to do in order to complete the Task, • provisions for <ul style="list-style-type: none"> • float, • time risk allowances, • health and safety requirements and • the procedures set out in this contract, • the dates when, in order to Provide the Service in accordance with his Task Order programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> • access to the Affected Property, • acceptances, • Plant and Materials, equipment and other things to be provided by the <i>Employer</i> and • information from Others, • for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and • other information which the Service Information requires the <i>Contractor</i> to show on a Task Order programme submitted for acceptance.
	X19.7	<p>Within one week of the <i>Contractor</i> submitting a Task Order programme to him for acceptance, the <i>Service Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting the Task Order programme is that</p> <ul style="list-style-type: none"> • the <i>Contractor's</i> plans which it shows are not practicable, • it does not show the information which this contract requires or • it does not comply with the Service Information.
Revising the Task Order programme	X19.8	<p>The <i>Contractor</i> shows on each revised Task Order programme</p> <ul style="list-style-type: none"> • the actual progress achieved on each operation and its effect upon the timing of the remaining work, • the effects of implemented compensation events, • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Contractor</i> proposes to make to the Task Order programme.
	X19.9	<p>The <i>Contractor</i> submits a revised Task Order programme to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> • within the <i>period for reply</i> after the <i>Service Manager</i> has instructed him to and • when the <i>Contractor</i> chooses to. <p>The latest programme accepted by the <i>Service Manager</i> supersedes previous accepted programmes.</p>

**Compensation
events**

X19.10

The following are compensation events.

(1) The *Service Manager* gives an instruction changing a Task Order.

(2) The *Contractor* receives the Task Order after the starting date stated in the Task Order.

(3) The *Employer* does not provide the right of access to the Affected Property in accordance with the latest accepted Task Order programme.

(4) The *Employer* does not provide something which he is to provide as stated in the Service Information in accordance with the latest accepted Task Order programme.

(5) The *Employer* or Others do not work in accordance with the latest accepted Task Order programme or within the conditions stated in the Service Information.

(6) An event which

- stops the *Contractor* completing a Task or
- stops the *Contractor* completing a Task by the Task Completion Date,

and which

- neither Party could prevent,
- an experienced contractor would have judged at the date of issue of the Task Order to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

(7) A Task Completion Date is later than the end of the *service period*.

X19.11

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

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

A delay to the Task Completion Date is assessed as the length of time that, due the compensation event, planned Task Completion is delayed.

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

**Implementing
compensation
events**

X19.12

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

Appendix 1- Key Performance Indicators

REDACTED