

**PART ONE – DATA PROVIDED BY THE CLIENT**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**1 General**

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017

Main Option	E
Option for resolving and avoiding disputes	W2
Secondary options	X10, X11, X18, Y(UK)1, Y(UK)2 and Y(UK)3
The <i>service</i> is	the provision of design services in relation to the Strategic Road Network in Highways England East Region
The Affected Property is	Highways England East Region, more particularly described in the Scope
The <i>Client</i> is	
Name	Highways England Company Limited
Address for communications	Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ
Address for electronic communications	info@highwaysengland.co.uk
The <i>Service Manager</i> is	
Name	[REDACTED]
Address for communications	Woodlands, Manton Lane, Bedford MK41 7LW
Address for electronic communications	[REDACTED]
The Scope is in	the document entitled "East Region DSCScope"
The <i>language of the contract</i> is	English
The <i>law of the contract</i> is the law of	England and Wales, subject to the jurisdiction of the Courts of England and Wales

The *period for reply* is

The *period for retention* is  years following Completion or earlier termination

The following matters will be included in the Early Warning Register

- Developing and maintaining familiarity of the local area through physical presence
- Structures scheme identification -- capability
- Concrete carriageway rehabilitation design work -- capability

Early warning meetings are to be held at intervals no longer than

**3 Time**

The *starting date* is

The *go live date* is

The *Client* provides access to the following persons, places and things

	<i>access</i>	<i>access date</i>
(1)	<input type="text" value="Office 1 – Woodlands"/>	<input type="text" value="01 October 2019"/>
(2)	<input type="text" value="Office 2 – Waterbeach"/>	<input type="text" value="01 October 2019"/>

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is

The *Consultant* submits revised programmes at intervals no longer than

If the *Client* has decided the *completion date* for the whole of the service *The completion date* for the whole of the service is

**4 Quality management**

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is as stated in the Scope.

The *quality table* is

The period between Completion of the whole of the service and the *defects date* is

**5 Payment**

The *currency* of the contract is the

The first assessment date is 6<sup>th</sup>

The *assessment interval* is

If the *Client* states any *expense* *The expenses* stated by the *Client* are item

The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time

The *staff rates* are

the rates calculated using the method set out in the document entitled "East Region Schedule of Cost Components". A *staff rate* does not exceed the relevant Maximum Staff Rate

The *maximum staff rate* is

the rate for the Highways England Role stated in Appendix A to the Task Schedule

The *index* is

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

The *accounting periods* are each Financial Year falling wholly or partly within the Live Period

**6 Compensation events**

If there are additional compensation events

These are additional compensation events

- (17) The *Service Manager* issues an instruction changing a Task Order.
- (18) The *Consultant* receives a Task Order after the *starting date* stated in the Task Order.
- (19) A Task Completion Date is later than the Completion Date.
- (20) The *Service Manager* gives an instruction correcting a mistake in the Task Schedule which arises from an ambiguity or inconsistency in or between the documents which are part of the contract.
- (21) The *Service Manager* agrees to the appointment by the *Consultant* of a specialist with recognised expertise in a particular technical discipline or area of competence to perform an identified part of the *service*.

**8 Liabilities and insurance**

If there are additional *Client's liabilities*

These are additional *Client's liabilities*

- (1)
- (2)
- (3)

The *Consultant's* total liability to the *Client* for all matters arising under or in connection with each Task, other than the excluded matters, is the higher of

- (1) £1,000,000 (one million pounds),

(2) ten times the forecast total of the Prices for the Task stated in the Task Order or

(3) ten times the final Price for Services Provided to Date for the Task

The *Consultant's* total aggregate liability to the *Client* for all matters arising under or in connection with this Contract, other than the excluded matters, is limited to £125,000,000.00 (one hundred and twenty five million pounds)

**Resolving and avoiding disputes**

The *tribunal* is

If the *tribunal* is arbitration The *arbitration* procedure is

The place where arbitration is to be held

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

The *Adjudicator nominating body* is

**Optional statements**

The *Consultant* prepares forecasts of the total Time Charge and expenses at intervals no longer than

**X10: Information modelling**

If Option X10 is used

The period within which the *Consultant* is to submit a first Information Execution Plan for acceptance is stated in the Scope

**X18: Limitation of liability**

If Option X18 is used	The <i>Consultant's</i> liability to the <i>Client</i> for indirect or consequential loss is limited to	£1,000,000 (one million pounds)
	The <i>Consultant's</i> liability to the <i>Client</i> for Defects that are not found until after the <i>defects date</i> is limited to	£5,000,000 (five million pounds)
The end of liability date is 12 years after the Completion of the whole of the <i>service</i>		

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

Charges made and interest paid by the <i>project bank</i>	The <i>Client</i> is to pay any charges made and to be paid any interest paid by the <i>project bank</i>
---	--

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

The first *invoice date* is 20<sup>th</sup> September 2019  
 Later *invoice dates* occur on the 20<sup>th</sup> of each calendar month after the first *invoice date* until all amounts due to the *Consultant* under the contract have been paid

**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used	term	<i>beneficiary</i>
	The provisions of Option Y(UK)1	Named Suppliers
	Clause Z12.9	An Incoming Consultant

**Z: Additional conditions of contract**

If Option Z is used	The <i>additional conditions of contract</i> are in the document entitled "East Region DSC Z clauses".
---------------------	--

**East Region  
Design Services Contract (DSC)  
Contract Data Part 2**

**CONTENTS AMENDMENT SHEET**

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SEL	18/3/19

**PART TWO – DATA PROVIDED BY THE CONSULTANT**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**1 General**

The *Consultant* is

Name

Address for communications

Address for electronic communications

The *key persons* are the people listed in the *key people schedule*

The *key people schedule* is in the

The following matters will be included in the Early Warning Register

- Interfaces with Community Partners
- Excessive Travel time around the network
- Scope agreement / certainty

**2 The *Consultant's* main responsibilities**

If the *Consultant* is to provide Scope The Scope provided by the *Consultant* is in

**3 Time**

If a programme is to be identified in the Contract Data The programme identified in the Contract Data is

**5 Payment**

If the *Consultant* states any *expenses* The *expenses* stated by the *Consultant* are

item	amount
Please see Submission 3 – Commercial Submission Task Schedule, file name: 1.3.2 Submission 3 Atkins_East RegionDSC_3_Appendix A Time Charge & 1.3.3 Submission 3 Atkins_East RegionDSC_3_Appendix B Lump Sum	
Expenses are in accordance with Highways England's Travel and Subsistence Policy.	

**Resolving and avoiding disputes**

The *Senior Representatives* of the *Consultant* are

Name (1) Ian Spellacey

Address for communications

Atkins Limited  
Epsom Gateway  
2 Ashley Avenue  
Epsom  
KT18 5AL  
United Kingdom

Address for electronic communications

[Redacted]

Name (2) Peter Baynham

Address for communications

Atkins Limited  
The Axis  
10 Holliday Street  
Birmingham  
B1 1TF

Address for electronic communications

[Redacted]

**Optional statements**

The *task schedule* is the document entitled

Not applicable

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

party	rating agency	credit rating
[Consultant]	Dun & Bradstreet	5A.1
[Consortium Member]	[•]	[•]
[Guarantor]	[•]	[•]

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

If Option Y(UK)1 is used The *project bank* is

To be advised

*named suppliers* are

To be advised

# **East Region Design Services Contract (DSC)**

## **Scope**

### CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SEL	18/3/19
1	0.1	Section 13.1.1. changed reference from Table 1 to Table 2. Section 13.1.4. changed reference from Table 1 to Table 2. Section 13.1.5. changed reference from Table 2 to Table 3.	SEL	01/04/19
2	1.1	Amendments to Section 24.3 Offshoring of Data	SEL	11/04/19
3	2.0	2.1.4 (27) removed Inclusion Action Plan (IAP) item within the Mobilisation Period and added new requirement 2.1.6 as IAP to be developed during Mobilisation with completion in accordance to Annex 27	AP	31/05/19

## LIST OF CONTENTS

<b>1. GENERAL</b> .....	<b>6</b>
1.1. Introduction .....	6
1.2. Scope of service .....	6
1.3. Affected Property .....	8
<b>2. MOBILISATION</b> .....	<b>8</b>
<b>3. DESIGN VALIDATION</b> .....	<b>10</b>
<b>4. COMMUNITY</b> .....	<b>11</b>
<b>5. INSPECT ASSET (OPTIONAL)</b> .....	<b>11</b>
<b>6. IDENTIFY NETWORK NEEDS (OPTIONAL)</b> .....	<b>11</b>
<b>7. DEVELOP NETWORK INVESTMENT NEEDS (OPTIONAL)</b> .....	<b>11</b>
<b>8. DESIGN SCHEMES</b> .....	<b>11</b>
<b>9. DELIVER SCHEMES</b> .....	<b>12</b>
<b>10. DELIVER SCHEMES (OPTIONAL)</b> .....	<b>13</b>
<b>11. DELIVER INCIDENT RESPONSE (RAPID RESPONSE)</b> .....	<b>13</b>
<b>12. DEMOBILISATION</b> .....	<b>13</b>
<b>13. OFFICE SPACE</b> .....	<b>14</b>
<b>14. INSTRUCTION AND PAYMENT REQUIREMENTS</b> .....	<b>15</b>
14.1. Task Orders .....	15
14.2. Optional Service .....	15
<b>15. QUALITY MANAGEMENT</b> .....	<b>16</b>
15.1. Quality Plan .....	16
15.2. Audits .....	16
15.3. Performance Management .....	16
15.4. Continual Improvement .....	16
15.5. Records .....	16
<b>16. EXTENSION REVIEW</b> .....	<b>17</b>
16.1. Purpose .....	17
16.2. Extension Criteria .....	17
<b>17. GENERAL HEALTH AND SAFETY</b> .....	<b>17</b>
<b>18. CUSTOMER SERVICE AND STAKEHOLDER LIAISON</b> .....	<b>17</b>
18.1. Customer Service .....	17
18.2. Consultation, Liaison and Planning .....	18

18.3. Disclosure Requests .....	18
18.4. Communications .....	18
18.5. Specified Agreements .....	18
19. TRAFFIC MANAGEMENT AND ACCESS TO NETWORK.....	18
20. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY .....	19
21. COMMERCIAL MANAGEMENT.....	19
21.1. Compensation Events .....	19
21.2. Cost Capture .....	19
21.3. Certification of staff rate changes .....	19
21.4. Annual Commercial Plan .....	20
22. RISK MANAGEMENT.....	20
22.1. Risk Management .....	20
22.2. Business Continuity .....	20
23. PROCUREMENT AND SUPPLY CHAIN MANAGEMENT.....	20
23.1. Subcontracting.....	20
24. INFORMATION TECHNOLOGY AND DATA.....	21
24.1. Data Protection .....	21
24.2. Information Security .....	25
24.3. Offshoring of Data .....	25
24.4. Information Systems .....	26
25. GENERAL OBLIGATIONS .....	27
25.2. Statutory Powers .....	27
25.3. Reference Documents .....	28
25.4. Confidentiality, Security and Conflict of Interest.....	28
25.6. Anti-Bribery and Anti-Fraud .....	28
25.7. Discrimination, Bullying and Harassment.....	29
25.8. Pensions.....	30
25.9. Parent Company Guarantee .....	34
25.10. Form of Novation .....	34
IDENTIFIED AND DEFINED TERMS.....	35

**LIST OF ANNEXES**

- 1 Not Used
- 2 Vision, Imperatives, Values and Key Objectives
- 3 Reference Documents
- 4 Insurance Requirements
- 5 Not Used
- 6 Information Systems
- 7 Not Used
- 8 Confidentiality, Security and Conflict of Interest
- 9 Not Used
- 10 Cost Capture Data Requirements
- 11 Community
- 12 Communications
- 13 General Health & Safety Requirements
- 14 Not Used
- 15 Annual Commercial Plan and Service Plan
- 16 Quality Management
- 17 Performance Management
- 18 Continual Improvement and Innovation
- 19 Records
- 20 Not Used
- 21 Not Used
- 22 Not Used
- 23 Not Used
- 24 Parent Company Guarantee
- 25A Form of Novation
- 25B Form of Novation
- 26 Customer Service
- 27 Environmental Management & Sustainability
- 28 Not Used

## 1. GENERAL

### 1.1. Introduction

1.1.1. The *service* to be provided in this contract relates to highway maintenance, renewal and small improvement design and associated services for the Affected Property, including:

- structures,
- landscaping,
- pavements,
- drainage,
- traffic modelling,
- traffic signals,
- geometrical designs,
- geotechnics,
- technology,
- lighting,
- motorway communications,
- environmental,
- noise quality (including non-invasive surveys),
- air quality (including non-invasive surveys),
- vehicle restraint systems,
- depots
- preparation of contract documents,
- site supervision,
- stakeholder engagement/ consultation

1.1.2. An anticipated programme of schemes is shown in Annex 3.

### 1.2. Scope of service

1.2.1. In Providing the Service the *Consultant* facilitates the *Client* to achieve the vision and goals set out in Annex 2, as modified and updated by the *Client* from time to time.

1.2.2. For all activities involving design as set out in the Construction (Design and Management) Regulations 2015, the *Consultant* is a designer under the Regulations

- 1.2.3. The *service* between the *starting date* and the *go live* date is defined in the following sections:
- Mobilisation
  - Design Validation
- 1.2.4. The *service* from the *go live* date is defined in the following sections:
- Community
  - Design Schemes
  - Deliver Schemes
  - Incident Response (Rapid Response)
  - Demobilisation
- 1.2.5. The optional parts of the *service* are defined in the following sections:
- Inspect Asset (Optional)
  - Identify Network Needs (Optional)
  - Develop Network Investment Needs (Optional)
  - Deliver Schemes (Optional)
- 1.2.6. Constraints on how the *Consultant* Provides the *Service* are defined in the following sections:
- Instruction and Payment Requirements
  - Quality Management
  - Extension Review
  - General Health and Safety
  - Customer Service and Stakeholder Liaison
  - Traffic Management and Access to Network
  - Environmental Management and Sustainability
  - Commercial Management
  - Risk Management
  - Procurement and Supply Chain Management
  - Information Technology and Data
  - General Obligations
- 1.2.7. Places, people, or things provided by the *Client* are defined in the following sections:
- Office Space

### 1.3. Affected Property

#### 1.3.1. The Affected Property is:

- the strategic road network in East Region,
- the associated infrastructure and amenities, and
- other infrastructure and amenities the *Client* is required to improve from time to time within these geographical boundaries.

#### 1.3.2. The boundaries and network details of the East Region are Areas 6 and 8 and DBFO 29 (A1(m)) and DBFO M40 Junctions 1 to 15) as shown in the Affected Property map [East Region Map Rev 0.pdf](#)

## 2. MOBILISATION

#### 2.1.1. Design Validation commences during the Mobilisation Period and does not form part of the mobilisation duties. The requirements for Design Validation are defined in section 3.

#### 2.1.2. The *Consultant* designs and documents a mobilisation plan and submits it to the *Service Manager* for acceptance within two weeks of the *starting date*.

#### 2.1.3. The mobilisation plan includes all the tasks, methodologies, dates and timescales necessary during the Mobilisation Period to Provide the Service on the *go live date*.

#### 2.1.4. During the Mobilisation Period the *Consultant* delivers the activities in accordance with the mobilisation plan and specifically:

- (1) prepares and manages a risk register relating to mobilisation tasks,
- (2) produces the individual Annex 16 processes,
- (3) submits the Design Validation Process to the *Service Manager* for acceptance within two weeks of the *starting date*,
- (4) submits the annual commercial plan no later than four weeks after the *starting date*,
- (5) submits an information security plan no later than four weeks after the *starting date*,
- (6) procures resources so that the *Consultant* is fully able to Provide the Service on the *go live date*,
- (7) ensures employees and Sub-contractors are fully aware of the operation and requirements of this contract, their role and the Quality Plan,
- (8) identifies and manages risks associated with the *Consultant's* employees who are transferred from the Outgoing Consultant,

- (9) submits a Transition Plan to the *Client* for acceptance, no later than 2 months prior to the go live date,
- (10) develops collaborative relationships with other Partners in the Community,
- (11) manages the Mobilisation Plan,
- (12) identifies key staff and their roles,
- (13) establishes the relevant components of the Business Information Gateway interface and other systems in accordance with Annex 4,
- (14) participates in the establishment of the Community,
- (15) prepares and issues the Quality Plan to the *Client* no later than four weeks after the *starting date*,
- (16) attends a one day *Client's* workshop to review use of lean principles for continual improvement,
- (17) becomes familiar with the Affected Property and all interfaces and boundaries,
- (18) takes all reasonable steps to obtain from the Outgoing Consultant and the *Client*, all records, programmes and other information necessary or required for the carrying out of its duties under this contract,
- (19) liaises as appropriate with the Outgoing Consultant, any other Consultant of the *Client* on the Affected Property, and any relevant authority, to ensure smooth transitional arrangements. The *Consultant* becomes familiar with any residual duties to be performed by the Outgoing Consultant and any ongoing work being performed on the Affected Property and advises the *Client* as appropriate,
- (20) advises the *Client* of any additional services, which the *Consultant* considers appropriate to be performed during the Mobilisation Period no later than three weeks after the *starting date*,
- (21) prepares a records policy document including the disposal of records based upon the *Client's* records policy and submits it to the *Client* for approval, no later than three weeks after the *starting date*,
- (22) prepares a business continuity plan that complies with ISO22301:2012 and best industry practice and submits the draft plan to the *Client* no later than four weeks after the *starting date* for comment. The *Consultant* finalises the business continuity plan no later than eight week after the *starting date*,
- (23) provides a copy of all staff rate calculations for each person to the *Client* within four weeks of the Contract Date,
- (24) develops a formal health and safety management system in accordance with paragraph 1.2.1 of Annex 13,

- (25) prepares a Health and Safety Maturity Matrix Action Plan in accordance with paragraph 1.3.1 of Annex 13,
- (26) prepares an environmental management system in accordance with paragraph 2.2.1 of Annex 27,
- (27) assists the *Service Manager* to gather and analyse customer and communities intelligence in accordance with paragraph 3.3.6 in Annex 27,
- (28) produces Apprenticeship proposals in accordance with paragraph 3.6.2 of Annex 27.

2.1.5. The *Consultant* includes the Transition Plan in its quality management system. The Transition Plan details how the *Consultant* is to Provide the Service from the end of the Mobilisation Period and:

- (1) details how employees and Sub-contractors will be further developed following mobilisation into this contract, their role and familiarity with the Quality Plan,
- (2) identify and manage risks associated with the *Consultant's* employees who are transferred from the Outgoing Consultant
- (3) describe how the *Consultant* will further develop collaborative relationships developed during the Mobilisation Period with other Partners in the Community,
- (4) include procedures which set out the *Consultant's* approach to the transition of its employees,
- (5) details how implementation of this Transition Plan will be monitored.

2.1.6. The *Consultant* from the starting date develops an evidence based Inclusion Action Plan in accordance with Annex 27.

### **3. DESIGN VALIDATION**

- 3.1.1. The *Consultant* identifies and procures resources to undertake any Design Validation as instructed by the *Client* via a Task Order.
- 3.1.2. Details of the designs that require design validation are set out in [East Region Year 5 \(2019-20\) Capital Programme.pdf](#), although this may be varied by the *Service Manager* during the Mobilisation Period.
- 3.1.3. Design Validation Services comprise all reviews of the designs carried out by the Outgoing Provider that the *Consultant* considers necessary to enable the *Consultant* to accept full design liability for the already-prepared designs as if they were their own designs.

3.1.4. For each design the *Consultant* certifies that it accepts the design liability. For any design that it does not accept design liability, they agree with the *Client* full reasons why the design liability cannot be accepted.

#### 4. COMMUNITY

4.1.1. The *Consultant* is a *Partner* and collaborates and participates in and contributes to the requirements of the Community as described in Annex 11.

#### 5. INSPECT ASSET (OPTIONAL)

5.1.1. When instructed by the *Client* using a Task Order, the *Consultant* carries out asset condition inspections on all asset types including:

- a. Highways
- b. Structures
- c. Drainage
- d. Geotechnical
- e. Soft Estate
- f. Trees

#### 6. IDENTIFY NETWORK NEEDS (OPTIONAL)

6.1.1. When instructed by the *Client* using a Task Order, the *Consultant* will:

- (1) provide technical advice to support the *Client* with the identification of network needs and collates future asset needs

#### 7. DEVELOP NETWORK INVESTMENT NEEDS (OPTIONAL)

7.1.1. When instructed by the *Client* using a Task Order the *Consultant* will:

- (1) provide technical advice to support the *Client* with the development of scheme options to address identified investment needs.

#### 8. DESIGN SCHEMES

8.1.1. The *Consultant* creates solutions ready for construction that embrace innovation at all stages.

- 8.1.2. Where instructed by the *Client* under a Task Order, the *Consultant*:
- (1) undertakes the role of principal designer under the CDM Regulations
  - (2) undertakes new scheme designs and/or reviews or completes the scheme designs undertaken by Others,
  - (3) engages with the *Client's* contractors to support the design,
  - (4) prepares specifications for technical surveys and testing to be undertaken by Others where necessary to support the design,
  - (5) undertakes surveys, studies and any other works necessary to support the design,
  - (6) reviews designs from third parties including developers, and
  - (7) prepares tender and contract documentation to various forms of contract.
- 8.1.3. The following table gives an indication of the number of 3<sup>rd</sup> party schemes carried out in previous years and known future third party schemes. The table does not guarantee future workload of third party design.

**Table 1 - Number of third party schemes carried out in East Region**

Year	No. of third party schemes
2015/16	25
2016/17	36
2017/18	37
2018/19	42
2019/20	14
Known Future Schemes	38

## 9. DELIVER SCHEMES

- 9.1.1. The *Consultant* supports the construction of defect free works as designed and planned including the mitigation of risk and the avoidance of site changes.
- 9.1.2. When instructed by the *Client* using a Task Order, the *Consultant*:
- (1) undertakes the role of principal designer under CDM Regulations,
  - (2) provides design support for schemes during construction, including clarification of designs, re-design of the works and supporting the *Client's* site supervisor in inspections and supervision of construction,
  - (3) prepares as constructed drawings in consultation with contractors and provides the data and documentation in the *Client's* Building Information Modelling (BIM) format for the *Client* to input into the *Client's* electronic system,

- (4) prepares the Health and Safety files,
  - (5) attends arbitration, alternative dispute resolution proceedings, consultation, inquiries and legal proceedings
- 9.1.3. The *Consultant* provides the Health and Safety file to the *Service Manager* within 4 weeks of the *Client* certifying completion of the Scheme.

## 10. DELIVER SCHEMES (OPTIONAL)

10.1.1. When instructed by the *Client* using a Task Order, the *Consultant*:

- (1) provides site supervision services

## 11. DELIVER INCIDENT RESPONSE (RAPID RESPONSE)

11.1.1. If agreed by both Parties, the *Consultant* provides emergency technical and design advice where there has been an incident on or affecting the Affected Property. This will then be instructed by the *Service Manager* as an emergency Task Order in accordance with clause Z59.10 of the contract.

11.1.2. If instructed using a Task Order, the *Consultant* provides technical advice and design where there has been an incident on or affecting the Affected Property.

## 12. DEMOBILISATION

12.1.1. The *Consultant* delivers the following information to the *Client* for acceptance.

- (1) all relevant inventories and records including any electronic inventories/records,
- (2) records of all services carried out,
- (3) a report on all outstanding defects, work in progress and the *Consultant's* assessment of all duties that would appropriately be performed by the *Consultant* after the end of the contract.

12.1.2. All information must be in a readily accessible format agreed with the *Service Manager*, and is to include the relevant software licenses. A draft of the information is provided three months before the Completion Date and is finalised one week before the Completion Date or at a time agreed with the *Service Manager*.

12.1.3. The *Consultant*:

- (1) makes all necessary data available and provides all necessary facilities, including accommodation (as stated in this contract) advice and assistance to enable the Incoming Consultant to perform its duties,
- (2) co-operates with the Incoming *Consultant* and the *Client* to discuss and agree a detailed plan to ensure a smooth transfer of operation,
- (3) vacates and hands back premises provided by the *Client* in good order at the Completion Date, and
- (4) transfers all digital information that is accumulated as a result of Providing the Service to the *Client*, other than the *Consultant's* digital information relating to the acquisition and management of the *Consultant's* resources, at the end of the contract.

### 13. OFFICE SPACE

13.1.1. Permanent office space, furniture and facilities will be provided by the *Client* for use by the *Consultant* as shown in Table 2 below.

13.1.2. The *Consultant* occupies and uses the office space only to Provide the Service.

13.1.3. The *Consultant's* occupation of the office space is as licensee only and the Parties do not intend to create any relationship of landlord and tenant or other interest in land.

**Table 2 – Premises, equipment and facilities supplied by the *Client***

Item	Quantity	Comments
<b>Office 1 – Woodlands</b>		
<b>Address – Manton Lane, Bedford, MK41 7LW</b>		
Work Stations	Up to 40 *	Work stations included desk, chair and storage space.
Car Park Spaces	0	Design contractor will have to make their own arrangements for car parking
<b>Office 2 – Waterbeach</b>		
<b>Address – Building 1000, Cambridge Research Park, CB25 9PD</b>		
Work Stations	Up to 20 *	Work stations included desk, chair and storage space
Car Park Spaces	0	Design contractor will have to make their own arrangements for car parking
* Design contractor may only take a maximum of 40 desks across both offices		

- 13.1.4. The *Client* provides the *Consultant* with all equipment and facilities listed in Table 2.
- 13.1.5. The *Consultant* provides all necessary equipment to Provide the Service. Table 3 includes an indicative but not exhaustive list of items which the *Consultant* may provide,

**Table 3 – Equipment and facilities supplied by the *Consultant* (Indicative)**

Item	Comments
IT	Including computer, screens, servers, broadband connections and all other IT hardware and all software.
Telephones	Including handsets, cables and all connections.
Vehicles certified as compliant to Chapter 8 of the Traffic Signs Manual	Vehicles for use by <i>Consultant</i> on the Affected Property
PPE Equipment	

## 14. INSTRUCTION AND PAYMENT REQUIREMENTS

### 14.1. Task Orders

- 14.1.1. Other than Mobilisation and Demobilisation, the *Service Manager* will instruct the *service* via Task Orders. The *Consultant* performs the Mobilisation / Demobilisation duties without being instructed.
- 14.1.2. Task Orders are issued in accordance with clause Z59.
- 14.1.3. The *Service Manager* will issue Task Orders electronically, either using the Forms of Task Order in Annex 3, or via the *Client's* Finance and Works Management System.

### 14.2. Optional Service

- 14.2.1. Where part of the *service* is defined as Optional, the *Consultant* only performs that work as part of a Task if it is included in a Task Order.
- 14.2.2. Prior to instructing the change to the Task Order scope, the *Service Manager* consults with the *Consultant* and undertakes an assessment to check and agree that the *Consultant* is capable and has capacity to carry out the *service*, together with any assessment required to discharge the *Client's* CDM responsibilities.

**15. QUALITY MANAGEMENT****15.1. Quality Plan**

15.1.1. The *Consultant* complies with the requirements in Annex 16 for the preparation, implementation and ongoing updating of its Quality Plan.

**15.2. Transition Plan**

15.2.1. The *Consultant* implements its Transition Plan.

15.2.2. The *Consultant* submits a revised Transition Plan to the *Service Manager* within two weeks of being instructed to do so. A reason for not accepting the revised Transition Plan is that it does not set out the improvements needed for the *Consultant* to be able to Provide the Service in accordance with the Scope.

**15.3. Audits**

15.3.1. The *Consultant* complies with the audit requirements in Annex 16.

**15.4. Performance Management**

15.4.1. The *Consultant* manages performance in accordance with Annex 17.

15.4.2. The *Consultant* submits a Monthly Review Progress Report in accordance with the guidance in Annex 3.

**15.5. Continual Improvement**

15.5.1. The *Consultant* manages continual improvement using the principles set out in Annex 18.

15.5.2. The *Consultant* analysis the cost capture data and submits to the *Client* for acceptance at least two months before the start of the second and subsequent financial years, details showing how the *Consultant* proposes to achieve year on year continual improvement in Providing the Service.

15.5.3. The *Consultant* develops enhancements over and above their existing duties when instructed by the *Client* in accordance with clause Z31 of the Contract Data.

**15.6. Records**

15.6.1. The *Consultant* creates and maintains records in accordance with Annex 19.

15.6.2. The *Consultant* undertakes translation of existing records into an accepted format when instructed by the *Client*.

**16. EXTENSION REVIEW****16.1. Purpose**

16.1.1. The Extension Review is to enable the *Client* to satisfy itself that the *Consultant* has Provided the Service in accordance with the contract, within the Extension Review Period, as evidenced by the achievement of the extension criteria described in paragraph 16.2.

**16.2. Extension Criteria**

16.2.1. The award of an extension to the Live Period is solely based on the achievement of the criteria as defined in the *additional conditions of contract* (Z60).

16.2.2. The Extension Performance Metrics (EPM) and Extension Performance Targets (EPT) are as defined below

**Table 16.2: Extension Performance Metrics (EPM)**

Extension Performance Metric (EPM) (Based on the CPF Metrics as defined in Scope, Annex 17)		Extension Performance Target (EPT)
No	Metric Title	
5.2a	Effectiveness of quality management system	Green (level 6) or higher
6.1b	Variance in scheme or task delivery duration	Green (level 6) or higher
7.1d	Design of schemes to the agreed design costs. Note – Only applied to Design of Schemes, not Design Validation	Green (level 6) or higher

16.2.3. On conclusion of the Extension Review, the *Service Manager* notifies the *Consultant* whether they are entitled to an extension.

**17. GENERAL HEALTH AND SAFETY**

17.1.1. The *Consultant* meets the requirements of Annex 13 in relation to health and safety duties.

**18. CUSTOMER SERVICE AND STAKEHOLDER LIAISON****18.1. Customer Service**

18.1.1. The *Consultant* carries out the customer service requirements of Annex 26.

**18.2. Consultation, Liaison and Planning**

18.2.1. The *Consultant*, when instructed by the *Client*, attends meetings convened by the *Client* and Others relating to the management, operation, performance and maintenance of the Affected Property and Providing the Service.

**18.3. Disclosure Requests**

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

18.3.2. When requested to do so by the *Client*, the *Consultant* promptly provides information in its possession relating to this contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

18.3.3. The *Consultant* promptly passes any Disclosure Request which it receives to the *Client*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Client*.

**18.4. Communications**

18.4.1. The *Consultant* communicates in accordance with the requirements in Annex 12

**18.5. Specified Agreements**

18.5.1. For any specified agreements as defined in the Task Order, the *Consultant* confers and collaborates with Others to facilitate performance by them of work relating to the obligations of the *Consultant* or which may affect the Affected Property.

**19. TRAFFIC MANAGEMENT AND ACCESS TO NETWORK**

19.1.1. The *Client* provides traffic management necessary to allow the *Consultant* to Provide the Service.

19.1.2. The *Consultant* collaborates with the *Client* and Others to share traffic management and road space.

- 19.1.3. The *Consultant* requests road space from the *Client* in accordance with the Network Occupancy Requirements (refer to Annex 3).
- 19.1.4. The *Consultant* obtains a motorway permit from the *Client* before accessing the Affected Property and ensures that all staff wear appropriate PPE.
- 19.1.5. The *Consultant's* staff do not access the Affected Property without the appropriate induction by the *Consultant* and notifying and gaining approval from the *Client's* ROC.

## 20. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY

- 20.1.1. The *Consultant* carries out the environmental, social and economic sustainability requirements of Annex 27.

## 21. COMMERCIAL MANAGEMENT

### 21.1. Compensation Events

- 21.1.1. The *Consultant* uses the forms provided by the *Client* to submit compensation events.

### 21.2. Cost Capture

- 21.2.1. The *Consultant* records cost in accordance with the cost capture data requirements in Annex 10 and submits the records in a format and at intervals to be agreed with the *Client*.

### 21.3. Certification of staff rate changes

- 21.3.1. At the time of calculating a *staff rate* under the Schedule of Cost Components, the *Consultant* provides a certificate from the *Consultant's* Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed in writing by the *Service Manager* before the calculation is carried out) confirming that the calculation.
- accurate and not misleading,
  - has been prepared in conformity with generally accepted accounting principles within the United Kingdom,
  - is a true and fair reflection of the information included within the *Consultant's*:
    - books,
    - management and statutory accounts and
    - other documents and records

- complies with the contract

#### **21.4. Annual Commercial Plan**

21.4.1. The Consultant produces and updates the Annual Commercial Plan in accordance with Annex 15

### **22. RISK MANAGEMENT**

#### **22.1. Risk Management**

22.1.1. The *Consultant* operates a risk management system, which will comply with the principles, framework and processes in ISO31000 before the end of the Mobilisation Period.

#### **22.2. Business Continuity**

22.2.1. The *Consultant* undertakes a business continuity plan test event testing the plan every year. The *Consultant* agrees with the *Client* the test scenario prior to the business continuity plan test. Following the business continuity plan test, the *Consultant* prepares a feedback report with any proposed amendments to the business continuity plan and submits the report to the *Client* within fourteen days. The *Consultant* implements any proposed amendments as instructed by the *Client*.

### **23. PROCUREMENT AND SUPPLY CHAIN MANAGEMENT**

#### **23.1. Subcontracting**

23.1.1. The *Consultant* includes in the conditions of contract for each subcontract

- an obligation on the Subcontractor to work with the *Consultant* to assist the *Client* to achieve its objectives for the contract,
- an obligation on the Subcontractor to keep detailed cost records in the same format, containing the same details and for the same period as the *Consultant* is required to keep, and to make the records available to the *Consultant* and the *Service Manager* and its representatives on request,
- a term requiring (at the *Client's* option) the assignment or novation of the subcontract to the *Client* or an Incoming Consultant following the termination of the contract,
- a term requiring the *Consultant* to pay the Subcontractor within a specified period (not exceeding 19 days after the due date in the contract) for work which the Subcontractor has completed from the

previous assessment date up to the current assessment date in the contract,

- a term requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in the contract,
- a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all subsubcontractors (at any stage of remoteness from the *Client*) are to be paid within 30 days after the date on which payment becomes due under the contract and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.
- The *Consultant* notifies non-compliance with the timescales for payment:
  - to the *Service Manager* and
  - through the Efficiency and Reform Group Supplier Feedback Services.

23.1.2. The *Consultant* includes a provision in all subcontracts stating that it will not deduct retention from any amount due to the Subcontractor.

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

## **24. INFORMATION TECHNOLOGY AND DATA**

### **24.1. Data Protection**

24.1.1. For the purposes of the contract and the Data Protection Acts

- the *Client* is the Data Controller,
- the *Consultant* is the Data Processor and
- this section constitutes a data processing agreement where required by the Data Protection Acts.

24.1.2. The *Consultant* processes the Data in accordance with the Data Protection Acts and only to the extent necessary for the purpose of Providing the Service.

24.1.3. The *Consultant* does not knowingly do anything or permit anything to be done which might lead to a breach of the Data Protection Acts by either Party.

- 24.1.4. The *Consultant* obtains and maintains throughout the Service Period all registrations and notifications that it is obliged to obtain and maintain pursuant to the Data Protection Acts in respect of Providing the Service.
- 24.1.5. Without prejudice to paragraph 24.1.2, the *Consultant* processes the Data only in accordance with the instructions of the *Service Manager*, unless the *Consultant* is required to process the Data for other reasons under the laws of the European Union (or a member state of the EEA) to which the *Consultant* is subject. If the *Consultant* is required to process the Data for these other reasons, it informs the *Service Manager* before carrying out the processing, unless prohibited by relevant law.
- 24.1.6. The *Consultant* immediately informs the *Service Manager* if it believes that an instruction infringes the Data Protection Acts or any other applicable law.
- 24.1.7. The *Consultant* has in place and maintains for as long as it holds any Data in accordance with then current good industry practice, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing
- appropriate technical and organisational measures (having regard to the nature of the Data) to protect the Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
  - adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Data or to any equipment used to process the Data,
- in each case to ensure that the *Consultant's* processing is in accordance with the Data Protection Acts and protects the rights of the Data Subjects.
- 24.1.8. The *Consultant* ensures that all persons authorised to process Data are bound by obligations equivalent to those set out in condition Z7 and this section and are aware of the *Consultant's* obligations under the contract and the Data Protection Acts.
- 24.1.9. The *Consultant* ensures that access to the Data is limited to those persons who need access in order to Provide the Service and (in each case) to such parts of the Data as are strictly necessary for performance of that person's duties.
- 24.1.10. Where the *Consultant* obtains or collects Personal Data on behalf of the *Client*, the *Consultant*
- provides to Data Subjects a data protection notice in a form accepted by the *Service Manager* informing the Data Subject of the identity of the *Client*, the identity of any data protection representative it may have appointed, the purpose or purposes for which their Personal Data will

be processed and any other information which is necessary having regard to the specific circumstances in which the Personal Data is, or is to be, processed to enable processing in respect of the Data Subject to be fair and

- where applicable, obtains all necessary consents for the processing of Personal Data.

24.1.11. On request, the *Consultant* takes all necessary actions and provides the *Service Manager* with all reasonable assistance necessary for the *Client* to comply with its obligations under the Data Protection Acts in relation to the rights of Data Subjects, including:

- the provision of access to, and information relating to, Data,
- the rectification of inaccurate Data,
- the permanent erasure of Data,
- the restriction of processing of Data,
- the provision of a copy of Data in machine readable format and
- the transfer of Data to a third party.

24.1.12. The *Consultant* immediately notifies the *Service Manager* if it receives

- a request from any Data Subject whose Personal Data it holds to access their Personal Data,
- a complaint or request relating to the *Client's* obligations under the Data Protection Acts or
- a request from any Supervisory Authority for assistance or information, unless prohibited by relevant law.

24.1.13. The *Consultant* assists and co-operates with the *Service Manager* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Service Manager* and
- promptly providing the *Client* with any Personal Data and other information requested by it to enable it to respond to the request.

24.1.14. The *Consultant* does not process the Data outside the EEA (other than in the United Kingdom) without the agreement of the *Service Manager*. Where the *Service Manager* agrees, the *Consultant*

- provides evidence (acceptable to the *Service Manager*) of appropriate safeguards as required by the Data Protection Acts and
- complies with the instructions of the *Service Manager*.

- 24.1.15. The *Consultant* does not engage any Sub-Processor without the prior consent of the *Service Manager*.
- 24.1.16. Prior to allowing a Sub-Processor to process any Data, the *Consultant* enters into a written agreement with the Sub-Processor under which the Sub-Processor is obliged to comply with the terms of this section. The *Consultant* remains fully liable to the *Client* for any acts or omissions of any Sub-Processors.
- 24.1.17. The *Consultant* complies with the requirements of the *Client* in relation to the storage, dispatch and disposal of Data in any form or medium. Any requirement for the *Consultant* to destroy or delete copies of the Data is subject to any law of the European Union (or a member state of the EEA) to which the *Consultant* is subject that requires the Data to be retained.
- 24.1.18. The *Consultant* notifies the *Service Manager* within 24 hours of becoming aware of a Security Incident or any other breach of this section. The notification includes, as far as possible
- a description of the nature of the Security Incident, including the categories and approximate number of Data Subjects concerned,
  - the likely consequences of the breach and
  - the measures taken or to be taken to address the breach, including measures taken to mitigate any possible adverse effects.
- 24.1.19. In the event of a Security Incident, the *Consultant* provides the *Service Manager* with full co-operation and assistance in dealing with the Security Incident, in particular in notifying individuals affected by the Security Incident or a Supervisory Authority as required by the Data Protection Acts.
- 24.1.20. On request (but not more than once in any 12 month period) the *Consultant* provides to the *Service Manager* all necessary information to demonstrate the *Consultant's* compliance with this section.
- 24.1.21. The *Consultant* promptly provides all assistance and information requested by any Supervisory Authority or required by the *Service Manager* requires in order for the *Client* to ensure compliance with its obligations under the Data Protection Acts, including in relation to
- security of processing,
  - preparation of any necessary data protection impact assessments and
  - undertaking any necessary data protection consultations.
- 24.1.22. The *Consultant* maintains electronic records of all processing activities carried out on behalf of the *Client*, including:
- the different types of processing being carried out (if applicable),

- any transfers of Data outside the EEA or the United Kingdom, identifying the relevant country or international organisation and any documentation required to demonstrate suitable safeguards and
- a description of the technical and organisational security measures referred to in paragraph 24.1.7.

The *Consultant* makes these records available to the *Service Manager* promptly on request.

24.1.23. If it is or becomes a requirement that, under the Data Protection Acts or other applicable laws, this section must be governed by the laws of a member state of the European Union, and the law of the contract does not or ceases to satisfy this requirement, this section is governed by and construed in accordance with the laws of Ireland.

24.1.24. A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **24.2. Information Security**

24.2.1. The *Consultant* prepares and maintains a robust information security plan complying with the *Client's* security policy and submits it to the *Client* for acceptance. The *Consultant* includes the security plan in its quality management system. The security plan includes procedures which:

- (1) ensure compliance with the Data Protection Acts,
- (2) protect information against accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of Personal Data,
- (3) ensure that unauthorised persons do not have access to Personal Data or to any equipment used to process Personal Data, and
- (4) protect IT systems from viruses and similar threats.

24.2.2. The *Consultant* provides training for its employees and Subcontractors in accordance with the security plan.

## **24.3. Offshoring of Data**

24.3.1. In this section Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with the HMG Security Policy Framework (SPF) dated May 2018 and the Highways England Information Security Data Security Standard, or any later revision or replacement.

24.3.2. The *Consultant* does not store any of the *Client's* data that is classified as OFFICIAL (including OFFICIAL SENSITIVE) or higher in accordance with the HMG Government Security Classifications dated May 2018 (or any later revision or replacement):

- (1) offshore or
- (2) in any way that it could be accessed from an offshore location

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

- (1) the *Client* has gained approval for such storage in accordance with the Highways England Information Security Data Security Standard (or any later revision or replacement) or
- (2) such approval is not required.

24.3.3. The *Consultant* ensures that no offshore premises are used in Providing the Service until

- (1) such premises have passed a Risk Assessment or
- (2) the *Client* confirms to the *Consultant* that no Risk Assessment is required

24.3.4. The *Consultant* complies with a request from the *Client* to provide any information required to allow the *Client* to

- (1) gain approval for storing data or allowing access to data from an offshore location in accordance with 24.3.2 or
- (2) conduct a Risk Assessment for any premises in accordance with 24.3.3

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

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

#### **24.4. Information Systems**

24.4.1. The *Consultant* maintains and operates the Business Information Gateway interface in accordance to Annex 6 for:

- (1) the management of information and records relating to the Affected Property,
- (2) the support of decisions relating to programmes of work for maintenance and improvement of the Affected Property,
- (3) receiving and transmitting communications, information, records and data from and to the *Client* and
- (4) the operation of management information systems, which are part of the information and communication technology owned and managed by the *Client*.