



**Call Off Agreement under the**

**Crown Commercial Service's**

**PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES  
FRAMEWORK (RM3741) SCHEDULE 4 CALL OFF AGREEMENT**

**(BASED ON CROWN COMMERCIAL'S CALL OFF AGREEMENT  
TEMPLATE AND INCORPORATING THE NEC3 PROFESSIONAL  
SERVICES CONTRACT APRIL 2013),**

**for Highways England's  
Lower Thames Crossing Commercial Partner Contract**

**VOLUME 1**

**CONTRACT DATA AND Z CLAUSES**

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**Note:** In this document, departures from the Call Off Agreement template are set out in blue text.

Issue No.	Revision No.	Amendments	Initials	Date
1	1.0	Tender release	AT	19 July 2021
2	1.0	Separated Form of Agreement & Contract Data Part 2 into distinct documents. Added starting date	AB	22 October 2021
3				
4				
5				
6				

## Professional Services Contract

### Contract Data

#### Part one – Data provided by the *Employer*

**Note:** In this document, departures from the Call Off Agreement template are set out in **blue** text.

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option **E** dispute resolution Option W2 and secondary Options X2, X7, X11, X20, Y(UK)1, Y(UK)2, Y(UK)3 of the NEC3 Professional Services Contract (April 2013) and **Clauses Z1 to Z59**.
  - The *Employer* is **Highways England Company, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ**.
  - The *Service Manager* is the *Employer's* service manager for this contract who is REDACTED (Lower Thames Crossing(LTC) Commercial Director) at Highways England
  - 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 *Employer's senior representatives* are REDACTED  
Address for communications: Bridge House, 1 Walnut Tree, Close, Guildford, Surrey, GU1 4LZ  
Address for electronic communications: REDACTED  
  
REDACTED  
Address for communications: Bridge House, 1 Walnut Tree, Close, Guildford, Surrey, GU1 4LZ  
Address for electronic communications: REDACTED
  - The *services* are the services in relation to the Lower Thames Crossing project as set out in Volume 2 (Scope).
  - The Scope is in Schedule 2 of the Framework Agreement RM3741 and the document entitled "Volume 2 Scope" and its associated Annexes including the Services and Systems Schedules.
  - The *language of this contract* is English.
  - The *law of the contract* is the law of England and Wales subject to the jurisdiction of the Courts of England and Wales.

- The *period for reply* is two weeks.
- The *period for retention* is **12 years** following Completion or earlier termination.
- The *Adjudicator nominating body* is the [Institution of Civil Engineers](#)
- The *tribunal* is arbitration
- The following matters will be included in the Risk Register
  - (1) [Project office space at Pilgrims Lane and Marling Cross is not available on the \*starting date\*.](#)
  - (2) [The Development Consent Order is delayed.](#)
  - (3) [The award of any Project Contract is delayed.](#)
  - (4) [Failure to obtain timely approvals from internal and external stakeholders causes delay.](#)
  - (5) [The Project is subject to legal challenge.](#)

## 2 The Parties' main responsibilities

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

<a href="#">Highways England's Office at Pilgrims Way (Junction 30)</a>	<a href="#">the <i>starting date</i></a>
persons, places and things set out in the Scope	<a href="#">the <i>starting date</i> or as otherwise set out in the Scope or a Task Order, or agreed in accordance with the provisions of the Services and Systems Schedules</a>

- ### 3 Time
- *The starting date* is **01 November 2021**
  - The *Consultant* submits revised programmes at intervals no longer than one month.
  - *The Consultant* is to submit a first programme for acceptance
    - [in respect of Mobilisation Activities, as part of the \*mobilisation plan\* identified in Contract Data Part Two and](#)
    - [in respect of the Delivery Phase, prior to completion of the Mobilisation Activities.](#)

- The *completion date* for the whole of the *services* is 8 years (416 weeks) from the *starting date*.

#### 4 Quality

- The quality *management system* and quality plan are provided within **4 weeks** of the Contract Date.
- The *quality table* is in Annex 10 to the Scope.
- The *defects date* is **52 weeks** after Completion of the whole of the *services*.

#### 5 Payment

- The *assessment interval* is **monthly**
- The *currency of this contract* is the pound sterling (£).
- The *interest rate* (unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require) is, 3% per annum above the Bank of England base rate in force from time to time.
- If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due, the period within which payments are made is – the final date for payment is fourteen days after the date on which payment becomes due.
- The *expenses* stated by the *Employer* are **not applicable**

### 6 Compensation events

These are additional compensation events

- The *Service Manager* issues an instruction changing a Task Order.
- The *Consultant* receives a Task Order after the Task Starting Date.
- A Task Completion Date is later than the Completion Date.

#### 8 Indemnity, insurance and liability

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

event	cover	Period
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failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	A limit of indemnity of not less than twenty five million pounds (£25,000,000) in respect of any one claim and in the aggregate per annum.	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
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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) being not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £10,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
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death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As required under Framework Schedule 14 (Annex 1 - Part C) being not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
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- The *Consultant* provides these additional insurances  
Any other insurances required by applicable law.

*Include if applicable*

- The *Employer* provides the following insurances  
Not applicable

### **Consultant's Liabilities.**

#### **Limitation of Consultant's liability under Clause 82**

*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 £20,000,000 (twenty million pounds) in the aggregate.

## Optional Statements

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

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

#### *condition to be met*

- 1) Completion of all Mobilisation Activities
- 2) Submission of Quality Plan
- 3) Submission of Service Contract Management Plan
- 4) Submission of Health and Safety Plans
- 5) Service Plan and all other plans submitted to the *Service Manager* for acceptance

#### *key date*

- 60 working days from the *starting date*
- 40 working days from the *starting date*
- 40 working days from the *starting date*
- 40 working days from the *starting date*
- 40 working days from the *starting date*

### If the *tribunal* is arbitration

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- 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

### If Option C or E is used:

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

**Option X2 If Option X2 is used**

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

**Option X7 If Option X7 is used**

*[use only with  
main Options A,  
C and E]*

- Delay damages for Completion of the whole of the *services* are £0.01 per day.

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

- *The incentive schedule* for Key Performance Indicators is in [the document entitled Incentive Schedule in Volume 1](#).
- A report of performance against each Key Performance Indicator is provided at intervals of **3 months (quarterly)**.
- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.

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

- The [Consultant](#) is to pay any charges made and is paid any interest paid by the *project bank*

**[For guidance, all known Tier 2 and 3 suppliers must be listed in the Project Bank Account as Named Suppliers.]**

**Option Y(UK)3 • If Option Y(UK)3 is used**

<b>term</b>	<b>person or organisation</b>
Fair payment (in Scope S828)	A subcontractor (at any stage of remoteness to the <i>Employer</i> )
Subcontracting (Scope 825)	A subcontractor (at any stage of remoteness to the <i>Employer</i> )



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

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

**Option Z • The *additional conditions of contract* are clauses Z1 to Z59 set out with this contract.**

**Contract Data  
relating to Z clauses**

- Clause Z1**
- The *extension period* is two years
  - The *mobilisation resource limit* is 1,000 Person Days (where a “**Person Day**” consists of one person for 8 hours)

**Clause Z42 Off Shoring of Data**

**The Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with **HMG Security Policy Framework (SPF)** (see link in Scope Volume 2B Annex 2) and the ***Employer’s Information Security Data Security Standard*** (see link in Scope Volume 2B Annex 2).

Note – this is contained in Scope documents (section S513 of Volume 2A) rather than as a Z clause.

**Clause Z45 Apprenticeships**

The **number or** percentage of the *Consultant’s* employees required to be on formal apprenticeship programmes is **as per the Scope in Volume 2A and 2B**

Note – this is contained in Highways England’s Scope documents (Section S506 of Volume 2A and Annex 6 of Volume 2B) rather than as a Z clause. The *Consultant* complies with the Scope.

- Clause Z49** The *Consultant* submits a Task Order programme to the *Service Manager* for acceptance within **14 days** of receiving the Task Order.

**Clause Z51**     **Indexation**

The *index* is EARN03: Average Weekly Earnings by Industry “Not Seasonally Adjusted Average Weekly Earnings – Index figures include Bonuses, including Arrears” Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY published by the Office for National Statistics

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***Additional conditions of contract – clauses Z1 to Z59***

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**Clause Z1 Interpretation and the law, additional definitions and amendments to core and Secondary Option clauses**

**Z1.1 Interpretation and the law**

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.

**Z1.3 Identified and defined terms**

11.2(11) Insert an additional bullet point after “and is either”

“• in a Task Order.”

11.2(13) Delete and replace with:

“**Time Charge** is, in respect of any period and for any one of the following

- Mobilisation Activities,
- Core Services,
- Phase Specific Services,
- General Systems Requirements or
- Optional Services

the amount determined by multiplying the relevant *staff rates* by the total number of days appropriate to that rate (or pro rata for any half day, rounded to nearest half day) for all Staff properly engaged on providing that activity or task in that period. The Time Charge is all-inclusive of any expenses including travel and subsistence.”

Add the following defined terms

**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

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**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

**Baseline Price Estimate** is the estimated price for

- the Mobilisation Activities
- General Systems Requirements
- Core Services
- Phase Specific Services and
- each Task Order,

set out in Annex A of the Pricing Documents, comprising time related items. The Baseline Price Estimate is inclusive of Profit. The Baseline Price Estimate may be adjusted in accordance with this contract and is used by the *Service Manager* to assess a quotation for a Task Order in accordance with clause Z49.5.

**Confidential Information** has the meaning defined in Annex 01 to Volume 2B of the Scope.

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

**Contracting Authorities** means the bodies listed in the contract notice 2016/S 180-323830 on 17/9/2016 in the Official Journal of the European Union and "Contracting Authority" shall be construed accordingly;

**Core Services** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Cost Build-Up** has the meaning given in clause 63.1.

**Consultant Board Representatives** are the *Consultant Board Representatives*, as replaced in accordance with section s205.29 of Volume 2A of the Scope.

**Delivery Phase** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**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.

**Equipment** means items provided by the *Consultant* and used by him to Provide the Services.

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**Extension Period** is the *extension period* unless later changed in accordance with this contract.

**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 *services* (or any part of the *services*) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant)

**General Systems Requirements** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Health and Safety Plans** are

- a completed Health and Safety Maturity Matrix (HAM) (as defined in Annex 15 to Volume 2B of the Scope) for the *Consultant* or each Consortium Member in the form required by the *Employer*, recording the level of safety maturity within the organisation at the date of the HSMM,
- an implementation plan, setting out the actions to be taken by the *Consultant* or each Consortium Member over a period of 12 months following the date of the HSMM in order to improve the scores recorded in the HSMM by not less than the percentage specified from time to time by the *Employer*, including the timescale for each action and
- an action plan, setting out the specific actions to be taken under this contract by the *Consultant* and its subcontractors (at any stage of remoteness from the *Employer*) in order to support delivery of the improvements identified in the implementation plans for the *Consultant* or each Consortium Member.

**Indemnified Claim** is a matter for which the *Consultant* is liable under this contract.

**Indemnified Person** has the meaning defined in Annex 01 to Volume 2B of the Scope.

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

**Integrated Project Programme** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Licence** is the document entitled “Highways England: Licence” dated April 2015 listed in Annex 02 to Volume 2B of the Scope.

**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

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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.

**Mobilisation Activities** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Mobilisation Phase** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Mobilisation Resource Limit** is the mobilisation resource limit set out in Contract Data Part One unless changed in accordance with this contract.

**Optional Services** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Performance Requirement** is the required standard for performance of each element of the *services* as specified in the Scope.

**Phase Specific Services** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Pricing Documents** are the documents comprising the commercial workbook including

- Annex A – Pricing schedules and
- Annex B – Staff rates.

**Pricing Parameters** to be adjusted under clause 6 in respect of any compensation event are the Prices and one or more of the following

- Target Cost for a Task,
- Mobilisation Resource Limit or
- Baseline Price Estimate for a potential Task.

as applicable to the relevant Mobilisation Activities, potential Task Order or instructed Task Order.

**Profit** is the Profit Percentage multiplied by the aggregate of the relevant Time Charge (if any).

**Profit Element** has the meaning given in the Incentivisation Schedule.

**Profit Percentage** is the *profit percentage*.

**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

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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.

**Quality Management Points** are points accrued by the *Consultant* in accordance with the *quality table*.

**Quality Plan** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Related Dispute** is a dispute under or in connection with a contract between a Party and Others relating to this contract.

**Related Dispute Adjudicator** is an adjudicator appointed to determine a Related Dispute.

**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.

**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

**Services and Systems Schedules** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Service Contract Management Plan** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Service Plan** is the *Consultant's* service plan of how it will Provide the Services including the delivery of any Mobilisation Activities, Core Services, Phase Specific Services, General Systems Requirements and Optional Services in accordance with the relevant Scope (including any amendments thereto accepted by the *Service Manager* in accordance with this contract) and which service plan shall incorporate:



- 
- the Mobilisation Plan,
  - the Quality Plan,
  - the Service Contract Management Plan,
  - the Health and Safety Plans and
  - any other plans relating to the *services*.

**Staff** has the meaning defined in Annex 01 to Volume 2B of the Scope.

**Target Cost** is the amount stated in the Task Order as the target for the Time Charge (as adjusted in accordance with this contract).

**Task** is work within the *services* which the *Service Manager* may instruct the *Consultant* to carry out within a stated period of time.

**Task Brief** is a detailed description of the work required for a Task.

**Task Completion** is when the *Consultant* has done all the work which the Task Order requires it to do by the Task Completion Date, and corrected Defects which would have prevented the *Employer* or Others from using the *services* and Others from doing their work.

**Task Completion Date** is the date for completion stated in the Task Order unless later changed in accordance with this contract.

**Task Order** is the *Service Manager's* instruction to carry out a Task and contains a Time Charge. A Task Order with a Time Charge contains a Target Cost in relation to the Time Charge, unless otherwise stated in the Task Order.

**Task Starting Date** is the date on which the *Consultant* is required to start the work required by a Task Order.

**Tender Commitments Statement** is the statement of that name set out in Appendix A to the Deed of Agreement detailing the commitments made by the *Consultant* as part of its tender in respect of how it is to Provide the Services.

**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.

## **Z1.4 Amendments to core and Secondary Option clauses**

### **15 Early warning**

In clause 15.4 in the first line delete "*Employer*" and replace with "*Consultant*" and in the second line delete "*Consultant*" and insert "*Employer*".

### **22 People**

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**22.3** Insert a new clause 22.3:

“The *Consultant* provides the Consultant Board Representatives in accordance with sections s205.28 and s205.29 of Volume 2A of the Scope.”

**24 Subcontracting**

**24.3** In clause 24.3, after “A reason for not accepting them is that”, insert an additional bullet point

- “they do not include all the provisions specified in the Scope,”.

**30 Starting, Completion and Key Dates**

**30.2** Add at the end of the clause “The *Service Manager* decides the date of completion of Mobilisation Activities and certifies it within one week thereafter”.

**31 The programme**

**31.1** At the end of the clause insert “The *Consultant* takes into account the latest Integrated Project Programme when it updates the programme, and aligns the programme with the updated Integrated Project Programme.”.

**31.2** In the first bullet point after “*starting date*” insert “, or Task Starting Date as applicable,” and after “Completion Date” insert “or Task Completion Date, as applicable”.

In the second bullet point, after “Completion” insert “or Task Completion as applicable”.

**32 Revising the programme**

**32.2** Add a further bullet point

- “with any quotation for a Task submitted in accordance with clause Z49.2,”

**34 Acceleration**

**34.1** After “achieve Completion before the Completion Date” insert “or Task Completion before the relevant Task Completion Date”. In the fifth line after “Completion Dates”, insert “, Task Completion Dates”.

**34.2** After “Completion Date” insert “or Task Completion Date”.

**40 Quality management system**

In clause 40.2, replace all references to “quality policy statement” with “quality management system”.

In clauses 40.2 and 40.3, replace all references to “quality plan” with “Quality Plan”.

**50 Assessing the amount due**

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In clause 50.1 (line 2) before “each assessment date” insert “the last day of the calendar month before”.

In clause 50.1, line 2, delete “decided by ... *starting date*” and insert “stated in the Contract Data”.

At the end of clause 50.2 insert “The *Consultant* makes separate applications for payment in respect of the Mobilisation Activities and each Task and ensures that the Task Order reference is clearly identified in each application for payment relating to a Task.”.

Delete the second bullet point to clause 50.3 and insert "Not used,"

In clause 50.3 in the final bullet point delete the full stop and add the following below the bullet points: “at the last day of the calendar month before the assessment date”.

## **51 Payment**

- 51.1 Delete in the second line", or, if a different period is stated in the Contract Data, within the period stated".

## **60 Compensation events**

- 60.1(1) In clause 60.1(1) at the end of the clause delete the full stop and insert “except for
- A change made in order to accept a Defect
  - A change to the Scope provided by the *Consultant* which is made at the *Consultant's* request or in order to comply with the Scope provided by the *Employer*,
  - a change to the Information Systems or the introduction of a new Information System,
  - a change to the method of or requirements for performance measurement or
  - a change which is stated elsewhere in these *conditions of contract* not to be a compensation event.”.

- 60.1(4) At the end of clause 60.1(4) (before the full stop) insert “, unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise”.

## **61 Notifying compensation events**

- 61.3 In clause 61.3 delete "Prices" and insert "Pricing Parameters". After “Completion Date” insert “or Task Completion Date (as applicable)”.

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- 61.4 In the third bullet point of clause 61.4 delete “*Consultant’s cost*” and insert “any component of the *Consultant’s costs* forming part of a Time Charge as derived from the relevant Baseline Price Estimate” and after “Completion” insert “or Task Completion (as applicable), or the Mobilisation Activities”.

In the sentence immediately following the bullet points in clause 61.4

- delete "Prices" and insert "Pricing Parameters" and
- after “Completion Date” insert “or Task Completion Date (as applicable),”.

**61.8 to 61.13**

Insert new clauses 61.8 to 61.13 as follows:

- 61.8 Notwithstanding clauses 61.1 and 61.3, the *Consultant* notifies the *Service Manager* of a compensation event affecting the Baseline Price Estimate for any potential Task Order (including a compensation event arising from the *Service Manager* giving an instruction or notification or changing an earlier decision) no later than the date that the *Consultant* submits its quotation for that potential Task Order.
- 61.9 A compensation event affecting the Baseline Price Estimate for a potential Task Order is not notified by the *Service Manager* or the *Consultant* after the date that the *Consultant* submits its quotation for that potential Task Order.
- 61.10 A compensation event affecting the Baseline Price Estimate for a potential Task Order (whether or not notified before the date that the *Consultant* submits its quotation for that potential Task Order) does not adjust the Prices for that Task Order when instructed.
- 61.11 Whilst a compensation event adjusting the Baseline Price Estimate for a potential Task Order is notified in accordance with clause 61.8, depending on the nature of that compensation event and the surrounding circumstances, an adjustment to the Baseline Price Estimate for that potential Task Order may not be capable of proper assessment
- at the time of notification or
  - until the *Service Manager* instructs the *Consultant* to submit a quotation for a that potential Task Order and provides the Task Brief,
- in which case the adjustment to the Baseline Price Estimate for that potential Task Order is assessed when the *Service Manager* instructs the *Consultant* to submit a quotation for that potential Task Order and provides the Task Brief.

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61.12 The *Consultant* undertakes such enquires, monitoring and reviews as it is entitled under this contract, and which an experienced consultant would undertake, to keep itself informed at all times of events affecting the *services* which may be a compensation event adjusting a Baseline Price Estimate for a potential Task Order and notifies the *Service Manager* accordingly in accordance with clause 61.8.

61.13 A compensation event for a potential Task Order which ought to have been notified in accordance with clauses 61.8 and 61.11, which is not so notified, is treated as having been taken into account in

- the *Consultant's* accepted quotation for that Task Order in accordance with clause Z49.2 or
- by the *Service Manager's* assessment of the pricing for that Task Order in accordance with clause Z49.5

and no compensation event for a Task Order is notified before the Task Starting Date".

## **62 Quotations for compensation events**

62.2 In clause 62.2, delete "Prices" and insert "Pricing Parameters."

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## 63 Assessing compensation events

### 63.1 Delete clause 63.1 and insert:

"Subject to clause 63.13, the change to the Pricing Parameters for the

- Mobilisation Activities,
- potential Task Orders and
- instructed Task Orders

is assessed as the effect of the compensation event on the build-up of the relevant Time Charge in the

- Baseline Price Estimate for the Mobilisation Activities and potential Task Orders and
- instructed Task Orders,

(referred to as the "**Cost Build-Up**") as follows

- for Time Charges
  - the actual Time Charge for the work already done and
  - the forecast of the Time Charge of the work not yet to be done,

(If the compensation event arose from the *Service Manager* giving an instruction changing an earlier decision or correcting an assumption, the date which divides the work already done from the work yet to be done is the date of that communication. In all other cases the date is the date of the notification of the compensation event. If the effect of the compensation event is to reduce the total Time Charge the Pricing Parameters are reduced.)

and

- only if a compensation event
  - affects any cost element, that cost element is adjusted in the Cost Build-Up,
  - requires a new cost element not included or allowed for in the Cost Build-Up, that new cost element is added to the Cost Build-Up and
  - requires any cost element to be omitted, that cost element is omitted from the Cost Build-Up.

If the effect of the compensation event is to reduce the total sum of cost elements, the Pricing Parameters are reduced.

Any such adjusted or new cost element under this clause 63.1 is evaluated on an open book basis using current prices at the date of the compensation event and is then deflated in accordance with indexation under clause Z51 to obtain the equivalent prices at the Contract Date.

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The relevant (if any and as applicable)

- existing unadjusted cost elements,
- deflated adjusted or new cost elements and
- omitted cost elements

are then used to change the Pricing Parameters (as applicable) under this clause 63.1.”.

63.2 Delete clause 63.2.

63.3 At the end of clause 63.3 insert the following additional paragraph

“A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, the planned Task Completion is later than the planned Task Completion as shown on the Accepted Programme current at the dividing date.”.

63.4 In clause 63.4 delete "Prices" and insert "Pricing Parameters" and after “Completion Date” insert “, any Task Completion Date”.

63.8 In clause 63.8, delete "Prices" and insert "Pricing Parameters", and after “Completion Date” insert “or Task Completion Date”.

63.13 Insert the following new clause

“63.13 Assessments for changed Pricing Parameters for compensation events are in the form of changes to the Mobilisation Resource Limit, Time Charge in the Baseline Price Estimate or Task Order (as applicable).”.

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## 81 Insurance cover

Delete clause 81 and insert

“81.1 The *Consultant* provides the insurances at the levels stated in the Contract Data and to comply with the requirements set out in Schedule 14 of the Framework Agreement.”.

## 82 Limitation of liability

At the end of clause 82.1, insert the following additional excluded matters

- any amount due from or paid by the *Consultant* to the *Employer* under clause X20.4
- loss of or damage to the *Employer's* property,
- fraud or fraudulent misrepresentation,
- loss or damage due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt,
- losses caused by the *Consultant's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct and
- events for which this contract requires the *Consultant* to insure (but only excluded up to the required level for each type of insurance stated in the Contract Data).

Insert the following new clause:

“82.3           The *Consultant* is not liable to the *Employer* for any delay in Completion of the work by the Completion Date or any Task Completion Date, save to the extent the *Consultant* is required to pay the *Employer* an amount under clause X20.4.”



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**Option E**      **Cost reimbursable contract**

- 11.2(16) Delete the definition of the Price for Services Provided to Date in clause 11.2(16) and insert

“The Price for Services Provided to Date for the Mobilisation Activities is the total of the Time Charge for work which has been completed on time based items for since the *starting date* for those activities excluding any Time Charge for Staff

- engaged on the Mobilisation Activities in excess of the Mobilisation Resource Limit,
- engaged on the Mobilisation Activities after the Key Date for completion of the Mobilisation Activities,
- prevented from Providing the Services in accordance with paragraph 1.16 of Annex 15 to the Scope or
- not permitted access under paragraph 1.22 of Annex 15 to the Scope,

and any such amounts are excluded from the Price for Services Provided to Date.

The Price for Services Provided to Date for a Task Order is the total of the Time Charge for work which has been completed on time based items since the Task Starting Date for that Task (if any) excluding any Time Charge for Staff

- prevented from Providing the Services in accordance with paragraph 1.16 of Annex 15 to the Scope or
- not permitted access under paragraph 1.22 of Annex 15 to the Scope,

and any such amounts are excluded from the Price for Services Provided to Date.”.

- 11.2(19) Delete the definition of the Prices in clause 11.2(19) and insert

“The Prices for the Mobilisation Activities is the forecast of the total of the Time Charge for items described as time based in the Baseline Price Estimate for those activities.

The Prices for a Task Order is the forecast of the total of the Time Charge for items described as time based in that Task Order.”.

- 21.4 In line 1 of clause 21.4 delete “Time Charge and *expenses*” and insert “Time Charges”. At the end of the clause insert. “Forecasts are provided in relation to each Task Order and clearly identify the Task Order to which each forecast relates”.

- 52.2 In clause 52.2 delete “and *expenses*”.

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[Add new clause](#)

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**Option X20      Key Performance Indicators**

**X20.4**      Delete clause X20.4 and insert

“Save as set out in this clause X20.4, in respect of the *Consultant’s* performance during the period to which a report relates, the amount calculated in accordance with the Incentive Schedule to be

- paid to the *Consultant* if the target stated for a Key Performance Indicator is improved upon or
- paid by the *Consultant* to the *Employer* if the target stated for a Key Performance Indicator is not met

is included in the assessment of the amount due at the next assessment date following submission of such report, subject to and in accordance with the provisions of the Incentive Schedule.

Any amounts due in respect of the *Consultant’s* performance against Key Performance Indicators during the Mobilisation Phase are included in the assessment of the amount due at the next assessment following the end of the Mobilisation Phase.”.

**X20.5**      Delete clause X20.5 and insert

“The *Employer* and the *Consultant* may agree amendments to the Incentive Schedule, including by adding, removing or altering a Key Performance Indicator or its associated weighting and metrics, as part of a Task Order issued in accordance with clause Z49.”

**Option Y(UK)1      Project Bank Account**

After the second sentence of clause Y1.6 insert

“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.”.

In clause Y1.9, delete the final sentence and replace with

“The *Employer* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Consultant* submits it to the *project bank*. A reason for not accepting the Authorisation is that it does not match the application for payment or it does not comply with the requirements of this contract.”.

**Option Y(UK)2      The Housing Grants, Construction and Regeneration Act 1996**

Insert new clause Y2.5 to Y2.8 in Option Y(UK)2 as follows

**Y2.5**      “Following each *assessment date*, the *Consultant* submits separate invoices for the Mobilisation Activities detailing the amount due in respect of the Time Charge for time based Mobilisation Activities.

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- Y2.6 Following each *assessment date*, the *Consultant* submits separate invoices for each Task Order detailing the amount due in respect of the Time Charge for time based items for that Task Order (identifying the Task Order to which it relates).
- Y2.7 Invoices are in the format and contain all the details specified in the Scope or required by the *Service Manager*.
- Y2.8 The *Consultant* submits such information as the *Service Manager* requires to show that the amount stated as due in each invoice has been correctly assessed.”.

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## Clause Z2 Prevention of fraud and bribery

(i) Insert new clauses:

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

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

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

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Prohibited Act; and/or

- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

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

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

Z2.7 In addition to Z2.1 to Z2.6 above the *Consultant* also complies with the *Employer's* requirements in Section S509 of the Scope (Volume 2A) in relation to its Counter Fraud, Bribery & Corruption Policy and Response Plan, and Fair Payment Charter and the linked documents in Volume 2B Annex 02). Where there is any conflict between this clause Z2 and the *Employer's* requirements in the Scope, the *Employer's* requirements in the Scope prevail.

#### **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

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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 or charge the benefit of 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 require that, the *Consultant* enters into, 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 the terms of the form of novation included in the Scope. 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* complies with the *Employer's* requirements in respect of discrimination in the Scope, including without limitation in Volume 2A, Section S507.

Z5.2 Not used

Z5.3 Not used

Z5.4 Not used

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
- an allegation of bullying or harassment

resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each

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[subcontractor](#), 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* [immediately](#) notifies the [Service Manager](#) 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.

[Z6.5 A failure to comply with paragraph S508.1 in the Scope is treated as a substantial failure by the Consultant comply with its obligations.](#)

[Z6.6 Any steps taken in accordance with paragraph S508.1 in the Scope is not a compensation event.](#)

[Z6.7 The Consultant complies with the Employer's additional requirements in relation to conflicts of interest in the Scope at section S508 of Volume 2A. Where there is any conflict between this clause Z6 and the Employer's requirements in the Scope, the Employer's requirements in the Scope prevail.](#)

## **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 a Consortium Member](#) or
  - acquires a direct or indirect interest in the relevant share capital of the *Consultant* [or Consortium Member](#) and as a result [of which that person or group of persons](#) 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* [or Consortium Member](#),
- **Consortium Member** is an organisation or person which is



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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 defined in Annex 01 to Volume 2B of the Scope.
- **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 in the Contract Data
- **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. The *Employer's form of Parent Company Guarantee* is set out in Scope Section S1100.1 of Volume 2A and Annex 16 of Volume 2B.

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 and may terminate this contract or any Task Order under Z49 with immediate effect.

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. In this situation the *Employer* may decide (having reviewed any information provided by the *Consultant* and made appropriate inquiries) that the *Consultant* is no longer in a position to perform its obligations under this contract and may terminate the *Consultant's* obligations under this contract with immediate effect. In the event of termination

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under this clause, the termination procedures followed are as in NEC3 core clause 91 and the amounts due on termination are as under core clause 92 to the NEC3 PSC contract.

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* (or a Consortium Member). 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 a Consortium Member), or
- the composition of the *Consultant* (or a Consortium Member). Without limitation, a change is material if it directly or indirectly affects the performance of this contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant* (or a Consortium Member).

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*.

Z7.9 If a Change of Control occurs which is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Employer* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree to implement the actions the *Employer* reasonably believes are needed to overcome or mitigate the conflict, the *Employer* may terminate this contract with immediate effect. In the event of termination under this clause, the termination procedures followed as in clause 91 and the amounts due on termination are as under clause 92

Z7.10 If, as a result of a Change in Control an Associated Company (as defined in clause Z29) or Consortium Member is a person or organisation with which the *Employer* does not wish to be associated for ethical or reputational reasons the *Employer* may terminate this contract with immediate effect. In the event of a termination under this clause, the termination procedures followed as in clause 91 and the amounts due on termination are as under clause 92 to this contract.

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Z7.11 If a Change of Control occurs, the *Consultant* provides to the *Employer*:

- certified copies of the audited consolidated accounts of the new Controller for the last three financial years,
- a certified copy of the board minute of the new 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 new Controller meets the Credit Rating Threshold and

any other information requested by the *Employer* in order to satisfy itself that the *Consultant* remains in a position to perform its obligations under this contract.

Z7.12 If a Change of Control or any of the events listed in this clause Z7 (or Z39 below) occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the new Controller or (if the new Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Consultant* and accepted by the *Employer*.

Z7.13 A reason for not accepting an alternative guarantor proposed by the *Consultant* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z40.6 or

have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z7 has occurred.

## **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 *this contract* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Z8.2 If a dispute under this contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under this contract is referred to the Related Dispute *Adjudicator* and the Related Dispute *Adjudicator* becomes the *Adjudicator*.

## **Clause Z9 Project Bank Account**

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

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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* [at any time](#) 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.

Z9.4 [In addition, the \*Consultant\* also complies with the requirements in relation to Project Bank Accounts in S1600 of the Scope in Volume 2A \(S1600\).](#)

#### **Clause Z10 *Employer's Codes of Conduct***

Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct included [in the Scope](#). The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

[The codes of conduct include the “Counter-Fraud, Bribery and Corruption Policy and Response Plan” and “Fair Payment Charter”.](#)

[The \*Consultant\* complies with these requirements which are set out in the Scope \(see Volume 2A S509 and also see link in Annex 02 of Volume 2B.\)](#)

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

#### **Clause Z11 *Fair payment***

[Z11.1 The \*Consultant\* complies with the fair payment requirements in the Scope. \(Section S827 of Volume 2A\).](#)

#### **Clause Z12 *Confidentiality***

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

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

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

- such disclosure is a requirement of the law of this contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the

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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.

Z12.9 In addition, the *Consultant* complies with *Employer's* confidentiality requirements contained in the Scope (Volume 2A Section S 557) and disclosure requirements. (Scope Volume 2A Section S555). If there is any conflict between this clause Z12 and the *Employer's* requirements in the Scope, the *Employer's* requirements in the Scope take precedence.

### **Clause Z13 Security Requirements**

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

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

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

Z13.3 In addition, the *Consultant* complies with *Employer's* security requirements which are contained in the Scope (Volume 2A Section 504 and S514 along with their associated Annexes in Volume 2B Annex 4 and Annex 9). If there is any conflict between this clause Z13 and the *Employer's* requirements in the Scope, the *Employer's* requirements in the Scope take precedence.

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**Clause Z14 Official Secrets Act**

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

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

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

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

Z14.5 The *Consultant* also complies with the Scope Volume 2A (Section S556). Note Z14.2 above is to apply to all “subcontractors (at any stage of remoteness to the *Employer*)”. If there is any conflict between this clause Z14 and the *Employer’s* requirements in the Scope, the *Employer’s* requirements in the Scope take precedence.

**Clause Z15 Data protection**

Z15.1 The *Consultant* complies with the *Employer’s* Data Protection requirements which are contained in the Scope (see Volume 2A Section 512 and Volume 2B Annex 8).

**Clause Z16 Freedom of Information**

Z16.1 The *Consultant* complies with the *Employer’s* requirements in respect of “disclosure” in the Scope. (See Volume 2A Section S 555).

**Clause Z17 Records and Audit Access**

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

Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any [subconsultant](#).

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

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



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relation to the *Consultant* is not a function exercisable under this contract.

Z17.5 In addition, the *Consultant* complies with the *Employer's* requirements which are set out in the Scope (Volume 2A Section S 832). Note slight differences in terminology and Highway's England require a monthly Efficiency Register. Where there is any conflict between this clause Z17 and the *Employer's* requirements in the Scope, the *Employer's* requirements in the Scope take precedence.

## **Clause Z18 Reporting: Small and Medium Enterprises**

Z18.1 In this clause "SME" is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

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

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

- the name of the SME,
- the class of SME (medium, small or micro),
- the value and percentage of this 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



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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.

Z18.6 The *Consultant* complies with the *Employer's* requirement in the Scope. See Scope Volume 2A at Section S 829. Where there is any conflict between this clause Z18 and the *Employer's* requirements in the Scope, the *Employer's* requirements in the Scope take precedence.

**Clause Z19 NOT USED**

**Clause Z20 Tax Non-Compliance**

Z20.1

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

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

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

(3) General Anti-Abuse Rule is

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

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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**

Z21.1 The *Consultant* complies with the *Employer's* requirements in the Scope. (See Volume 2A Sections S541 and S542 and the Quality Table at Volume 2B Annex 10.)

#### **Clause Z22 Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**

Z22.1 The Parties agree that:

- where the commencement of the provision of the *services* or any part thereof results in one or more Relevant Transfers, [Annex G](#) shall apply as follows:
- where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of [Annex G](#) shall apply;
- where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the [Annex G](#) shall apply;
- where the Relevant Transfer involves the transfer of Transferring Employer Employees and Transferring Former

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Consultant Employees, Parts A and B of [Annex G](#); and

- Part C of [Annex G](#) shall not apply;
- where commencement of the provision of the *services* or a part of thereof does not result in a Relevant Transfer, Part C of [Annex G](#) shall apply and Parts A and B of [Annex G](#) shall not apply; and
- Part D of [Annex G](#) shall apply on the expiry or termination of the *services* or any part of thereof.

[Z22.2](#) For the purposes of [Annex G](#), “Service Period” means from the starting date until Completion.

#### **Clause Z23    [Audit of staff rates](#)**

[Z23.1](#) Every three months from the *starting date* until Completion of the whole of the *services*, the *Consultant* (or, if the *Consultant* comprises a Consortium, each Consortium Member) provides a report of all Staff used to Provide the *Services* during the preceding three months, their respective grade and *staff rate* and evidence that their salary base (as described in the Staff Rates [Annex E](#)) is appropriate for their staff grade (the “Quarterly Salary Report”).

[Z23.2](#) On each anniversary of the *starting date*, the Chief Financial Officer or Director of Finance (or equivalent senior officer agreed with the *Service Manager*) of the *Consultant* (or, if the *Consultant* comprises a Consortium, of each Consortium Member) certifies that all Quarterly Salary Reports provided during the preceding year

- [are](#) accurate and not misleading,
- [have](#) been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- [are](#) a true and fair reflection of the information included within the *Consultant’s* books, management and statutory accounts and other documents and records and
- [comply](#) with this contract.

[Z23.3](#) If [any Staff used to Provide the Services are Staff of a subcontractor \(at any stage of remoteness from the Employer\)](#), and the *Consultant* considers that, in order to comply with any law, the [relevant subcontractor](#) should submit its [own Quarterly Salary Report](#) 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*.

[Z23.4](#) Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a [subcontractor](#) to provide

- records of any Time Charge incurred by it or
- a certificate that its invoice and records of any Time Charge

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incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the [relevant subcontractor or Consortium Member](#) 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 [relevant subcontractor or Consortium Member](#) to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the [relevant subcontractor or Consortium Member](#) to submit its records and certificate directly to the *Employer*.

**Z23.5** The *Consultant* includes in the conditions of contract for each [subcontractor](#)

- provisions substantially similar to those set out in clause Z23.,
- a right for the *Employer* to audit any records and certificates provided by the [subcontractor](#) under this clause Z23,
- an obligation on the [subcontractor](#) 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 [subcontractor](#) ,
- a right for the *Consultant* to recover from the [subcontractor](#) (or to deduct from any amount that would otherwise be due to the [subcontractor](#) ) 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 [subcontractor](#) that the *Employer* may enforce these provisions directly against the [subcontractor](#) under the Contracts (Rights of Third Parties) Act 1999.

#### **Clause Z24 Insurance cover**

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

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

#### **Clause Z25 Professional indemnity insurance**

Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon

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

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

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

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

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

Clause Z26 NOT USED

**Clause Z27 Termination – PCRs, Regulation 73**

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

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

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Date.

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

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

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

**Clause Z28 Value Added Tax (VAT) Recovery**

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

**Clause Z29 Tax Arrangements of Public Appointees**

Z29.1 For the purposes of this clause

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

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

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

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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*, [or if the \*Consultant\* is an unincorporated joint venture](#) 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)".

[Add the following:](#)



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Z30.4 The *Consultant* nominates the representative named in the Contract Data for the purposes of this contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Consultant* acknowledges that receipt of a communication by the *Consultant's* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Employer* in advance of any change to the identity of the *Consultant's* nominated representative

Z30.5 The *Consultant* acknowledges that any payment made by the *Employer* to a Consortium Member under this contract to that extent discharges the *Employer's* liability to make payment to the *Consultant*.

Z40.6 A Consortium Member gives not less than four weeks' notice to the *Employer* of any proposed termination of the joint venture arrangement.

## **Clause Z31 Subcontracting**

Z31.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under this contract.

Z31.2 If the *Consultant* subcontracts work to an Associated Company (as defined in clause Z29), the [Defined Cost] of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Employer*.

Z31.3 The *Employer* may, having stated the reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with this contract.

Z31.4 The *Employer* may terminate if a Subcontractor or another resource needed for the *works* is no longer available and the *Consultant* is unable to propose an alternative resource acceptable to the *Service Manager*. In the event of a termination under this clause, the termination procedures followed are and the amounts due on termination are in accordance with clause 92

Z31.5 Before

- appointing a proposed subcontractor or
- allowing a subcontractor to appoint a proposed subsubcontractor

the *Consultant* submits to the *Service Manager* for acceptance

- either
  - a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor
  - or other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that



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none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or subsubcontractor

- [details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor.]

Z31.6 The *Consultant* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Service Manager* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or

[the *Service Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or event giving rise to Enforcement Action will not reoccur.]

Z31.7 If requested by the *Service Manager*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.

Z 31.8 If, following the acceptance of a submission under clause Z31.2 it is found that

- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- [the subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or event giving rise to Enforcement Action will not reoccur]

the *Service Manager* may instruct the *Consultant* to

- replace the subcontractor or
- require the subcontractor to replace the subsubcontractor

Z31.9 The *Consultant* submits the name of each proposed subcontractor to the *Employer* for acceptance. A reason for not accepting the subcontractor is that its appointment will not allow the *Consultant* to Provide the Services.

Z37.10 The *Consultant* does not appoint a proposed subcontractor until the *Service Manager* has accepted it.

Z37.11 The *Consultant* submits the proposed conditions of contract for each subcontract to the *Service Manager* for acceptance unless the

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*Service Manager* has agreed that no submission is required.

Z37.12 The *Consultant* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Service Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Consultant* to Provide the Services or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

Z37.13 The *Consultant* also complies with the subcontracting requirements in the *Employer's Scope* (Volume 2A Section S825).

Z37.14 A reference under the Framework Agreement to a Subcontractor includes a Subconsultant, a subconsultant or a Subcontractor under this contract.

#### **Clause Z32 Energy Efficiency Directive**

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

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

Z32.2 The *Consultant* complies with the requirements of the Scope Volume 2A section S516.

#### **Clause Z33 Compliance with statutory requirements**

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

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

#### **Clause Z34 Negotiation and mediation**

Z34.1 Without prejudice to either Party's right to refer a dispute to the

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*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 *the Employer's senior representatives* and *the Consultant's senior representatives* for negotiation and resolution.

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

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

**Clause Z35** NOT USED

**Clause Z36** NOT USED

**Clause Z37** NOT USED

**Clause Z38** Intellectual Property Rights

**Z38.1 Intellectual Property Rights or IPRs, Software, Open Source Software and OSS**, have the meaning given in the Scope Volume 2B.

Z38.2 The *Employer* owns (or will own) all IPRs in material prepared in connection with this contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Employer*, the *Consultant* enters into such documents and does such acts as the *Employer* requests to transfer the IPRs to the *Employer*, and procures that its subcontractors (at any stage of remoteness from the *Employer*) do the same. The *Consultant* provides to the *Employer* the documents which transfer these IPRs to the *Employer*.

Z38.3 The *Consultant* grants or obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Employer* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees or any third party. Z38.4 The *Consultant* provides to the *Employer* the documents which license these IPRs to the *Employer*.

Z38.5 The *Consultant's* or third party licensor's exclusive remedies for any breach by the *Employer* or any sub-licensee, of any licence granted under this clause are damages and equitable relief.

Z38.6 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer* contains a right for the *Employer*

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(enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Z38.7 The *Consultant* warrants to the *Employer* that

- the Software does not contain any Open Source Software other than OSS and
- the OSS is licensed upon terms which permit the use of such Open Source Software by the *Consultant*, the *Employer* and the *Employer*'s end users for all purposes contemplated by this contract.
- all components of the Software:
  - are free from material design and programming errors,
  - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
    - the Scope,
    - the Quality Statement,
    - the Documentation and

do not infringe any Intellectual Property Rights

Z38.8 The *Consultant* at all times, during and after Completion, indemnifies the *Employer* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

## **Clause Z39 Financial Distress**

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

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

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

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- 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 (if the Controller does not meet the Credit Rating Threshold) 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.

A reason for not accepting an alternative guarantor proposed by the *Consultant* is that it does not

- meet the Credit Rating Threshold,
- provide the legal opinion required in clause Z40.6 or

have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z7 or Z39 has occurred.

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

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

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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 and may terminate this contract with immediate effect.

**Clause Z40 Change of Control – new guarantee / Parent company Guarantee**

- Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
  - a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).
- Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6 or does not meet the Credit Rating Threshold, 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.

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

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

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

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

## Clause Z41 Parent Company Guarantee

Z41.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee and legal opinion in accordance with Section S 1100 of the Scope (Volume 2A). 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 or Consortium (more than one party) – the Controller of each Consortium



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Member or

- for an incorporated joint venture or Consortium – 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 Z42 Offshoring of data

Z42.1 In this clause

**Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with the documents stated in the Contract Data and the *Employer's Information Security Data Security Standard* (see link in Scope Volume 2B Annex 02).

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) as referred to in Annex 02 of Scope Volume 2B

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

until the *Service Manager* has confirmed to the *Consultant* that either

- the *Service Manager* 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 *Service Manager* 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.

Z42.6 The *Consultant* complies with *Employer's* requirements in respect of the offshoring of data in the Scope. (Section S513 of Volume 2A and links in Scope Volume 2B Annex 02).

## **Clause Z43**

### **Payment forecast**

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

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

## **Clause Z44**

### **Responsibility for documents**

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

Z44.2 The *Consultant* complies with the Scope Section S562 ("Records and Audit Access").

## **Clause Z45**

### **Apprenticeships**

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

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

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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 number or percentage target
- actions being taken to improve the take up of apprenticeships and
- other training/skills development being undertaken by employees in relation to this contract, including
  - work experience placements for 14 to 16 year olds,
  - work experience /work trial placements for other ages,
  - student sandwich/gap year placements,
  - graduate placements,
  - vocational training,
  - basic skills training and
  - on site training provision/ facilities.

Z45.6 The *Consultant* complies with the Scope (In particular refer to Section S506 of Volume 2A and Annex 6 of Volume 2B). If there is any conflict between this clause and the *Employer's* requirements in the Scope, then the Scope takes precedence.

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**Clause Z46**

**NOT USED**

**Clause Z47**

**Employer's Property**

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

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

**Clause Z48**

**Building Information Modelling**

Z48.1 The *Consultant* complies with the information modelling requirements in s1400 of the Scope.

Z48.2 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 pursuant to or in accordance with s1400 of the Scope by or on behalf of the *Employer* (including any produced by the *Consultant* or another member of the professional team) ("**BIM Material**") for the purpose of Providing the Services and complying with s1400 of the Scope;

Z48.3 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 s1400 of the Scope, 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 s1400 of the Scope or the BIM Material; or
  - was made following termination of the engagement of the party that produced it (or on

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whose behalf it was produced) in relation to this contract for a use which was permitted in accordance with s1400 of the Scope or the BIM Material.

## Clause Z49

### Tasks

#### Z49.1

The *Service Manager* may issue a Task Order to the *Consultant*. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The instruction includes

- a Task Brief,
- a job description for any new Highways England role,
- a requirement to assess the pricing for the Task in accordance with the Baseline Price Estimate (as adjusted in accordance with this clause Z49.1)
- a requirement to take into account any relevant Service Plan (including any amendments thereto accepted by the *Service Manager*) and
- the Task Starting Date and Task Completion Date.

For this purpose, the relevant Baseline Price Estimate is adjusted to take into account any relevant

- compensation event under clause 6
- indexation under clause Z51 and

amendment to the relevant Service Plan accepted by the *Service Manager* in accordance with this contract, and any such adjustment is deemed to be assessed as a compensation event under clause 6.

#### Z49.2

The *Consultant* provides the staff rates for the new Highways England role using the template in the Annex E of the Pricing Documents. The business overhead and the office overhead percentages are not changed.

#### Z49.3

The *Consultant* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Consultant* submits details of its assessment with the quotation. If the quotation is not the same as the relevant Baseline Price Estimate (as adjusted under clause Z49.1), the *Consultant* includes details of the reasons for the difference between the quotation and the relevant Baseline Price Estimate (as adjusted under clause Z49.1). The *Service Manager* replies within two weeks of the submission. The reply is

- acceptance of the quotation and the issue of the Task Order,
- an instruction to submit a revised quotation,

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	<ul style="list-style-type: none"> <li>• that the <i>Service Manager</i> will be making the assessment or</li> <li>• a notification that the Task will not be instructed.</li> </ul>
Z49.4	The <i>Service Manager</i> instructs the <i>Consultant</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Consultant</i> . The <i>Consultant</i> submits the revised quotation within three weeks of being instructed to do so.
Z49.5	<p>The <i>Service Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"> <li>• the <i>Consultant</i> to submit quotations for a Task or</li> <li>• the <i>Service Manager</i> to reply to a quotation</li> </ul> <p>if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Consultant</i> of the extension which has been agreed.</p>
Z49.6	<p>The <i>Service Manager</i> assesses the pricing for the Task if</p> <ul style="list-style-type: none"> <li>• the <i>Consultant</i> has not submitted a quotation and details of its assessment within the time allowed or</li> <li>• the <i>Service Manager</i> decides that the <i>Consultant</i> has not assessed the Task correctly in a quotation and has not instructed the <i>Consultant</i> to submit a revised quotation or</li> <li>• the quotation is not in accordance with the relevant Baseline Price Estimate (as adjusted under clause Z51).</li> </ul> <p>The <i>Service Manager</i> notifies the <i>Consultant</i> of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the <i>Consultant's</i> submission of its quotation for the same Task. This period starts when the need for the <i>Service Manager's</i> assessment becomes apparent. The <i>Service Manager</i> may assess the pricing for a Task by reference to the relevant Baseline Price Estimate (as adjusted under clause Z51). The <i>Service Manager</i> may issue a Task Order notwithstanding that there is a dispute on the assessment of the pricing for the Task. The <i>Employer</i> pays the <i>Consultant</i> in accordance with the <i>Service Manager's</i> assessment pending resolution of the dispute.</p>
Z49.7	The pricing of each Task as agreed or determined in accordance with this clause Z49 is set out in the Task price list.
Z49.8	<p>When a Task Order is issued</p> <ul style="list-style-type: none"> <li>• the staff rates for the new Highways England Role become <i>staff rates</i> and</li> <li>• the work involved is added to the Scope.</li> </ul> <p>The issue of a Task Order is not a compensation event.</p>

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Z49.9	The <i>Consultant</i> does not start any work included in the Task until the Task Starting Date or (if no Task Starting Date is specified) the date on which it receives the Task Order, and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.
Z49.10	The <i>Service Manager</i> decides the date of Task Completion and certifies it within one week thereafter.
Z49.11	<p>The <i>Service Manager</i> may instruct the <i>Consultant</i> to carry out a Task in an emergency before the requirements of clauses Z49.1 to Z49.5 have been fully complied with. If so</p> <ul style="list-style-type: none"> <li>the <i>Service Manager</i> provides any of the matters listed in clause Z49.1 which it has not provided and</li> </ul> <p>the <i>Consultant</i> submits its quotation for the Task as soon as practical after the Task Order is issued.</p>
Z49.12	The <i>Consultant</i> provides information which shows how each item included in a Task relates to the operations on each programme which it submits for acceptance.
<b>Clause Z50</b>	<b>Basis of contract and compensation events</b>
Z50.1	<p>The <i>Consultant</i> is deemed to have satisfied itself before entering into this contract</p> <ul style="list-style-type: none"> <li>as to the scope and nature of the <i>services</i> and its obligations under this contract</li> <li>as to the basis of payment for the <i>services</i> and</li> <li>that it has all the information necessary to enable it to Provide the <i>Services</i> in accordance with this contract.</li> </ul>
<b>Z51</b>	<b>Indexation</b>
Z51.1	<p>On each anniversary of the Contract Date, the <i>Consultant</i> calculates a price adjustment factor, equal to <math>(L-B)/B</math>, where</p> <ul style="list-style-type: none"> <li>L is the last published value of the <i>index</i> and</li> <li>B is the last value of the <i>index</i> published before the Contract Date.</li> </ul> <p>If an <i>index</i> is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.</p> <p>The price adjustment factor calculated at the Completion Date for the whole of the <i>services</i> is used for calculating adjustments after this date.</p>
Z51.2	On each anniversary of the Contract Date, each <i>staff rate</i> is adjusted by the price adjustment factor

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	the adjusted <i>staff rate</i> = <i>staff rate</i> x (1 + price adjustment factor)
Z51.3	<p>On each anniversary of the Contract Date, each Baseline Price Estimate is adjusted by the price adjustment factor</p> <p>the adjusted Baseline Price Estimate = Baseline Price Estimate x (1 + price adjustment factor)</p>
Z51.4	<p>On each anniversary of the Contract Date, each target cost in a Task Order is adjusted by the price adjustment factor</p> <p>the adjusted target cost = target cost x (1 + price adjustment factor)</p>
Z51.5	Notwithstanding clause Z51.1 to Z51.5, there is no adjustment under this clause Z51 to any Time Charge in respect of the Mobilisation Activities.
<b>Clause Z52</b>	<b>The final accounting assessment</b>
Z52.1	<p>Within thirteen weeks after the date on which any Task Completion is achieved (or, in the case of Mobilisation Activities, within thirteen weeks of the end of the Mobilisation Phase) the <i>Service Manager</i></p> <ul style="list-style-type: none"> <li>• makes an assessment of the final amount due for the relevant Task or Mobilisation Activities (as applicable) and</li> </ul> <p>notifies the <i>Consultant</i> of that assessment and provides details of how the assessment has been made.</p>
Z52.2	<p>The <i>Service Manager</i> gives the <i>Consultant</i> details of how the amount due has been assessed. The Party to whom payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Service Manager's</i> notification. The final payment is made by the later of</p> <ul style="list-style-type: none"> <li>• one week after the paying Party receives an invoice from the other Party and</li> </ul> <p>three weeks after the assessment date.</p>
Z52.3	<p>The <i>Service Manager's</i> assessments are conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable) unless a Party</p> <ul style="list-style-type: none"> <li>• refers a dispute about the assessment of the final amount due to the <i>senior representatives</i> or to the <i>Adjudicator</i> within four weeks of the assessment being issued,</li> <li>• refers any issues referred to but not agreed by the <i>senior representatives</i> to the <i>Adjudicator</i> within three weeks of the list of issues not agreed being produced or when it should have been produced and</li> </ul>

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		refers to the <i>tribunal</i> its dissatisfaction with a decision of the <i>Adjudicator</i> as to the final assessment of the amount due within four weeks of the decision being made.
	Z52.4	<p>The assessment of the final amount due is changed to include</p> <ul style="list-style-type: none"> <li>• any agreement the Parties reach and</li> <li>• a decision of the <i>Adjudicator</i> which has not been referred to the <i>tribunal</i> within four weeks of that decision.</li> </ul> <p>A changed assessment becomes conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable).</p>
	<b>Clause Z53</b>	<b>Audit, Quality Management Points and Nonconformities</b>
	Z53.1	Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less, the <i>Service Manager</i> does not issue any further Task Orders to the <i>Consultant</i> and the <i>Employer</i> may appoint Others to perform these Tasks.
	<b>Clause Z54</b>	<b>Corruption or loss of data</b>
	Z54.1	<p>If any data of the <i>Employer</i> is corrupted, lost, stolen or sufficiently degraded as a result of the <i>Consultants</i> default so as to be unusable, the <i>Consultant</i> immediately reports this to the <i>Service Manager</i> and</p> <ul style="list-style-type: none"> <li>• the <i>Service Manager</i> may instruct the <i>Consultant</i> to restore the data in accordance with the <i>Service Manager's</i> requirements (and any cost incurred by the <i>Consultant</i> in so doing is not included in the Price for Services Provided to Date) or</li> <li>• the <i>Employer</i> may itself restore the data (and the <i>Consultant</i> pays to the <i>Employer</i> any reasonable expenses which the <i>Employer</i> incurs in so doing).</li> </ul>
	<b>Clause Z55</b>	<b>Title to equipment and other items to be supplied under this contract ("Equipment")</b>
	Z55.1	<p>Whatever title the <i>Consultant</i> has to any Equipment passes to the <i>Employer</i> at the earlier of</p> <ul style="list-style-type: none"> <li>• the Equipment being brought into an ICT Location, into a Project Site Office or Compound, onto the <i>Employer's</i> premises or to such other location as is identified in a Task Order and</li> <li>• the <i>Service Manager</i> marking it as for this contract.</li> </ul>
	Z55.2	Title to the Equipment passes back to the <i>Consultant</i> if the same is removed from the relevant ICT Location, Project Site Office or Compound, <i>Employer's</i> premises or other location identified in a Task Order (as applicable) with the <i>Service Manager's</i> permission.

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Z55.3	<p>The <i>Service Manager</i> marks Equipment as for this contract if</p> <ul style="list-style-type: none"> <li>• this contract identifies it for payment and</li> <li>• the <i>Consultant</i> has prepared it for marking as the Scope requires.</li> </ul>
Z55.4	<p>The <i>Consultant</i> removes the Equipment from the relevant ICT Location, Project Site Office or Compound, <i>Employer's</i> premises or other location identified in a Task Order as applicable (with the <i>Service Manager's</i> permission) when it is no longer needed to Provide the Services or to be retained by the <i>Employer</i>.</p>
Clause Z56	<b>Extension to the Completion Date</b>
Z56.1	<p>The <i>Employer</i> may notify the <i>Consultant</i> that the Completion Date is to be extended by the Extension Period or such lesser period as the <i>Employer</i> may specify.</p>
Z56.2	<p>If the Completion Date is extended by less than the Extension Period, the <i>Employer</i> may further extend the Completion Date so that the total period of extension does not exceed the Extension Period.</p>
Z56.3	<p>The <i>Employer</i> does not notify the <i>Consultant</i> of any extension or further extension to the Completion Date later than 9 months before the Completion Date.</p>
Clause Z57	<b>Infrastructure Act 2015</b>
Z57.1	<p>The <i>Consultant</i> Provides the Services in compliance with, and so as not to put the <i>Employer</i> in breach of</p> <ul style="list-style-type: none"> <li>• the Licence and</li> <li>• any other directions and guidance issued by the Secretary of State to the <i>Employer</i> under section 6 of the Infrastructure Act 2015 (and notified by the <i>Service Manager</i> to the <i>Consultant</i>).</li> </ul>
Z57.2	<p>The <i>Service Manager</i> notifies the <i>Consultant</i> of any notice issued by the Office of Rail and Road to the <i>Employer</i> under section 11(2)(a) of the Infrastructure Act 2015 that relates to the services. The <i>Consultant</i> complies with the terms of any such notice and indemnifies the <i>Employer</i> against any associated fine imposed on the <i>Employer</i> under section 11(2)(b) of that Act.</p>
Z58	<b>Revisions to the Tender Commitments Statement</b>
Z58.1	<p>The <i>Consultant</i> may submit to the <i>Service Manager</i> proposed revisions to the Tender Commitments Statement for acceptance within the <i>period for reply</i>. A reason for not accepting the proposed revision is that</p> <ul style="list-style-type: none"> <li>• it will not enable the <i>Consultant</i> to meet a Performance Requirement,</li> <li>• it will unacceptably increase the risk of failure to meet a</li> </ul>

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Performance Requirement,

- it will not enable the *Consultant* to achieve the level of performance specified in the Tender Commitments Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Tender Commitments Statement.

Z58.2 A revision to the Tender Commitments Statement accepted by the *Service Manager* is not a compensation event.

**Z59 Indemnified Claims**

Z59.1 The *Employer* notifies the *Consultant* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Employer* is liable under this contract (an Indemnified Claim).

Z59.2 The *Consultant* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Employer*. The *Employer* co-operates with and gives reasonable assistance to the *Consultant* in defending the Indemnified Claim.

Z59.3 The *Consultant* keeps the *Employer* fully and regularly informed and consults with the *Employer* as appropriate in relation to the conduct of any Indemnified Claim.

Z59.4 Where the *Consultant* is diligently conducting the defence of an Indemnified Claim, the *Employer* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Consultant*.

Z59.5 The *Consultant* bears the costs which it incurs in defending an Indemnified Claim. The *Consultant* indemnifies the *Employer* against any costs incurred by the *Employer* arising out of the *Consultant's* defence of the Indemnified Claim.

Z59.6 The *Employer* may, at any time prior to the settlement of an Indemnified Claim, give the *Consultant* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Employer's* notice the *Consultant*

- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Employer* and

co-operates with and gives reasonable assistance to the *Employer* in defending the Indemnified Claim.

Z59.7 Where the reason for the *Employer's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Employer* in respect of it.

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**INCENTIVE SCHEDULE**

**Incentive Schedule**

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## Key Performance Indicators

The Key Performance Indicators together incentivise the *Consultant* to influence Project outcomes positively, whilst controlling its own costs. There are three categories of Key Performance Indicators (“KPIs”):

- “Mobilisation KPIs” are applicable only during the Mobilisation Phase (Phase M)
- “Delivery Phase KPIs” are based on matters which are within the control of the *Consultant* and directly linked to the service within each Delivery Phase (Delivery Phases 1 to 5) and
- “Project KPIs” are based on matters which can be influenced by the *Consultant* and are linked to the overall delivery of the Project.

The KPIs in each of these categories are set out in the KPI incentive table at Annex 1 (“Incentive Table”).

The Incentive Table sets out for each category of KPI, the relevant measure, frequency of assessment and weighting. The basis of metric and basis of calibration columns “KPI Metrics” to determine the score for each KPI between minimum and maximum limits are developed during the Mobilisation Phase in accordance with this Incentive Schedule.

## Profit Element

KPIs are used to adjust the amount of profit which the *Consultant* can recover, whether by addition or reduction from the amount due in accordance with clause X20.4, dependent on KPI performance.

In this Incentive Schedule “Profit Element” means for

- Mobilisation KPIs: the aggregate Profit for the Mobilisation Phase and
- Delivery Phase KPIs for any Phase: the aggregate Profit for all Task Orders in that Phase up to the date of the relevant assessment.

There is no Profit Element for Project KPIs. Project KPIs, however

- moderate any adjustment to profit arising under the Delivery Phase KPI and
- provide for a bonus profit if all Project KPIs are met at the date of Completion.

## Mobilisation KPIs

### Monitoring and assessment of Mobilisation Phase KPIs

Mobilisation Phase KPIs are monitored as part of the monthly project reporting cycle and progress against KPIs is reviewed quarterly following submission of the *Consultant’s* report of its performance against the Mobilisation Phase KPIs.

The *Consultant* provides all the data by which the *Employer* can assess the *Consultant’s* performance accurately against each Mobilisation Phase KPI.

Assessment of performance against the Mobilisation KPIs is not made until completion of the Mobilisation Phase at which time any amount due to the *Consultant* or the *Employer* as an

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adjustment to the Profit Element for the Mobilisation Phase is paid in accordance with clause X20.4.

All Mobilisation Phase KPIs are assessed on a pass/fail basis.

### **Relationship between Mobilisation Phase KPI performance and profit**

100% of the Profit Element for the Mobilisation Phase is included in the assessment of each amount due under clause 50 of the *conditions of contract* during the Mobilisation Phase.

If the *Consultant* fails to achieve any of the Mobilisation Phase KPIs by the numbers of days stated in the column headed "Frequency", the *Consultant* pays (or allows) to the *Employer* 50% of the Profit Element for the Mobilisation Phase.

## **Delivery Phase KPIs and Project KPIs**

### **Development of KPI Metrics During Mobilisation Phase**

As part of the Mobilisation Activities, the *Consultant* develops the detailed processes which underpin the KPI Metrics for each

- Delivery Phase KPI and
- Project KPI.

Before applying its weighting stated in the Incentive Table, each Delivery Phase KPI and Project KPI is calibrated in accordance with the following range

- maximum score is 200
- "par" score is 100 and
- minimum score is 0.

For each Delivery Phase KPI and Project KPI and before applying its weighting, using the range described above, the *Consultant* calibrates the actual KPI measurement with its score. The calibrated range need not be linear.

The *Consultant* submits its proposals for each KPI Metric to the *Service Manager* for acceptance no later than 40 working days after the *starting date*.

A reason for not accepting a proposed KPI Metric is that

- they do not align with the Incentive Table,
- they do not reflect a symmetrical balance between the opportunity for any Profit Element to increase or decrease,
- they do not allow the *Employer* to assess accurately whether KPIs have been met or
- they do not otherwise comply with this contract.

### **KPI Scores for Delivery Phase KPIs and Project KPIs**

The KPI Score for the Delivery Phase KPIs and the Project KPIs is a number between 0 and 200. At each quarterly assessment the relevant KPI Score is as follows

- Delivery Phase KPIs in any Delivery Phase: the KPI Score is the aggregate of the weighted scores for all Delivery Phase KPIs for that Phase in that quarter and

- Project KPI in any Delivery Phase: the KPI Score is the aggregate of the weighted scores for all Project KPIs in all quarters in the relevant Delivery Phase up to and including the quarterly assessment.

For the purpose of determining the KPI Score at any quarterly assessment for any Delivery Phase KPI or Project KPI in respect of which the frequency of assessment in the Incentive Table is not quarterly, the KPI Score is based on the forecast outturn KPI Score of that KPI for the relevant frequency at the date of the quarterly assessment. Such Project KPI or Delivery Phase KPI is then reassessed at the quarterly assessment following the frequency stated in the Incentive Table.

### Monitoring and assessment of KPIs

Delivery Phase KPIs and Project KPIs are monitored monthly as part of the monthly project reporting cycle. The *Consultant* provides all the data by which the *Employer* can assess the *Consultant's* performance accurately against each Delivery KPI and Project KPI.

Payments owing to or from the *Consultant* in respect of Delivery Phase KPIs are assessed quarterly at the next assessment date following submission of the *Consultant's* report of its performance against the Delivery Phase KPIs and Project KPIs.

### Relationship between Delivery Phase KPI performance and Profit

The extent of the adjustment (whether by addition or reduction) of the Profit Element for all Task Orders in a Delivery Phase arising from the performance in respect of Delivery Phase KPIs for any quarterly assessment in that Phase is as shown in the table below.

Additional Profit Element payable or deductible (linear scale)	Delivery Phase KPI Score (linear scale)
100% x Profit Element payable	200
0% x Profit Element (no adjustment)	100 (par score for KPI suite)
100% x Profit Element deductible	0

In respect of any assessment date under clause 50 in respect of which Delivery Phase KPIs are not required to be reported under clause X20.2 during the assessment interval relating to that assessment date, 100% of the Profit Element for all the Task Order in that Phase is included in the assessment of each amount due under clause 50 of the *conditions of contract* for that Task Order.

In respect of any assessment date under clause 50 in respect of which Delivery Phase KPIs are required to be reported under clause X 20.2 during the assessment interval relating to that assessment date, if the KPI Score for the relevant Delivery Phase KPIs

- equals 100, the *Consultant* is entitled to retain the Profit Element for all Task Orders in that Phase which has been included in the assessments of Price for Service Provided to Date for the relevant quarter, and no further amount is payable to or by the *Consultant* in respect of its Delivery Phase KPI performance for the relevant quarter,

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- - is greater than 100 (subject to the “release-retain” mechanism set out below), the *Consultant* is entitled to be paid an additional proportion of the Profit Element for all Task Orders in that Phase on a pro rata basis, up to a maximum of 100% of that Profit Element for the relevant quarter (and such additional proportion of the Profit Element is referred to in this Incentive Schedule as the "Earned Profit Element") and
  - 
  - is below 100, the *Consultant* pays (or allows) to the *Employer* a proportion of the Profit Element for all Task Orders in that Phase on a pro rata basis, up to a maximum of 100% of that Profit Element for the relevant quarter.

### **Release-Retain of Earned Profit Element**

Project KPIs and Phase KPIs are interdependent and the *Consultant* is only entitled to be paid any Earned Profit Element in respect of the Delivery Phase KPIs if the Project KPIs are being met, in accordance with this “release-retain” mechanism.

At each quarterly assessment in respect of the Delivery Phase KPIs for a Delivery Phase, the extent to which there is a release of Earned Profit Element for that Phase (whether such Earned Profit Element relates to the same or a previous quarterly assessment) will depend on whether the Project KPIs are, at the date of that assessment,

- “green”, meaning that a KPI Score for the Project KPIs of 100 or more has been achieved at that assessment date,
- “amber”, meaning that a KPI score for the Project KPIs of less than 100 but more than 90 has been achieved at that assessment date or
- “red”, meaning that a KPI score for the Project KPIs of less than 90 has been achieved at that assessment date.

### **Project KPIs Green**

If the Project KPIs are “green” at the date of any quarterly assessment, all Earned Profit Element for the relevant Delivery Phase KPIs is released in full and paid to the *Consultant* in accordance with clause X20.

### **Project KPIs Amber**

If the Project KPIs are “amber” at the date of any quarterly assessment, 50% of any Earned Profit Element for the relevant Delivery Phase KPIs is released and paid to the *Consultant* in accordance with clause X20 and 50% is retained by the *Employer* (that retained balance being referred to in this Incentive Schedule as the "Amber Retained Balance").

The Amber Retained Balance does not become a sum due to the *Consultant* unless and until it is released in accordance with these provisions.

If at the

- first following quarterly assessment date, the Project KPIs are "amber", the Amber Retained Balance is retained by the *Employer* for a further quarter and
- second following quarterly assessment date (being 6 months after the initial assessment date), the Project KPIs are "amber", the Amber Retained Balance is

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retained permanently by the *Employer* and the *Consultant* loses all entitlement to that Amber Retained Balance.

The Amber Retained Balance is

- is released in full and paid to the *Consultant* in accordance with clause X20, if the Project KPIs become "green" at the first following quarterly assessment date or second following quarterly assessment date,
- retained by the *Employer*, if the Project KPIs remain "amber" at the first following quarterly assessment date and/or
- retained permanently by the *Employer* and the *Consultant* loses all entitlement to the Amber Retained Balance, if the Project KPIs become "red" at the second following quarterly assessment date (providing the Project KPIs have not become "green" at the first following quarterly assessment date).

### **Project KPIs Red**

If the Project KPIs are "red" at the date of any quarterly assessment, 100% of any Earned Profit Element for the relevant Delivery Phase KPIs is retained by the *Employer* (that retained balance being referred to in this Incentive Schedule as the "Red Retained Balance"). The Red Retained Balance does not become a sum due to the *Consultant* unless and until it is released in accordance with these provisions.

The Red Retained Balance is,

- retained permanently by the *Employer* and the *Consultant* loses all entitlement to the Amber Retained Balance, if the Project KPIs remain "red" at the first following quarterly assessment date,
- retained by the *Employer*, if the Project KPIs become "amber" at the first following quarterly assessment date,
- retained permanently by the *Employer* and the *Consultant* loses all entitlement to that Red Retained Balance, if the Project KPIs remain "amber" or become "red" at the second following quarterly assessment date and/or
- released in full and paid to the *Consultant* in accordance with clause X20, if the Project KPIs become "green" at the first or second following quarterly assessment date (having been "red" at the previous quarterly assessment date and "amber" at the first following quarterly assessment).

### **Project KPI Completion Bonus**

If the Project KPIs are "green" at the date of Completion of this contract, the *Employer* pays to the *Consultant* an additional amount equal to 50% of the aggregate of the:

- Baseline Price Estimates for all the Task Orders in all Delivery Phases at the Contract Date, multiplied by the *profit percentage* and
- Profit in respect of Mobilisation Activities which was included in the Baseline Price Estimate at the Contract Date.

## **Incentive Table**

The Incentive Table is at Annex 1 to this Incentive Schedule

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## ANNEX 1: INCENTIVE TABLE

[To be inserted.]

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**SCOPE**

**PLEASE SEE FRAMEWORK AGREEMENT SCHEDULE 2**

**AND**

**HIGHWAYS ENGLAND'S VOLUME 2 SCOPE**

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**PRICING DOCUMENTS**

**SEE HIGHWAYS ENGLAND'S VOLUME 3**

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## **STAFF TRANSFER SCHEDULES A TO D (ANNEX G)**

***[Guidance Note: this schedule only contains general provisions on the application of TUPE and related issues and is essentially designed to alert Employers to the range of issues that may need to be considered where the entering into of a Call Off Agreement (and/or its subsequent expiry) is likely to entail a TUPE transfer. Employers should always take specialist legal advice on the specific TUPE and pensions drafting requirements (e.g. whether the New Fair Deal applies, whether there will be a Relevant Transfer etc.) relevant to their project]***

### **1. Definitions**

1.1. In this Annex G, the following definitions shall apply:

**“Consultant’s Final Personnel List”**

means a list provided by the *Consultant* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;

**“Consultant’s Provisional Personnel List”**

means a list prepared and updated by the *Consultant* of all staff who are engaged in or wholly or mainly assigned to the provision of the *services* or any relevant part of the *services* which it is envisaged as at the date of such list will no longer be provided by the *Consultant*

**“Employee Liabilities”**

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

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	<ul style="list-style-type: none"> <li>d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the <i>Employer</i> or the Replacement Consultant to a Transferring Consultant Employee which would have been payable by the <i>Consultant</i> or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;</li> <li>f) claims whether in tort, contract or statute or otherwise;</li> <li>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>
<b>"New Fair Deal"</b>	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;
<b>"Notified Sub-Consultant"</b>	means a Sub-Consultant identified in Annex 1 of this Contract Annex G to whom Transferring Employer's Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date;
<b>"Principles of Good Employment Practice"</b>	means the guidance published by the Cabinet Office and found at <a href="http://www.gov.uk/government/publications/principles-of-good-employment-practice">www.gov.uk/government/publications/principles-of-good-employment-practice</a> ;
<b>"Replacement Consultant"</b>	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> from time to time or where the <i>Employer</i> is providing Replacement Services for its own account, shall also include the <i>Employer</i>
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the <i>services</i> and which the <i>Employer</i> receives in substitution for any of the <i>services</i> following the end of the Service Period or earlier termination, whether those services are provided by the <i>Employer</i> internally and/or by any third party;
<b>"Replacement Sub-Consultant"</b>	means a Subconsultant of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer

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	Date (or any sub-Consultant of any such sub-Consultant);
<b>“Service Transfer”</b>	any transfer of the <i>services</i> (or any part of the <i>services</i> ), for whatever reason, from the <i>Consultant</i> or any Subconsultant to a Replacement Consultant or a Replacement Sub-Consultant
<b>“Service Transfer Date”</b>	means the date of a Service Transfer;
<b>"Staffing Information"</b>	<p>means, in relation to all persons identified on the Consultant's Provisional Personnel List or Consultant's Final Personnel List, as the case may be, such information as the <i>Employer</i> may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>their ages, dates of commencement of employment or engagement and gender;</li> <li>details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;</li> <li>details of contracted working hours;</li> <li>the identity of the employer or relevant contracting party;</li> <li>their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>their wages, salaries and profit sharing arrangements as applicable;</li> <li>details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>copies of all relevant documents and materials relating to such information, including copies of relevant contracts of</li> </ul>

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	employment (or relevant standard contracts if applied generally in respect of such employees); and
	any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
<b>“Transferring Consultant Employees”</b>	means those employees of the <i>Consultant</i> and/or the Sub-Consultants to whom the Employment Regulations will apply on the Service Transfer Date
<b>"Transferring Employer Employees"</b>	means those employees of the <i>Employer</i> to whom the Employment Regulations will apply on the Relevant Transfer Date;

### **Interpretation**

Where a provision in this Annex imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Sub-Consultants shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Consultant, Replacement Consultant or Replacement Sub-Consultant, as the case may be.



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## PART A

### TRANSFERRING EMPLOYER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

#### 1. Relevant Transfers

##### 1.1. The *Employer* and the *Consultant* agree that:

- 1.1.1. the commencement of the provision of the *services* or of each relevant part of the *services* will be a Relevant Transfer in relation to the Transferring Employer Employees; and
  - 1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between the *Employer* and the Transferring Employer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or any Notified Sub-Consultant and each such Transferring Employer Employee.
- 1.2. The *Employer* shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Employer*, and (ii) the *Consultant* and/or any Notified Sub-Consultant (as appropriate).

#### 2. *Employer* Indemnities

- 2.1. Subject to paragraph 2.2 of Part A of this Annex G, the *Employer* shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;
  - 2.1.2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:
    - a) any collective agreement applicable to the Transferring Employer Employees; and/or
    - b) any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.
  - 2.1.3. any claim by any trade union or other body or person representing the Transferring Employer Employees arising from or connected with any failure by the *Employer* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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- 2.1.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - b) in relation to any employee who is not a Transferring Employer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5. a failure of the *Employer* to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees arising before the Relevant Transfer Date;
- 2.1.6. any claim made by or in respect of any person employed or formerly employed by the *Employer* other than a Transferring Employer Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Employer* in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.2. The indemnities in paragraph 2.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant (whether or not a Notified Sub-Consultant) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1. arising out of the resignation of any Transferring Employer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* and/or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
  - 2.2.2. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
- 2.3. If any person who is not identified by the *Employer* as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by
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the *Employer* as a Transferring Employer Employee, that his/her contract of employment has been transferred from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer*; and
  - 2.3.2. the *Employer* may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Consultant* and/or any Notified Sub-Consultant, or take such other reasonable steps as the *Employer* considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 2.4. If an offer referred to in paragraph 2.3.2 of Part A of this Annex G is accepted, or if the situation has otherwise been resolved by the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
- 2.5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Annex G:
- 2.5.1. no such offer of employment has been made;
  - 2.5.2. such offer has been made but not accepted; or
  - 2.5.3. the situation has not otherwise been resolved,
- the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall indemnify the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Annex G provided that the *Consultant* takes, or procures that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7. The indemnity in paragraph 2.6 of Part A of this Annex G
- 2.7.1. shall not apply to:
    - a) any claim for
    - a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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- b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant;

- b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and

2.7.2. shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Annex G is made by the *Consultant* and/or any Sub-Consultant (as appropriate) to the *Employer* within six (6) months of the Contract Date.

2.8. If any such person as is referred to in paragraph 2.3 of Part A of this Annex G is neither re-employed by the *Employer* nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part A of this Annex G such person shall be treated as having transferred to the *Consultant* and/or any Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

### 3. *Consultant* Indemnities and Obligations

3.1. Subject to paragraph 3.2 of Part A of this Annex G, the *Consultant* shall indemnify the *Employer* against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;

3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:

- a) any collective agreement applicable to the Transferring Employer Employees; and/or

- b) any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;

3.1.3. any claim by any trade union or other body or person representing any Transferring Employer Employees arising from or connected with any failure by the *Consultant* or any Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4. any proposal by the *Consultant* or a Sub-Consultant made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Employer Employees on or after their transfer to the *Consultant* or the relevant Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and

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- conditions of employment or working conditions of any person who would have been a Transferring Employer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5. any statement communicated to or action undertaken by the *Consultant* or any Sub-Consultant to, or in respect of, any Transferring Employer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* in writing;
- 3.1.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - b) in relation to any employee who is not a Transferring Employer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Employer's* failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2. The indemnities in paragraph 3.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Employer* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Employer's* failure to comply with its obligations under the Employment Regulations.
- 3.3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the
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Transferring Employer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Employer* and the *Consultant*.

#### 4. Information

- 4.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* in writing such information as is necessary to enable the *Employer* to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

#### 5. Principles of Good Employment Practice

- 5.1. The Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Consultant* of employees whose employment begins after the Relevant Transfer Date, and the *Consultant* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Employer Employee (and in the Annex to Part A below any such Transferring Employer Employees are “**Fair Deal Employees**”) as set down in:
- 5.2.1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
  - 5.2.4. The New Fair Deal.

#### 6. Pensions

- 6.1. The *Consultant* shall, and shall procure that each of its Sub-Consultants shall, comply with the pensions provisions set out in the following Annex. References in the following Annex to the “**Schemes**” are to those public sector schemes in which the *Consultant* is required to participate to comply with its obligations under paragraph 5.2 above.

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## ANNEX TO PART A: PENSIONS

### 1. Participation

1.1. The *Consultant* undertakes to enter into any admission agreement (in this Annex the “**Admission Agreement**”) required for the *Consultant’s* participation in the Schemes. In this Annex an employee of the *Consultant* who is eligible to be a member of the Schemes is an “**Eligible Employee**”.

1.2. The *Consultant* and the *Employer*:

- 1.2.1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
- 1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* immediately in the event that it breaches the Admission Agreement; and
- 1.2.4. agree that the *Employer* may terminate this Call Off Agreement for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.

### 2. Future Service Benefits

2.1. The *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for services from (and including) the Relevant Transfer Date.

2.2. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.3. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### 3. Funding

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3.1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.

#### 4. Provision of Information

4.1. The *Consultant* and the *Employer* respectively undertake to each other:

4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

4.1.2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

#### 5. Indemnities

5.1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any costs, losses, expenses and liabilities whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### 6. Employer Obligation

6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### 7. Subsequent Transfers

7.1. The *Consultant* shall:

7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

7.1.2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.



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7.1.3. for the period either:

- a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate this contract or any part of the *services*; or
- b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Consultant or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

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## PART B

### TRANSFERRING FORMER CONSULTANT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

#### 1. Relevant Transfers

##### 1.1. The parties agree that:

- 1.1.1. the commencement of the provision of the *services* or of any relevant part of the *services* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and
  - 1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or Notified Sub-Consultant and each such Transferring Former Consultant Employee.
- 1.2. The *Employer* shall procure that each Former Consultant shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Consultant Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Consultant* shall make, and the *Employer* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.

#### 2. Former Consultant Indemnities

- 2.1. Subject to paragraph 2.2 of Part B of this Annex G, the *Employer* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
  - 2.1.2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
    - a) any collective agreement applicable to the Transferring Former Consultant Employees; and/or
    - b) any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.

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- 2.1.3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - b) in relation to any employee who is not a Transferring Former Consultant Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4. a failure of the Former Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5. any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.2. The indemnities in paragraph 2.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1. arising out of the resignation of any Transferring Former Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
  - 2.2.2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
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2.3. If any person who is not identified by the *Employer* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Consultant Employee, that his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, to the Former Consultant; and

2.3.2. the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* and/or the Notified Sub-Consultant or take such other reasonable steps as the Former Consultant considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.

2.4. If an offer referred to in paragraph 2.3.2 of Part B of this Annex G is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.

2.5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:

2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. the situation has not otherwise been resolved;

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.7. The indemnity in paragraph 2.6 of Part B of this Annex G

2.7.1. shall not apply to:

a) any claim for

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- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

- b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and

2.7.2. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this Annex G is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.

2.8. If any such person as is described in paragraph 2.3 of Part B of this Annex G is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part B of this Annex G, such person shall be treated as having transferred to the *Consultant* or Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

### 3. Consultant Indemnities and Obligations

3.1. Subject to paragraph 3.2 of Part B of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
  - a) any collective agreement applicable to the Transferring Former Consultant Employee; and/or
  - b) any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal

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obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- 3.1.4. any proposal by the *Consultant* or a Sub-Consultant prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees on or after their transfer to the *Consultant* or a Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5. any statement communicated to or action undertaken by the *Consultant* or a Sub-Consultant to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* and/or the Former Consultant in writing;
- 3.1.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - b) in relation to any employee who is not a Transferring Former Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations.

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3.2. The indemnities in paragraph 3.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant's failure to comply with its obligations under the Employment Regulations.

3.3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Consultant* and the Former Consultant.

#### 4. Information

4.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and/or at the *Employer's* direction, the Former Consultant, in writing such information as is necessary to enable the *Employer* and/or the Former Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Former Consultant shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

#### 5. Principles of Good Employment Practice

The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Former Consultant Employee (and in the Annex to Part B below any such Transferring Former Consultant Employees are "**Fair Deal Employees**") as set down in:

5.1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.2. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.3. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.4. the New Fair Deal.

#### 6. Procurement Obligations

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6.1. Notwithstanding any other provisions of this Part B of this Annex G, where in this Part B the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

## 7. Pensions

7.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex. References in the following Annex to the “**Schemes**” are to those public sector schemes in which the *Consultant* is required to participate to comply with its obligations under paragraph 5 above.



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## ANNEX TO PART B: PENSIONS

### 1. Participation

1.1. The *Consultant* undertakes to enter into any admission agreement. (in this Annex the “**Admission Agreement**”) required for the *Consultant*’s participation in the Schemes. In this Annex an employee of the *Consultant* who is eligible to be a member of the Schemes is an “**Eligible Employee**”.

#### 1.2. The *Consultant* and the *Employer*:

- 1.2.1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
- 1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* immediately in the event that it breaches the Admission Agreement; and
- 1.2.4. agree that the *Employer* may terminate this Call Off Agreement for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.

### 2. Future Service Benefits

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2.1. If staff are rejoining the Schemes for the first time, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

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2.2. If staff have already been readmitted to the Schemes, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such

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cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

- 2.4. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### 3. Funding

- 3.1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 3.2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.

### 4. Provision of Information

- 4.1. The *Consultant* and the *Employer* respectively undertake to each other:

- 4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

- 4.1.2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

### 5. Indemnities

- 5.1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any costs, losses, expenses and liabilities whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### 6. Employer Obligation

- 6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

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## 7. Subsequent Transfers

### 7.1. The *Consultant* shall:

- 7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
- 7.1.2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.1.3. for the period either:
  - a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate this contract or any part of the services; or
  - b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Consultant or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

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## PART C

### NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

#### 1. Procedure in the Event of Transfer

1.1. The *Employer* and the *Consultant* agree that the commencement of the provision of the *services* or of any part of the *services* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or any Former Consultant.

1.2. If any employee of the *Employer* and/or a Former Consultant claims, or it is determined in relation to any employee of the *Employer* and/or a Former Consultant, that his/her contract of employment has been transferred from the *Employer* and/or the Former Consultant to the *Consultant* and/or any Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1. the *Consultant* shall, and shall procure that the relevant Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, give notice to the Former Consultant; and

1.2.2. the *Employer* and/or the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* or the Sub-Consultant (as appropriate) or take such other reasonable steps as the *Employer* or Former *Consultant* (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.

1.3. If an offer referred to in paragraph 1.2.2 of Part C of this Annex G is accepted (or if the situation has otherwise been resolved by the *Employer* and/or the Former Consultant), the *Consultant* shall, or shall procure that the Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.

1.4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2

1.4.1. no such offer of employment has been made;

1.4.2. such offer has been made but not accepted; or

1.4.3. the situation has not otherwise been resolved,

the *Consultant* and/or the Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### 2. Indemnities

2.1. Subject to the *Consultant* and/or the relevant Notified Sub-Consultant acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Annex G and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 2.4 of Part C of this Annex G, the *Employer* shall:

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- 2.1.1. indemnify the *Consultant* and/or the relevant Notified Sub-Consultant against all Employee Liabilities arising out of the termination of the employment of any employees of the *Employer* referred to in paragraph 1.2 of Part C of this Annex G made pursuant to the provisions of paragraph 1.4 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2. procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant against all Employee Liabilities arising out of termination of the employment of the employees of the Former Consultant made pursuant to the provisions of paragraph 1.2 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the relevant Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2. If any such person as is described in paragraph 1.2 of Part C of this Annex G is neither re employed by the *Employer* and/or the Former Consultant as appropriate nor dismissed by the *Consultant* and/or any Sub-Consultant within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Annex G such person shall be treated as having transferred to the *Consultant* and/or the Sub-Consultant (as appropriate) and the *Consultant* shall, or shall procure that the Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
- 2.3. Where any person remains employed by the *Consultant* and/or any Sub-Consultant pursuant to paragraph 1.2 of Part C of this Annex G, all Employee Liabilities in relation to such employee shall remain with the *Consultant* and/or the Sub-Consultant and the *Consultant* shall indemnify the *Employer* and any Former Consultant, and shall procure that the Sub-Consultant shall indemnify the *Employer* and any Former Consultant, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Consultant* and/or employees of the Sub-Consultant.
- 2.4. The indemnities in paragraph 2.1 of Part C of this Annex G
- 2.4.1. shall not apply to:
- a) any claim for
    - a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, orin any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or
  - b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
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2.4.2. shall apply only where the notification referred to in paragraph 1.2.1 of Part C of this Annex G is made by the *Consultant* and/or any Sub-Consultant to the *Employer* and, if applicable, Former Consultant within six (6) months of the Contract Date.

### 3. Procurement Obligations

3.1. Where in this Part C of this Annex G the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

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## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. Pre-service Transfer Obligations

1.1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
- 1.1.2. receipt of the giving of notice of early termination or any partial termination of this contract;
- 1.1.3. the date which is twelve (12) months before the end of the Service Period; and
- 1.1.4. receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the *Consultant's* Provisional Personnel List, together with the Staffing Information in relation to the *Consultant's* Provisional Personnel List and it shall provide an updated *Consultant's* Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

1.2. At least twenty (20) Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement *Consultant* and/or any Replacement Sub-*Consultant*:

- 1.2.1. the *Consultant's* Final Personnel List, which shall identify which of the Staff are Transferring *Consultant* Employees; and
- 1.2.2. the Staffing Information in relation to the *Consultant's* Final Personnel List (insofar as such information has not previously been provided).

1.3. The *Employer* shall be permitted to use and disclose information provided by the *Consultant* under paragraphs 1.1 and 1.2 of Part D of this Annex G for the purpose of informing any prospective Replacement *Consultant* and/or Replacement Sub-*Consultant*.

1.4. The *Consultant* warrants, for the benefit of the *Employer*, any Replacement *Consultant*, and any Replacement Sub-*Consultant* that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Annex G shall be true and accurate in all material respects.

1.5. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this Annex G, the *Consultant* agrees, that it shall not, and agrees to procure that each Sub-*Consultant* shall not, assign any person to the provision of the Services who

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is not listed on the Consultant's Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):

- 1.5.1. replace or re-deploy any Staff listed on the Consultant's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
- 1.5.3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Consultant's Provisional Personnel List;
- 1.5.5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6. terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Consultant shall promptly notify, the *Employer* or, at the direction of the *Employer*, any Replacement Consultant and any Replacement Sub-Consultant of any notice to terminate employment given by the *Consultant* or relevant Sub-Consultant or received from any persons listed on the Consultant's Provisional Personnel List regardless of when such notice takes effect.

- 1.6. During the Service Period, the *Consultant* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Consultant and/or any Replacement Sub-Consultant with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer's* direction, the Replacement Consultant and/or any Replacement Sub-Consultant to have copies of any such documents.
- 1.7. The *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Consultant and/or any Replacement Sub-Consultant to ensure the smooth transfer of the Transferring Consultant Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date



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to ensure that all necessary payroll arrangements can be made to enable the Transferring Consultant Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer*, to any Replacement Consultant and/or any Replacement Sub-Consultant (as appropriate), in respect of each person on the Consultant's Final Personnel List who is a Transferring Consultant Employee:

- 1.7.1. the most recent month's copy pay slip data;
- 1.7.2. details of cumulative pay for tax and pension purposes;
- 1.7.3. details of cumulative tax paid;
- 1.7.4. tax code;
- 1.7.5. details of any voluntary deductions from pay; and
- 1.7.6. bank/building society account details for payroll purposes.

## 2. Employment Regulations Exit Provisions

- 2.1. The *Employer* and the *Consultant* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Consultant and/or a Replacement Sub-Consultant. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Consultant and/or a Replacement Sub-Consultant (as the case may be) and each such Transferring Consultant Employee.
- 2.2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with all its obligations in respect of the Transferring Consultant Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Consultant Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Consultant* and/or the Sub-Consultant (as appropriate); and (ii) the Replacement Consultant and/or Replacement Sub-Consultant.

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2.3. Subject to paragraph 2.4 of Part D of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.3.1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;

2.3.2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Consultant Employees; and/or

b) any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;

2.3.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

2.3.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* to the *Employer* and/or Replacement Consultant and/or any Replacement Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

2.3.5. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period up to (and including) the Service Transfer Date);

2.3.6. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Sub-Consultant other than a Transferring Consultant Employee for whom it is alleged the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant may be

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liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 2.3.7. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or Replacement Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.4. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Consultant and/or any Replacement Sub-Consultant whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
  - 2.4.1. arising out of the resignation of any Transferring Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Sub-Consultant to occur in the period on or after the Service Transfer Date); or
  - 2.4.2. arising from the Replacement Consultant's failure, and/or Replacement Sub-Consultant's failure, to comply with its obligations under the Employment Regulations.
- 2.5. If any person who is not a Transferring Consultant Employee claims, or it is determined in relation to any person who is not a Transferring Consultant Employee, that his/her contract of employment has been transferred from the *Consultant* or any Sub-Consultant to the Replacement Consultant and/or Replacement Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive, then:
  - 2.5.1. the *Employer* shall procure that the Replacement Consultant shall, or any Replacement Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Consultant*; and
  - 2.5.2. the *Consultant* may offer (or may procure that a Sub-Consultant may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or Replacement Sub-Consultant or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 2.6. If such offer is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Sub-Consultant, the *Employer* shall procure that the Replacement Consultant shall, or procure that the Replacement Sub-Consultant shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:

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- 2.7.1. no such offer of employment has been made;
  - 2.7.2. such offer has been made but not accepted; or
  - 2.7.3. the situation has not otherwise been resolved;

the *Employer* shall advise the Replacement Consultant and/or Replacement Sub-Consultant, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8. Subject to the Replacement Consultant and/or Replacement Sub-Consultant acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Sub-Consultant against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 of Part D of this Annex G provided that the Replacement Consultant takes, or shall procure that the Replacement Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.9. The indemnity in paragraph 2.8 of Part D of this Annex G

2.9.1. shall not apply to:

a) any claim for

a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Consultant and/or Replacement Sub-Consultant; or

b) any claim that the termination of employment was unfair because the Replacement Consultant and/or Replacement Sub-Consultant neglected to follow a fair dismissal procedure; and

2.9.2. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Annex G is made by the Replacement Consultant and/or Replacement Sub-Consultant to the *Consultant* within six (6) months of the Service Transfer Date.

2.10. If any such person as is described in paragraph 2.5 of Part D of this Annex G is neither re-employed by the *Consultant* or any Sub-Consultant nor dismissed by the Replacement Consultant and/or Replacement Sub-Consultant within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Annex G, such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Sub-Consultant shall comply with such obligations as may be imposed upon it under the *law of the contract*.

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2.11. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Consultant Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1. the *Consultant* and/or any Sub-Consultant; and

2.11.2. the Replacement Consultant and/or the Replacement Sub-Consultant.

2.12. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and any Replacement Consultant and/or Replacement Sub-Consultant, in writing such information as is necessary to enable the *Employer*, the Replacement Consultant and/or Replacement Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Consultant and/or Replacement Sub-Consultant shall promptly provide to the *Consultant* and each Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13. Subject to paragraph 2.14 of Part D of this Annex G, the *Employer* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Sub-Consultant and its sub-Consultants against any Employee Liabilities in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:

2.13.1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;

2.13.2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Consultant Employees; and/or

b) any custom or practice in respect of any Transferring Consultant Employees which the Replacement Consultant and/or Replacement Sub-Consultant is contractually bound to honour;

2.13.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the Replacement Consultant and/or Replacement Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

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- 2.13.4. any proposal by the Replacement Consultant and/or Replacement Sub-Consultant to change the terms and conditions of employment or working conditions of any Transferring Consultant Employees on or after their transfer to the Replacement Consultant or Replacement Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5. any statement communicated to or action undertaken by the Replacement Consultant or Replacement Sub-Consultant to, or in respect of, any Transferring Consultant Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
- 2.13.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* or Sub-Consultant, to the Replacement Consultant or Replacement Sub-Consultant to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7. a failure of the Replacement Consultant or Replacement Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* and/or any Sub-Consultant (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Sub-
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Consultant (as applicable) to comply with its obligations under the Employment Regulations.

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## ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS

***[Guidance Note: list of Notified Sub-Consultants to be inserted here as required.]***



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**CONTRACT SCHEDULE 2 – TEMPLATE FORM OF COLLATERAL WARRANTY IN  
FAVOUR OF A BENEFICIARY: NOT USED**