

Contract Title: Risk Assessments for 6 Buildings

Supplier: Perfect Circle via Scape Framework

Contract Start Date: 08/04/2024

Contract End Date: 31/01/2015

Contract Value: £53,475.67

This contract was awarded under the Terms and Conditions of NEC3 Professional Service Contract (PSC) Option A and utilised the copyrighted NEC Forms of Contract.

The following amendments/additions were made by DSTL to the standard Terms and Conditions of NEC3 PSC –

Z1.0 Core Clause amendments

1 General

11.2 (2) Add further bullet point:

- ‘provided or procured all Collateral Warranties which the Consultant is then obliged under this contract to provide or procure.’

11.2(13) At the end of the sentence add:

‘Appropriately spent excludes time;

- spent on activities included within the Commercial Inclusions Tables contained in the Pricing Procedures of the Framework Agreement,

- not justified by the Consultant’s accounts and records,

- that should not have been paid to a Subconsultant or supplier in accordance with its contract,

- was incurred only because the Consultant did not

- follow an acceptance or procurement procedure stated in the Scope,

- give an early warning which the contract required it to give or

- give notification to the Employer of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Consultant and a Subcontractor or supplier,

and the cost of

- activities included under the Employer Proposed Appointment Charge of the Framework Agreement,

- correcting Defects after Completion,

- correcting Defects caused by the Consultant not complying with a constraint on how it is to Provide the Service stated in the Scope,

- for staff not used to Provide the Service (after allowing for reasonable availability and utilisation), and

- preparation for and conduct of an adjudication or proceedings of the tribunal between the Parties.’

11.2(20) Delete the second bullet point and replace with:

‘the lump sum price in the Task Schedule for each other item. Where marked accordingly, these lump sum

prices may be calculated from applying a stated ‘Charge’ percentage from the Task Schedule to a forecast or estimated construction project value to establish a single or series of lump sum prices.’

11.2(26) Insert a new clause 11.2(6):

‘Framework Agreement is the framework agreement between Scape Procure Limited and the Consultant dated 29th January 2021.’

11.2(27) Insert a new clause 11.2(27):

‘Framework Commercial Model as included in the Framework Agreement between Scape Procure Limited and the Consultant dated 29th January 2021.’

11.2 (28) Insert a new clause 11.2(28): ‘Data Protection Legislation means:

i. the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/68) and any applicable national implementing laws as amended from time to time;

ii. the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;

and

iii. all applicable law about the processing of personal data and privacy.’

11.2 (29) Insert a new clause 11.2(29):

‘Data Subject has the meaning given to it in the Data Protection Legislation.’

11.2 (30) Insert a new clause 11.2(30):

‘Personal Data has the meaning given to it in the Data Protection Legislation.’

11.2 (31) Insert a new clause 11.2(31):

‘Cladding Claim shall mean any claim in respect of:

The combustibility of any Aluminium Composite Panels (and associated core/filler and insulation) which failed the BRE testing programme on behalf of The Department for Communities and Local Government in July and August 2017 or fails BS8414 test set out in the current Building Regulations.’

12.4 Insert at the end:

‘provided that Clauses 23 (Convictions), 29 (Statutory Requirements), 30 (Competition Law, Corrupt Gifts and Payments), 31 (Modern Slavery), 33 (Confidentiality and Freedom of Information), 35 (Intellectual Property) and 37.11 (Miscellaneous: Whistle Blowing) of the Framework Agreement shall be deemed incorporated into this contract, mutatis mutandis, as if references to ‘Scape’ were to ‘the Employer and references to the ‘Agreement’ were to ‘the contract.’

12.5 Insert a new clause 12.5:

‘A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.’

13.9 Insert a new clause 13.9:

‘The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the Consultant under it;
- any notification by the Consultant of his intention to suspend performance of his obligations under this contract;
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences; and
- any agreement between the parties amending the provisions of this contract.’

14.1 Add after the final sentence:

‘Notwithstanding any other provision of this contract, the terms ‘acceptance’, ‘approval’ or similar when used in the context of any acceptance or approval to be given by or on behalf of the Employer has the meaning ‘acceptance of general principles only’ and no such acceptance or approval shall diminish or relieve the Consultant from any of the Consultant’s obligations or liabilities under this contract.’

19. Insert a new Clause 19:

Data Protection

‘Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party’s obligations under the Data Protection Legislation. It is agreed that:

19.1. Without prejudice to the generality of clause 19.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

19.2. Without prejudice to the generality of clause 19.1, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this agreement:

19.2.1. Process that Personal Data only on the written instructions of the Employer and only as required for the purpose of the performance of this agreement;

19.2.2. Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where

appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

19.2.3. Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

19.2.4. Not transfer any Personal Data outside of the European Economic Area;

19.2.5. Assist the Employer, at the Consultant's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

19.2.6. Notify the Employer without undue delay on becoming aware of a Personal Data breach;

19.2.7. At the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the agreement; and

19.2.8. Maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Employer or the Employer's designated auditor.

19.3. The Employer does not consent to the Consultant appointing any third-party processor of Personal Data under this agreement.'

2 The Parties' main responsibilities

21. Amend as follows:

21.2 Delete and replace with:

'The Consultant's obligation is to use (and warrant that it has used) all the reasonable skill, care and diligence normally used by competent and appropriately qualified professionals experienced in providing services similar to the service.'

21.5 Insert a new clause 21.5:

'The Consultant checks the Scope provided by the Employer and satisfies itself that its own provision of the service, including any proposals, designs and Scope or specification documents for a subsequent construction contract meet the Employer's Scope with no discrepancy. Where there is ambiguity, inconsistency or conflict between these documents the Employer's Scope will prevail.'

21.6 Insert a new clause 21.6:

'The Consultant performs the Service in accordance with relevant laws and regulations, statutory and other requirements ('Laws') and (to the extent that the Consultant can control the same) such that the product of the Service complies with all relevant Laws.'

24.5 Insert a new clause 24.5:

'The Consultant, in relation to any subcontracting of any portion of the service:

- Procures that the relevant subcontract contains such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract and, without limitation, steps down the obligation to use the degree of skill, care and diligence specified in this contract and that requires

collateral warranties in favour of the Employer to be provided in the forms specified in the Framework Agreement and with any amendments as permitted by the Framework Agreement;

- Procures that all relevant subcontracts shall be executed and delivered as a deed;
- Warrants each Subcontractor's compliance with this contract's Modern Slavery Act requirements;
- Warrants that all Subcontractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations; and
- Provides to the Employer a certified copy of any subcontract (save for particulars of the cost of such subcontract service unless other provisions of this contract or the Framework Agreement oblige the Consultant to disclose them). The Consultant does not appoint a subcontractor if there are compulsory grounds for excluding the subcontractor under regulation 57 of the Public Contracts Regulations 2015.'

24.6 Insert a new clause 24.6:

'The Consultant includes in any subcontract awarded by him provisions requiring that:

- payment due to the Subcontractor under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice unless the Framework Agreement required the Consultant to make earlier payment to the Subcontractor;
- Invoices for payment submitted by the Subcontractor are considered and verified by the Consultant in a timely fashion;
- Undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
- Any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.'

26 Insert a new clause 26:

'The Consultant shall enter a novation agreement in the form specified in the Framework Agreement with the Employer's contractor within 14 days of being asked to do so in writing and shall, within 14 days of being provided with an engrossment, execute and return to the Employer the collateral warranty agreement in favour of the Employer, but with such amendments as the Consultant, Employer and Employer's contractor may agree, such agreement not to be unreasonably withheld or delayed.'

5 Payment

50.3 Insert at the end of the second bullet point:

'less expenses included in the Commercial Inclusions Tables from the Framework Agreement's Pricing Procedures,'

51.6 Insert a new clause 51.6:

'In addition to any other legal rights and remedies of the Employer, with the exception of when the Consultant is novated to a contractor under the conditions of contract, whenever any sum of money is recoverable from or payable by the Consultant under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the Consultant under this

contract provided that the Employer notifies the Consultant in writing not later than three days before the final date for payment of the amount to be paid and the basis on which it is calculated.'

6 Compensation events

63.10 At the end of the sentence add:

'Rates for subconsultant staff are calculated by applying the Uplift Percentage to the subconsultant's proposed rate. Unless the Employer otherwise agrees, proposed rates must not exceed the relevant regionally adjusted People Rates for the applicable role and seniority stated in the relevant table of the Framework Commercial Model. If the Employer and Consultant do not agree on the rate to be used, the Employer assesses the rate based on the staff rates. The agreed or assessed rate becomes the staff rate for that designation of person.'

63.19 Insert a new clause 63.19:

'The Employer and Consultant may agree rates or lump sums to assess the change to Prices or Prices for new items in the Task price list. If the Employer and Consultant do not agree on the rate or lump sum to be used, the Employer assesses the rate or lump sum based on the staff rates.'

8 Indemnity insurance and liability

81.1 Amend the insurance table:

delete the words 'and care normally used by professionals' in the first insurance of the Insurance Table and replace with: 'care and diligence normally used by competent and appropriately qualified professionals experienced in'

83 Insert a new clause 83: Insurance policies

83.1 'Before the starting date and on each renewal of the insurance policy until the defects date, the Consultant submits to the Employer for acceptance certificates which state that the insurance required by the contract is in force. After the defects date and on each renewal of the insurance policy until the end of the periods stated in the Contract Data for which insurance is to be maintained, the Consultant submits to the Employer for acceptance certificates which state that insurance required by this contract is in force. The certificates are signed by the Consultant's insurer or insurance broker. The Employer accepts the policies and certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities. The Employer's acceptance of an insurance certificate provided by the Consultant does not change the responsibility of Consultant to provide the insurances stated in the Contract Data.

83.2 The Parties comply with the terms and conditions of the insurance policies which they are a Party.'

84 Insert a new clause 84:

If the Consultant does not insure

84.1 'The Employer may insure an event or liability which the contract requires the Consultant to insure if the Consultant does not submit a required certificate. The cost of this insurance to the Employer is paid by the Consultant.'

85 Insert a new Clause 85:

Insurance by the Employer

85.1 'The Employer submits certificates for insurance provided by the Employer to the Consultant for acceptance before the starting date and afterwards as the Consultant instructs. The Consultant accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.

85.2 The Consultant's acceptance of an insurance certificate provided by the Employer does not change the responsibility of Employer to provide the insurances stated in the Contract Data.

85.3 The Consultant may insure an event or liability which the contract requires the Employer to insure if the Employer does not submit a required certificate. The cost of this insurance to the Consultant is paid by the Employer.'

90.5 Insert a new clause 90.5:

The Public Contracts Regulations 2015

90.5 'The Employer may terminate the Consultant's obligation to Provide the Service if any of the provisions of regulation 73(1) of The Public Contracts Regulations 2015 apply.

The Employer may terminate the Consultant's obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as if the Consultant has substantially failed to comply with his obligations.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Employer no longer requires the services.

90.6 The Consultant does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

90.7 The Consultant includes in any subcontract awarded by him provisions requiring that:

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the Subconsultant or supplier;
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the Consultant in a timely fashion, undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.'

Z2.0 Secondary Option Clause amendments

None

Z3.0 Statutory Clause amendments

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

Y2.2 delete clause and replace with the following:

The date on which a payment becomes due is the later of;

- the date of receipt by the Party making payment of an invoice, issued in accordance with these conditions of contract, and
- fourteen days after the assessment date.

The date on which the final payment becomes due is the later of;

- the date of receipt by the Party making payment of an invoice, issued in accordance with these conditions of contract, and if the Employer makes an assessment after the defects date or the date the last Defect is corrected, six weeks after the defects date or the date the last Defect is corrected, whichever is the later, if the Employer does not make an assessment after the defects date or the date the last Defect is corrected, two weeks after the Consultant issues its assessment, or if the Employer has issued a termination certificate, fifteen weeks after the issue of the certificate.

The final date for payment is seven days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data. The Employer's certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the Employer does not make an assessment after the defects date or the date the last Defect is corrected, the Consultant's assessment is the notice of payment.

21.7 Insert a new clause 21.7 "The Consultant warrants to the Employer that the Consultant has complied and will comply with the requirements of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') in so far as they relate to the performance of the Consultant's duties under this contract."

22.4 Add a new clause 22.4: "The Employer may refuse admission to their premises or require the removal of any person engaged in the performance of the services. The decision of the Employer on whether any person is to be refused admission or removed shall be final and conclusive and the Employer shall not be obliged to give reason for its decision.

If the Employer's decision is unlawful or manifestly unreasonable having regard to the competence, conduct and performance of the person concerned the Employer's actions shall be treated as a Compensation Event."

23.4 Add a new sub clause: "The Consultant shall carry out the services and, to the extent reasonably practical considering their nature, the services so as to cause minimum disruption to the Employer's activities on their premises and elsewhere. If the Consultant anticipates any such disruption, the Consultant will issue an early warning notice to enable the Employer to plan in advance, if necessary, for such disruption."

23.5 Add a new sub clause: "The Consultant shall co-operate with the requirements of all Employer boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Subconsultants who may be invited by the Employer to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the services. The Employer shall reimburse the Consultant their reasonable external costs of such attendance."

23.6 Add a new sub clause: "The Consultant acknowledges that it will not have exclusive rights to occupy any accommodation provide by the Employer or the Employer and that any such accommodation will only be used for the purpose of the services."

23.7 Add a new sub clause: "All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the Employer premises shall remain the property of the Employer."

24.7 Add a new sub clause 24.7: "Each Subconsultant contract shall contain equivalent contractual obligations as are imposed on the Consultant pursuant relating to fraud, Employer's Security Procedures, use of Employer's IT Systems, intellectual property rights confidentiality, publicity and law of the contract."

7 Rights to material

70 Delete and replace with:

70.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the Employer on their creation.

70.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the Employer, the Consultant shall with full title guarantee, assign or procure the assignment to the Employer of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

70.3 The Employer hereby grants to the Consultant for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subconsultants, to use such of the Foreground Information as the Consultant reasonably requires for the purposes of performing the services.

70.4 The Consultant hereby grants to the Employer, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

70.5 The Consultant shall highlight to the Employer any third party intellectual property rights which appear to be relevant to the Employers use of the Foreground Information and/or the Documents, and following consultation with the Employer and insofar as reasonably practicable the Consultant shall secure a licence on behalf of the Employer to use the third party intellectual property rights.

70.6 The Consultant shall, following consultation with the Employer and insofar as reasonably practicable, secure a licence on behalf of the Employer to use any third party software (except for commonly used and commercially available software) used by the Consultant and its Subconsultants in performing the services,

70.7 All licences shall be purchased in consultation with the Employer so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

70.8 The Consultant shall indemnify the Employer and keep the Employer fully indemnified against all losses which the Employer may sustain or incur that arise out of allegations that the Employer has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

70.9 The Consultant shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

72 Insert new clause 72 "Disclosure":

72.1 Except with the written consent of the Employer, the Consultant shall not disclose the services to any person other than a person employed by the Consultant or a Subconsultant. Disclosure shall be confined to those members of staff whose access to the information is essential for performance of the services.

72.2 Subject to clause 72.5, 72.6 and 72.7, each Party: a) shall treat in confidence all Information it shall receive from the other; b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that the Consultant may disclose Information in confidence, without prior consent, to such persons as and to such extent as may be necessary for the performance of the services; c) shall not use any of that information otherwise than for the purpose of performing the services; and d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this agreement.

72.3 The Consultant shall take all reasonable precautions necessary to ensure that all the Information disclosed to the Consultant by or on behalf of the Employer under or in connection with this agreement: a) is disclosed to its employees and Subconsultants only to the extent necessary for the performance of the services; b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for performing work or having work performed for the Employer under this agreement or any subconsultancy agreement. c) is returned to the Employer by the Consultant on Completion of the whole of the Services

72.4 The Consultant shall ensure that its employees, and its Subconsultants and their employees, are aware of its arrangements for discharging the obligations under clause 72.1, 72.2 and 72.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

72.5 Clause 72.2 and 72.3 shall not apply to the Information to the extent that either Party: a) exercises rights of use or disclosure granted otherwise than in consequence of, or, this agreement; b) has the right to use or disclose the Information in accordance with other conditions of this agreement c) can show: i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this agreement or any other agreement between the Parties; ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the services; iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or iv) from its records that the same information was derived independently of that received under or in connection with the services; provided the relationship to any other Information is not revealed.

72.6 Neither Party shall be in breach of this Clause 72 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosures shall in no way diminish the obligations of the Parties under this Clause.

72.7 The Employer shall not be in breach of this Clause 72 where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance with the Act or the Regulations, the Employer shall consult the Consultant where the Employer is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Consultant of any decision to disclose the Information. The Consultant acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Employer shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this condition shall affect the Consultant's rights at law.

72.8 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Option Z Additional conditions of contract

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.

Z1A The Consultant warrants that they have not done and will not do anything that would result in a breach of the Employer's Security Procedures or the Official Secrets Act.

Z2 The Consultant warrants that it has not done and will not do any of the following (hereafter referred to as "Prohibited Acts"): a) offered, given or agreed to give to any Crown servant any gift or consideration of any kind as an inducement or reward;

i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; b) entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Employer, and in respect of any breach of any of the above warranties and undertakings the Consultant acknowledges that the Employer will be entitled to claim damages against the Consultant.

Z3 In performing the services the Consultant shall not use Prohibited Materials or produce designs that may use Prohibited Materials.

Z4 The Consultant shall inform the Employer, as soon as practicable, in writing of any Change of Control.

Z5 In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z6 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Consultant, its agents or Subconsultants, or key people, and where there is a finding against the relevant party in such investigation or proceedings, the Consultant shall indemnify the Employer and the Employer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or

proceedings and such other financial redress to cover any payment the Employer may have been ordered or required to pay to a third party.

Z7 The Consultant shall ensure at no extra cost to the Employer that for the purposes of carrying out any audit, the Employer's internal and nominated external auditors are given access to inspect and examine such documents as may reasonably be required which are owned, held or otherwise within the control of the Consultant. The Consultant shall also promptly provide such oral and written explanations as it is considered necessary in order to assist the auditors referred to above to carry out their functions.

Z10 The Consultant shall for the purpose of carrying out any audit provide, at no additional cost to the Employer, such facilities for representatives of the Employer as the Employer may reasonably require.

Z11 The Consultant shall, hold harmless and indemnify the Employer on demand from and against all Losses incurred by or imposed upon the Employer as a result of: 1) death or personal injury; 2) loss, damage to or loss of use of property or assets (including property or assets belonging to the Employer or for which it is responsible); 3) breach of statutory duty; 4) any third party claims arising out of, or in consequence of, the performance or non-performance by the Consultant, arising from any breach of contract, tort (including negligence) or breach of statutory duty by the Consultant.

Z12 Fraud At all stages of its involvement under and in connection with the services, the Consultant shall take all practicable steps to prevent fraud and/or the risk of fraud arising. If in the reasonable opinion of the Employer the Consultant commits any fraud (as defined by the Law of the Contract) in relation to the services or any contract with the Employer or any other public body then the Employer may terminate the services for the Consultant's default by giving 10 Working Days' notice to the Consultant. The Consultant shall, keep and maintain all relevant records, invoices, approvals, notes; minutes of meetings and all such other original documents as may be required to verify the services carried out by the Consultant and its Subconsultants so that they may be provided upon request by the Employer. The Consultant shall immediately report to the Employer any circumstances giving rise to fraud within its own organisation, that of its Subconsultants, the Employer or otherwise in relation to the services and shall provide all such relevant information which may assist the Employer in dealing with such report efficiently and effectively. The Employer shall be entitled to set-off, deduct, abate or recover as a debt against the Consultant all losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.

Z13 Continued effect Notwithstanding any breach of this contract by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this contract as being in full force and effect and to enforce its rights under this contract. The failure of either Party to exercise any right under this contract, including any right to terminate this contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

Z14 Use of Information Technology (IT) The Consultant and its Subconsultants may use any of the Employer's IT Systems including connections to the internet or intranet services, with express permission from the Employer, and appropriate security clearance and only for the performance of the services. Use of a third party's computer equipment and software, including any connections to the internet or intranet services, on the Employer's premises, is subject to the approval of the Employer and said third party. The Consultant shall procure that its employees, and its

Subconsultants and their employees, comply with the Employer's policies, procedures and instructions in respect of computer hardware and software, including any connections to the internet or intranet services. The Employer may on reasonable notice from time to time make reasonable or necessary amendments to such policies, procedures and instructions. The Consultant shall take all reasonably practicable precautions to ensure that its employees, and its Subconsultants and their employees, do not use computer hardware or software, including any connections to the internet or intranet services, unlawfully or for unlawful purposes. The Consultant shall not cause or allow any of its employees, or its Subconsultants and their employees, to bring the reputation of the Employer or Employer into disrepute by any action, activity or behaviour in connection with computer hardware or software. Failure by the Consultant to comply with this Clause shall constitute a material breach of this agreement which may lead to termination.

Z15 Transfer Neither Party to this contract shall give, bargain, sell, assign, or otherwise dispose of this contract or any part thereof, or the benefit or advantage of this contract or any part thereof, without the previous consent in writing of the other Party.

Z16 Mitigation Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss which the relevant Party is entitled to recover from the other Party pursuant to this contract.

Z17 Disputes In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z18 The Public Contracts Regulations 2015 The Employer may terminate the Consultant's obligation to provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply. If the Employer terminates under the provisions of paragraph 73(1) (b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as if the Consultant has substantially failed to comply with his obligations. If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Employer no longer requires the services. The Consultant does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

The Consultant includes in any subcontract awarded by him provisions requiring that

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the Subconsultant or supplier,
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.

Z19 Data Protection

19.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party's obligations under the Data Protection Legislation. It is agreed that:

19.2 Without prejudice to the generality of clause 19.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

19.3 Without prejudice to the generality of clause 19.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

19.3.1 process that Personal Data only on the written instructions of the Employer and only as required for the purpose of the performance of this agreement;

19.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); 19.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

19.3.4 not transfer any Personal Data outside of the European Economic Area;

19.3.5 assist the Employer, at the Contractor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

19.3.6 notify the Employer without undue delay on becoming aware of a Personal Data breach;

19.3.7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the agreement; and

19.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Employer or the Employer's designated auditor.

19.4 The Employer does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement."

Z20 Electronic Communications 'The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the Contractor under it;
- any notification by the Contractor of his intention to suspend performance of his obligations under this contract;

- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract’.

Z21 – Cyber The Consultant shall comply with all of the requirements in Annex 1 (see attached) in relation to Cyber Security.