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Estate property management services agreement (incorporating the NEC4 Professional Services Contract June 2017 as amended by the NEC 4 amendments dated 4 January 2019 and 4 October 2020), contract data and Z clauses.

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Date.....2021

## **FORM OF AGREEMENT**

Incorporating the NEC4 Professional Services Contract June 2017 (amended by the NEC 4 amendments dated 4 January 2019 and 4 October 2020)

**Between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**and**

**TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED**

**for the provision of**

**Estate Property Management Services**

**THIS AGREEMENT is made on ..... day of December 2021**

**PARTIES:**

1. **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the "***Client***"); and
2. **TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 02165592) whose registered office address is at Low Hall, Calverley Lane, Horsforth, Leeds, West Yorkshire LS18 4GH (the "***Consultant***").

**BACKGROUND**

- (A) On the 23 July 2021, the *Client* invited the *Consultant* to tender for the *Client's* estate property management service requirements.
- (B) On the 18 August 2021, the *Consultant* submitted a tender response (as updated and resubmitted on 24 September 2021) and was subsequently selected by the *Client* to Provide the Service (as defined in this Contract).
- (C) The *Consultant* has agreed to Provide the Service in accordance with this Contract.

**IT IS AGREED AS FOLLOWS:**

- 1 The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with this Contract.
- 2 The *Consultant* will Provide the Service in accordance with this Contract.
- 3 This Contract is the entire agreement between the Parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
- 4 Neither Party has been given, nor entered into this Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Contract.
- 5 Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
- 6 The X options that apply to this Contract are:
  - X1 Price Adjustment Factor for inflation;
  - X2 Changes in the law;
  - X4 Ultimate Holding Company Guarantee;
  - X8 Undertakings to Others;
  - X11 Termination by the *Client*;
  - X18 Limitation of liability; and
  - X20 Key Performance Indicators.

- 7 The Y options that apply to this Contract are:
- Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996; and
- Y(UK)3 The Contracts (Rights of Third Parties) Act 1999.
- 8 The W options that apply to this Contract are:
- W1.1 Resolving and Avoiding Disputes - which shall be used, notwithstanding that Housing Grants, Construction and Regeneration Act 1996 applies to this Contract; and
- W2 Resolving and Avoiding Disputes – used when Housing Grants, Construction and Regeneration Act 1996 applies.
- 9 The Z clauses that apply to this Contract are:
- Z1 Amendments to the PSC NEC4 Core Clauses – General;
- Z2 Amendments to the PSC NEC4 Core Clauses – the *Consultant's* main responsibilities;
- Z3 Amendments to the PSC NEC4 Core Clauses – Time;
- Z4 Amendments to the PSC NEC4 Core Clauses – Quality Management;
- Z5 Amendments to the PSC NEC4 Core Clauses – Payment;
- Z6 Amendments to the PSC NEC4 Core Clauses – Compensation Events;
- Z7 Amendments to the PSC NEC4 Core Clauses – Rights to Material;
- Z8 Amendments to the PSC NEC4 Core Clauses – Liabilities and Insurance;
- Z9 Amendments to the PSC NEC4 Core Clauses – Termination;
- Z10 Amendments to Resolving Disputes and Avoiding Disputes;
- Z11 Amendments to the Secondary Option Clauses – X1 (*Price Adjustment for Inflation*);
- Z12 Amendments to the Secondary Option Clauses – X2 (*Changes in the Law*);
- Z13 Amendments to the Secondary Option Clauses – X4 (*Ultimate Holding Company Guarantee*);
- Z14 Amendments to the Secondary Option Clauses – X8 (*Undertakings to Others*);
- Z15 Amendments to the Secondary Option Clauses – X11 (*Termination by the Client*);
- Z16 Amendments to the Secondary Option Clauses – X20 (*Key Performance Indicators*);

- Z17 Amendments to the Secondary Option Clauses – Y(UK)2 (*The Housing Grants, Construction and Regeneration Act 1996*);
- Z18 Amendments to the Secondary Option Clauses – Y(UK)3 (*The Contracts (Rights of Third Parties) Act 1999*);
- Z19 Amendments to the Option Clause W2 (*Resolving and Avoiding Disputes – used when Housing Grants, Construction and Regeneration Act 1996 applies*);
- Z20 The *Client's* liability;
- Z21 Implementation Phase;
- Z22 Business Continuity;
- Z23 Performance Management;
- Z24 Improvement Plan;
- Z25 Increased Monitoring;
- Z26 Step-in Rights;
- Z27 Change Control Procedure;
- Z28 Exit Management;
- Z29 Staff Transfers;
- Z30 Consultant Personnel;
- Z31 Discrimination;
- Z32 Apprenticeships;
- Z33 *Client's* Codes of Conduct;
- Z34 Sustainable Development Requirements & Life Chances;
- Z35 Modern Slavery;
- Z36 Small and Medium Enterprises;
- Z37 Subcontracting;
- Z38 Working with the *Client* and Third Parties;
- Z39 Recovery of sums due from the *Consultant*;
- Z40 Fair Payment;
- Z41 Tax Non-Compliance;
- Z42 Value Added Tax (VAT) Recovery and Invoicing;
- Z43 Tax Arrangements of Public Appointees;

- Z44 Prevention of fraud and bribery;
- Z45 Financial Transparency;
- Z46 Confidentiality;
- Z47 Security Requirements;
- Z48 Official Secrets Act;
- Z49 Data Protection;
- Z50 Freedom of Information;
- Z51 Records and Audit Access;
- Z52 Intellectual Property Rights;
- Z53 Offshoring of data;
- Z54 Termination – PCRs, Regulation 73;
- Z55 Financial Distress;
- Z56 Assignment and Novation;
- Z57 Merger, take-over or change of control;
- Z58 Appointment of Adjudicator; and
- Z59 Counterparts.

10 The Schedules are:

- 1 Parts 1 and 2 of the Statement of Requirements;
- 2 Price List;
- 3 TUPE;
- 4 Template form of Undertaking to Others;
- 5 Template Form of Deed of Guarantee;
- 6 Personal Data and Data Subjects;
- 7 Change Control Procedure;
- 8 Security Policy;
- 9 Performance Management Regime;
- 10 Implementation Plan;
- 11 Consultant Personnel;

- 12 Sustainable Development Requirements;
- 13 Life Chances and Social Value; and
- 14 Exit Management.

**Executed under hand**

EXECUTED by the Parties and delivered on the date which first appears in this Agreement.

Signed by an authorised signatory for and on behalf of the **SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown

.....  
Authorised signatory

.....  
Position

.....  
Name

Signed by **TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED** acting by a Director and the Company Secretary/two Directors

.....  
Director

.....  
Director/Company Secretary

# Professional Services Contract

## Contract Data

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

#### 1 General

- The *conditions of contract* are:
  - the core clauses and the clauses for main Option A;
  - dispute resolution Options W1.1 and W2;
  - secondary Options X1, X2, X4, X8, X11, X18, X20, Y(UK)2 and Y(UK)3, of the NEC4 Professional Services Contract June 2017 (amended by the NEC 4 amendments dated 4 January 2019 and 4 October 2020);
  - clauses Z1 - Z59; and
  - Schedules 1 to 14.
- The *service* is the provision of estate property management services, as more particularly described in Parts 1 and 2 of the Statement of Requirements which is set out in Schedule 1 (*The Statement of Requirements*) to this Contract.
- The *Client* is The Secretary of State for Work and Pensions, Caxton House, Tothill Street, London, SW1H 9NA.
- The *Service Manager* is:

Name: [REDACTED]

Address: Department of Work and Pensions, People, Capability and Place Group, Estates, Major Projects Team, 5<sup>th</sup> Floor, 2 Peters Square, Manchester, M2 3AA
- The *Scope* is set out in the Statement of Requirements which is set out in Parts 1 and 2 of the Schedule 1 (*The Statement of Requirements*) to this Contract and any reference to the 'Scope' in this Contract shall be deemed to be a reference to the Statement of Requirements.
- The *language of this Contract* is English.
- The *law of this Contract* is the law of England and Wales and the Courts of England and Wales, shall have exclusive jurisdiction with regard to any dispute in connection with this Contract and the Parties irrevocably agree to submit to the jurisdiction of those courts.
- The *period for reply* is two (2) weeks.
- The *period for retention* is twelve (12) years following Completion or earlier termination.

- The following matters will be included in the Early Warning Register:



- Early Warning meetings will be held at the same time as the monthly Performance Review Meetings.

## 2 The *Consultant's* main responsibilities

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

- The *key dates and conditions* to be met will be further developed and agreed by the Parties during the Implementation Phase:

*condition* to be met

*key date*

The *Consultant* shall complete the Implementation Deliverables

31 January 2022 or such later date as may be agreed by the *Client*

If Option A is used:

The *Consultant* prepares forecasts of the total of any *expenses* that are not included within the Fixed Fee (and for the avoidance of doubt this includes the Prices) and/or that are the *Consultant's* risk under this Contract at intervals no longer than four (4) weeks.

## 3 Time

- The *service period* means the period from the Contract Date to:
  - (1) the 31 May 2025 (the "**Initial Service Period**"), provided that the *Client* may extend the Initial Service Period by up to twelve (12) months (the "**Extension Period**"), commencing on the day following the last day of the Initial Service Period by giving not less than twenty-four (24) weeks' written notice to the *Consultant* prior to the commencement of the Extension Period; or
  - (2) such earlier date of termination of this Contract in accordance with the provisions of this Contract.
- The *starting date* is the Contract Date and any reference to the '*starting date*' in this Contract shall be deemed to be a reference to the Contract Date.
- The Implementation Phase commences on the 13 December 2021 and expires on 31 January 2022 or such later date as the *Client* may agree.
- The *Consultant* submits revised programmes on the earlier of:
  - (1) the implementation of a Contract Change pursuant to the Change Control Procedure; and
  - (2) quarterly intervals following the Contract Date.

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

- The *completion date* for the *service* is the expiry of the *service period*.

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

- The *Consultant* is required to provide a programme for the Implementation Phase and that programme is identified in the Contract Data as “Q5 Contract Implementation Phase – Resubmission dated 24 September 2021”.
- The *Consultant* is to submit a first programme for the remainder of the *service* acceptance within four (4) weeks of the Contract Date.

#### **4 Quality Management**

- The quality policy statement and quality plan are provided within two (2) weeks of the Contract Date.
- The *defects date* for each part of the *service* shall be agreed by the Parties during the Implementation Phase.

#### **5 Payment**

- The *currency* of this Contract is the pound sterling (£).
- The *assessment interval* is monthly.
- The *interest rate* is three per cent (3%) per annum above the Bank of England base rate in force from time to time.
- The *expenses* stated by the *Client* are:
  - (1) the *Client* does not state any expenses; and
  - (2) all expenses, costs and disbursements are included in the Fixed Fee.

#### **6 Compensation Events**

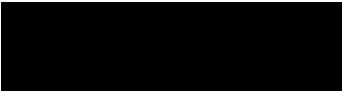
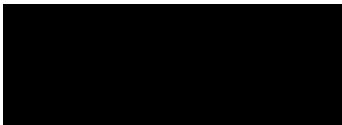
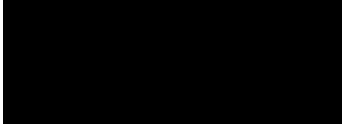
- These are additional compensation events:

[REDACTED]

#### **8 Liabilities and insurance**

- These are additional *Client* liabilities:
  - (1) None
- The *Consultant's* total liability to the *Client* for all matters arising under or in connection with this Contract, other than the excluded matters, is limited to [REDACTED]

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

Event	Minimum amount of cover	Period of cover
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>service</i> .	 number of claims except for claims arising out of pollution or contamination or fire safety notifications, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate.	from the Contract Date until six (6) years following termination or expiry of this Contract.
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> .		from the Contract Date until six (6) years following termination or expiry of this Contract.
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this Contract.		from the Contract Date until six (6) years following termination or expiry of this Contract.

## Resolving and avoiding disputes

### The tribunal is *arbitration*.

- The *arbitration procedure* is the London Court of International Arbitration Rules.
- The place where arbitration is to be held will be agreed by the Parties before the commencement of arbitration proceedings.
- Without prejudice to either Party's right to commence an adjudication pursuant to option W2, the Parties agree that the provisions of option W1.1 shall apply to this Contract.
- If the Parties cannot agree the identity of the arbitrator then the nominating body shall be Chartered Institute of Arbitrators.
- The *Senior Representatives* of the *Client* are:

Name: 

Address for communications: Head of Estates Service Delivery, Department for Work and Pensions, People, Capability and Place, Estates, 2<sup>nd</sup> Floor, Hartshead Square, Sheffield, S1 2FD.

Address for electronic communications: 

- The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement.
- The *Adjudicator nominating body* is the Royal Institution of Chartered Surveyors.

## Optional clauses

### X1: Price Adjustment Factor for inflation

- The *base date* for the indices is the applicable date set out in Clause Z11 (X1 – *Price Adjustment Factor*).
- The indices is CPIH (published by the ONS).

### X2: Changes in the law

- The law of this Contract is the law of England and Wales.

### X4: Ultimate Holding Company Guarantee

- The ultimate holding company guarantee is in the form attached at Schedule 5 (*Template Form of Deed of Guarantee*) and shall be made in favour of the *Client*.

### X8: Undertakings to Others

- The *Consultant* undertaking to *Others* is in the form(s) attached at Schedule 4 (*Template Form of Undertaking to Others*) and shall be made in favour of those persons identified by the *Client* from time to time, save that the *Consultant* shall be required to provide a maximum of 5 *Consultant* collateral warranties.
- The Subcontractor undertaking to *Others* is in the form(s) attached at Schedule 4 (*Template Form of Undertaking to Others*) and shall be made in favour of the *Client* and those persons identified by the *Client* from time to time, save that the each Subcontractor shall be required to provide a maximum of five (5) Subcontractor collateral warranties.

### X18: Limitation of liability

- Without prejudice to the second bullet point of this option X18, the *Consultant's* total liability to the *Client* for all matters arising under or in connection with this Contract, other than the excluded matters, is limited to [REDACTED] pounds).
- The *Consultant's* liability to the *Client* for Service Credits in any year is limited to the Amount At Risk Per Annum.
- The *end of liability date* is six (6) years after termination or expiry of this Contract.
- The excluded matters are:
  - (1) [REDACTED]
  - (2) [REDACTED]
  - (3) [REDACTED]
  - (4) [REDACTED]

(5)

(6)

#### **X20: Key Performance Indicators**

- The Key Performance Indicators and the mechanism for applying the Key Performance Indicators are set out at Schedule 9 (*Performance Indicators*).
- From the Contract Date, the *Consultant* shall submit a Performance Report each Contract Month.

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

- Not used

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

- The period for payment is thirty (30) days after the date when payment is due.

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

- The *beneficiaries* are those parties listed in Schedule 3 (*TUPE*).

#### **Contract Data relating to Z clauses**

- The *additional conditions of Contract* are Clause Z1 to Clause Z59 set out with this Contract and the Schedules 1 to 14.

#### **Clause Z55 Financial Distress**

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

party	rating agency	credit rating
<i>Consultant</i>	Dun & Bradstreet or such other credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default.	
<i>Guarantor</i>		

#### **Clause Z53 Offshoring of Data**

**The Risk Assessment** is a full risk assessment and security review carried out by the *Client* in accordance with the [Offshoring Policy for DWP Contractors](#) or any later revision or replacement.

## Part two – Data provided by the *Consultant*

### 1 General

- The *Consultant* is:

Name	Turner & Townsend Project Management Limited (company number 02165592)
Address	Low Hall, Calverley Lane, Horsforth, Leeds, West Yorkshire LS18 4GH
- The *fee percentage* is nil.
- The *key persons*: shall mean the Core Team and such persons are set out in Schedule 11 (*Consultant Personnel*) and any reference to ‘*key person*’ in this Contract shall be deemed to be a reference to the Core Team and such persons are set out in Schedule 11 (*Consultant Personnel*).
- The Key Roles are: set out in Schedule 11 (*Consultant Personnel*).
- The *staff rates* are: the Unit Rates set out in the Price List and any reference to ‘*staff rate*’ in this Contract shall be deemed to be a reference to Unit Rate.
- The *Guarantor* is Turner & Townsend UK Limited (company number 03512868) and any reference to ‘*ultimate holding company*’ in this Contract shall be deemed to be a reference to the *Guarantor*.
- The *Consultant* shall keep records of hours and days properly worked by the *Consultant*’s staff in the form of timesheets.
- The following matters will be included in the Early Warning Register:




### 2 The *Consultant*’s main responsibilities

- The *Consultant* shall provide the *service* in accordance with the Scope.

### 3 Time

- The *Consultant* is required to provide a programme for the Implementation Phase and that programme is identified in the Contract Data as “Q5 Contract Implementation Phase – Resubmission dated 24 September 2021”.

### 5 Payment

- The *Consultant* does not state any expenses and all expenses, costs and disbursements are included in the Prices.
- The Price List is set out at Schedule 2 (*Price List*), as may be adjusted pursuant to Schedule 7 (*Change Control Procedure*).
- The tendered total of the Prices is  as set out in Schedule 2 (*Price List*), as may be adjusted from time to time pursuant to a Contract

Change approved in accordance with Schedule 7 (*Change Control Procedure*), and this shall be deemed to be the Fixed Fee for the purposes of this Contract. Any reference to the 'Prices' in this Contract shall be deemed to be a reference to the Fixed Fee. Throughout the *service period*, the *Consultant* shall be entitled to apply for the relevant part of the Fixed Fee set out in Schedule 2 (*Price List*) for the relevant Contract Month.

- The Amount At Risk Per Annum is:
  - (1) Year 1 - [REDACTED]
  - (2) Year 2 - [REDACTED]
  - (3) Year 3 - [REDACTED]
  - (4) Year 4 - [REDACTED]
- as may be adjusted from time to time pursuant to a Contract Change approved in accordance with Schedule 7 (*Change Control Procedure*).
- **Resolving and avoiding disputes**
- The *Senior Representatives* of the *Consultant* are:
  - Name: [REDACTED]
  - Address for communications: Turner & Townsend Project Management Ltd,  
One New Change, London, EC4M 9AF.
  - Address for electronic communications: [REDACTED]

## Additional conditions of contract – clauses Z1 to Z59

### Clause Z1 Amendments to the PSC NEC4 Core Clauses - General

- Z1.1 Clause 11.2(2): delete the bullet points and insert, “completed all the work, including any Key Task, to the reasonable satisfaction of the *Service Manager* and provided all the relevant Deliverables which the Implementation Plan, the Statement of Requirements, the Accepted Programme and/or the Exit Plan (as the case may be) states is to be done by the *Consultant* in any Contract Month.”
- Z1.2 New clause 11.2(1A): insert new clause, “A Client Supply Chain Member means the principal suppliers to the *Client* notified to the *Consultant* from time to time and/or of which the *Consultant* should have been aware, including the Supply Chain Integrator.”
- Z1.3 New clause 11.2(1B): insert new clause, “Change Control Procedure means the change control procedure set out in Schedule 7 (*Change Control Procedure*).”
- Z1.4 Clause 11.2(3): delete and insert, “The Completion Date is the relevant completion date specified in the Implementation Plan, the Statement of Requirements, the Accepted Programme, the Performance Indicators and/or the Exit Plan (as the case may be) for any Key Task, any part of the *service* and the provision of any Deliverables in any Contract Month.”
- Z1.5 New clause 11.2(3A): insert new clause, “Confidential Information is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential, including any information agreed between the Parties to be commercially sensitive.”
- Z1.6 New clause 11.2(3B): insert new clause, “Consultant Personnel is all persons employed or engaged by the *Consultant* together with the *Consultant’s* servants, agents, suppliers, consultants and any Subcontractor (and all persons employed by any Subcontractor together with Subcontractor servants, consultants, agents, suppliers and sub-sub-contractors).”
- Z1.7 New clause 11.2(3C): insert new clause, “This Contract is:
- the core clauses and the clauses for main Option A;
  - dispute avoidance and resolution Options W1.1 and W2;
  - secondary Options X1, X2, X4, X8, X11, X18, X20, Y(UK)2 and Y(UK)3 of the NEC4 Professional Services Contract June 2017 (amended by the NEC 4 amendments dated 4 January 2019 and 4 October 2020);
  - Clause Z1 to Clause Z59; and
  - Schedules 1 to 14,

and references to 'this Contract', 'the contract' and/or 'this contract' shall be construed accordingly."

- Z1.8 New clause 11.2(3D): insert new clause, "Contract Change is a change implemented under the Change Control Procedure."
- Z1.9 Clause 11.2(4): delete and insert, "The Contract Date is the date of this Contract."
- Z1.10 Clause 11.2(6): after "Scope" insert, "the Implementation Plan, the Accepted Programme, the Performance Indicators, the Exit Plan (as the case may be)"
- Z1.11 New clause 11.2(6A): insert new clause, "A Deliverable is any advice, deliverable, document, information, product, report or such other item identified in the Statement of Requirements, the Implementation Phase, the Accepted Programme and/or the Exit Plan."
- Z1.12 New clause 11.2(6B): insert new clause, "Disallowed Costs means:
- (a) any amount which exceeds the relevant part of the Fixed Fee for any relevant Contract Month;
  - (b) any amount incurred which falls is in excess of:
    - (i) the corresponding Unit Rate, apportioned over the same period for which such costs are incurred; or
    - (ii) where there is no Unit Rate for the relevant part of the *service*, the new Unit Rate or other agreed cost by the Parties in accordance with Schedule 7 (*Change Control Procedure*);
  - (c) any costs incurred by the *Consultant* in providing the *service* and/or the Deliverables to the extent that the same arise out of or in connection with any default, negligence and/or breach of any provision of this Contract by the *Consultant* and/or the Core Team and/or any relevant Subcontractor, including in connection with:
    - (i) any failure to:
      - (A) follow an acceptance or procurement procedure stated in this Contract;
      - (B) take into account and apply Good Industry Practice; and/or
    - (ii) costs arising in connection with the preparation, revision and/or implementation of an Improvement Plan;
  - (d) any costs that are deemed to be included within the Fixed Fee;
  - (e) any costs, disbursements and/or expenses incurred by the *Consultant* and/or Subcontractor arising out of or in connection with:
    - (i) any dispute save to the extent that such costs are awarded against the *Client*; and
    - (ii) the preparation and issuing of a Change Request and/or an Impact Assessment;

- (f) any costs which:
  - (i) are not justified by the *Consultant's* accounts and/or records;
  - (ii) should not have been paid to the *Consultant*, a Subcontractor or consultant in accordance with this Contract; and/or
  - (iii) are not expressly permitted to be chargeable by the *Consultant* to the *Client* pursuant to this Contract;
- (g) any costs arising out of or in connection with the preparation for the conduct of an adjudication or proceedings of the tribunal save to the extent that such costs are awarded against the *Client*;
- (h) any costs, expenses and/or disbursements arising out of or in connection with the provision of any ultimate holding company guarantee and/or collateral warranties required in connection with this Contract; and/or
- (i) fines and/or royalties.”

Z1.13 Clause 11.2(8): delete and insert, “Not used.”

Z1.14 New clause 11.2(8A): insert new clause, “Fixed Fee for any Contract Month means the fixed fee (exclusive of any applicable VAT), payable to the *Consultant* by the *Client* under this Contract for that Contract Month as set out in Schedule 2 (*Price List*) as may be adjusted from time to time pursuant to a Contract Change approved in accordance with Schedule 7 (*Change Control Procedure*), for the full and proper performance by the *Consultant* of its obligations under this Contract but before taking into account the effect of any adjustment of price in accordance with clause 50.3.”

Z1.15 New clause 11.2(8B): insert new clause, “Good Industry Practice means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances and when exercising Good Industry Practice, the *Consultant* shall be required to take into account all knowledge gained by the *Consultant* throughout the *service period* of the *Client*, the Estate Properties, the Projects, the Client Supply Chain Members and the way in which the *Client* organises and delivers its business.”

Z1.16 New clause 11.2(8C): insert new clause, “Implementation Deliverable means any Deliverable that the *Consultant* is required to provide during the Implementation Phase.”

Z1.17 New clause 11.2(9A): insert new clause, “Key Task means any task, Deliverable or part of the *service* identified as a key task in the Statement of Requirements, the Accepted Programme, the Implementation Plan, the Exit Plan and/or that the Parties agree is a key task.”

Z1.18 New clause 11.2(9B): insert new clause, “Law means any applicable law, Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, exercise of the royal prerogative, regulation, order, regulatory policy, mandatory

- guidance or code of practice, judgment of a relevant court of law, directive, and/or requirements or any Regulatory Body of which the *Consultant* is bound to comply.”
- Z1.19 Clause 11.2(10): at the end of this clause insert, “including any Client Supply Chain Member.”
- Z1.20 Clause 11.2(12): after “Service means to do” insert, “in an efficient manner” and after “the contract” insert, “, all Laws, Good Industry Practice”
- Z1.21 Clause 11.2(13): delete and insert, “Scope is information which is set out in Parts 1 and 2 of the Statement of Requirements (as may be amended in accordance with this Contract), the Accepted Programme, the Implementation Plan, the Exit Plan (as the case may be) and/or any instruction given in accordance with this Contract.”
- Z1.22 New clause 11.2(13A): insert new clause, “The Statement of Requirements is set out in Parts 1 and 2 of Schedule 1 (*The Statement of Requirements*).”
- Z1.23 New clause 11.2(14A): insert new clause, “Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.”
- Z1.24 Clause 11.2(15): insert a new clause, “A completed activity (which includes a Key Task) is one without Defects.”
- Z1.25 Clause 11.2(16): delete and insert, “Not used.”
- Z1.26 Clause 12.3: at the end of the sentence insert, “in accordance with Schedule 7 (*Change Control Procedure*).”
- Z1.27 New clause 12.5: insert new clause, “In this Contract, except where the context shows otherwise:
- references to a document include any revision made to it in accordance with this Contract;
  - words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted;
  - reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
  - the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.”
- Z1.28 New clause 12.6: insert new clause, “Any reference in this Contract, which immediately prior to the IP Completion Day (or such later date when relevant EU

law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time):

- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("EEA") agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after the IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred."

Z1.29 New clause 12.7: insert new clause, "The documents which form this Contract shall be construed as mutually explanatory of one another. In the event of conflict between any of the documents comprising this Contract, the order of precedence shall be as follows:

- (a) Clause Z1-Clause Z59 (inclusive);
- (b) the core clauses and option clauses (as amended by the Z clauses);
- (c) Part 1 of the Statement of Requirements (*Client Statement of Requirements*);
- (d) the Price List;
- (e) balance of the Schedules;
- (f) Part 2 of the Statement of Requirements (*Consultant Tender Response*);
- (g) the Accepted Programme;
- (h) the Exit Plan;
- (i) the Implementation Plan; and
- (j) any other documents prepared by or on behalf of the *Consultant* pursuant to this Contract."

Z1.30 Clause 14.3: after "Scope" insert, "the Implementation Plan, the Exit Plan (as the case may be)" and delete the second sentence. After "or a Key Date" insert, "or requires the *Consultant* to correct a Defect so that a condition and/or Key Task stated for a Key Date is met by that Key Date"

Z1.31 Clause 14.6: insert a new clause, "No admission, consent, appraisal, comment, sanction, approval, direction, confirmation, acknowledgement, guideline or advice made or given by or on behalf of the *Client* under this Contract in no way excludes or limits the duties and responsibilities of the *Consultant*."

- Z1.32 Clause 14.7: insert, "The *Consultant* provides copies of all documents and/or information sent to the *Service Manager* to the *Client* unless instructed not to do so by the *Client*."
- Z1.33 Clause 15.1: in the fifth bullet point, after "contractor" insert, "a Client Supply Chain Member"
- Z1.34 Clause 15.2: delete, "or *Consultant* instructs the other" and insert, "instructs the *Consultant*"
- Z1.35 Clause 16.1: insert a new sentence at the end of the clause, "Such an instruction shall not entitle the *Consultant* to request a Contract Change, there is no adjustment to the Fixed Fee and the *Consultant* shall not be entitled to any other sum, cost, expense or disbursement arising out of such instruction."
- Z1.36 Clause 17.1: insert a new sentence, "This clause 17 is without prejudice to Clause Z44 (*Prevention of Fraud and Bribery*) and if there is any conflict between this clause 17.1 and Clause Z44 (*Prevention of Fraud and Bribery*), Clause Z44 (*Prevention of Fraud and Bribery*) shall take priority."
- Z1.37 Clause 18.1: insert a new sentence at the end of the clause, "Such an instruction shall not entitle the *Consultant* to request a Contract Change, there is no adjustment to the Fixed Fee and the *Consultant* shall not be entitled to any other sum, cost, expense or disbursement arising out of such instruction."

**Clause Z2 Amendments to the PSC NEC4 Core Clauses – the *Consultant's* main responsibilities**

- Z2.1 Clause 20.1: after "Scope" insert, "the Implementation Plan, the Accepted Programme and/or the Exit Plan (as the case may be), all Laws, Good Industry Practice and this Contract"
- Z2.2 Clause 20.2: delete and insert, "The *Consultant* exercises all the reasonable skill, care and attention as it is reasonable to expect of a suitably qualified and experienced property management consultant and advisor of the appropriate discipline designing and advising on projects of a similar scope, purpose, size and complexity to the project."
- Z2.3 Clause 20.3: delete and insert, "The *Consultant*, in performing the *service*, complies with, and gives all notices required by any Law insofar as they relate to *service*."
- Z2.4 New clause 20.4: insert new clause, "The fact that the *Consultant* has complied with:
- Part 1 of the Statement of Requirements (*Client Statement of Requirements*) but not Part 2 of the Statement of Requirements (*Consultant Statement of Requirements*) shall not be a defence to an allegation that the *Consultant* has not satisfied Part 2 of the Statement of Requirements (*Consultant Statement of Requirements*); and
  - Part 2 of the Statement of Requirements (*Consultant Statement of Requirements*) but not Part 1 of the Statement of Requirements (*Client Statement of Requirements*) shall not be a defence to an allegation that the

*Consultant* has not satisfied Part 1 of the Statement of Requirements (*Client Statement of Requirements*,

provided that Part 1 of the Statement of Requirements (*Client Statement of Requirements*) shall take priority over Part 2 of the Statement of Requirements (*Consultant Statement of Requirements*) in the event of any discrepancy or inconsistency between them.”

- Z2.5 New clause 20.5: insert new clause, “The *Consultant* provides the *service* in a timely manner without delay or disruption to the business of the *Client*.”
- Z2.6 New clause 20.6: insert new clause, “The *Consultant* provides all equipment, materials, goods and resources necessary for the supply of the *service* and such equipment, materials, goods and resources are deemed to be included within the Fixed Fee.”
- Z2.7 Clause 21.1: delete and insert, “The *Consultant* provides the Core Team and shall comply with the requirements of Schedule 11 (*Consultant Personnel*).”
- Z2.8 Clause 22.1: insert a new sentence, “This clause 22 is without prejudice to Clause Z38 (*Working with the Client and Third Parties*) and if there is any conflict between this clause 22.1 and Clause Z38 (*Working with the Client and Third Parties*), Clause Z38 (*Working with the Client and Third Parties*) shall take priority.”
- Z2.9 Clauses 23.2 and 23.3: delete.
- Z2.10 Clause 25.1: delete and insert, “Not used.”
- Z2.11 Clause 26.1: insert a new sentence, “This clause 26 is without prejudice to Clause Z46 (*Confidentiality*) and if there is any conflict between this clause 22.1 and Clause Z46 (*Confidentiality*), Clause Z38 (*Confidentiality*) shall take priority.”

#### **Clause Z3 Amendments to the PSC NEC4 Core Clauses – Time**

- Z3.1 Clause 30.2: delete and insert, “Without prejudice to the *Consultant*’s obligations under Schedule 9 (*Performance Indicators*) on the final Working Day of each Contract Month the *Consultant* completes a Performance Report. The Parties discuss the *Consultant*’s performance of the *service* and the Performance Report at the Performance Review Meeting. At the Performance Review Meeting, the *Service Manager* decides whether the *Consultant* has carried out and completed, the Key Tasks, any other relevant part of the *service* and provided the relevant Deliverables for that Contract Month.”
- Z3.2 Clause 31.2: delete and insert, “The *Consultant* shows on each programme for acceptance:
- the *Consultant*’s plans for delivering the *service*, including the Implementation Plan (for the relevant Contract Months);
  - the *Consultant*’s plans for meeting Parts 1 and 2 of the Statement of Requirements;
  - Key Tasks and Key Dates for such Key Tasks;
  - Milestone Dates;

- the *Consultant's* plans to provide any relevant Deliverables and the Key Dates for providing such Deliverables;
- the dates when in order to complete a Key Task, the *Consultant* will need:
  - access to a Client Supply Chain Member; and
  - information and things to be provided by the *Client*;
- the *Consultant's* plans for delivering the Exit Plan (for the relevant Contract Months);
- any other information that the Parties agree should be included on each programme; and
- any other information reasonably requested by the *Client* and/or the *Service Manager*, including any information referred to in or implied by Parts 1 and/or 2 of the Statement of Requirements."

Z3.3 Clause 32.1: after "operation" insert, "and any applicable Key Task"

Z3.4 New clause 33.3: insert new clause 33.3, "Any *Client's* premises made available from time to time to the *Consultant* by the *Client* in connection with this Contract shall be made available to the *Consultant* on a revocable, non-exclusive, licence basis free of charge and shall be used by the *Consultant* solely for the purpose of performing its obligations under this Contract. The *Consultant* shall have the use of such land or *Client's* premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract."

Z3.5 New clause 33.4: insert new clause 33.4, "The *Consultant* limits access to the land or *Client* premises to such staff as is necessary to enable it to perform its obligations under this Contract and the *Consultant* co-operates (and ensures that its staff co-operate) with such other persons working concurrently on such land or *Client's* premises as the *Client* may reasonably request."

Z3.6 New clause 33.5: insert new clause, "The *Consultant* (and ensures that its staff) observes and complies with such rules and regulations as may be in force at any time for the use of such *Client's* premises as determined by the *Client*, and the *Consultant* pays for the cost of making good any damage caused by the *Consultant* or its staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein."

Z3.7 New clause 34.2: insert a new clause, "An instruction issued under clause 34.1 to re-start or start the work or to remove work from the Statement of Requirements shall not entitle the *Consultant* to request a Contract Change, there is no adjustment to the Fixed Fee and the *Consultant* shall not be entitled to any other sum, cost, expense or disbursement arising out of such instruction."

Z3.8 Clauses 35.1 to 35.3: delete.

Z3.9 New clause 35.1: insert a new clause, "Notwithstanding any other express or implied term of this Contract the *Consultant* employs such resources (including the Core Team Members) as may be required using the level of skill and care in clause 21.2 to enable it to carry out and complete the Key Tasks, any other relevant part

of the *service* and provide the relevant Deliverables by the relevant key dates and the dates set out in the Accepted Programme.”

- Z3.10 New clause 35.2: insert a new clause, “If there is a delay to the progress of the project as a result of the failure by the *Consultant* to provide information to the *Client*, the *Service Manager* and Others as specified in the Implementation Plan, the Statement of Requirements, the Accepted Programme, the Performance Indicators and/or the Exit Plan (as the case may be), the *Consultant* at its own cost takes all reasonable and timely measures to mitigate the effects of such delays.”

#### **Clause Z4 Amendments to the PSC NEC4 Core Clauses – Quality Management**

- Z4.1 Clause 40.1: insert a new sentence, “This clause 40 is without prejudice to clause 1.3.9 of the Statement of Requirements and if there is any conflict between this clause 40 and clause 1.3.9 of the Statement of Requirements, clause 1.3.9 of the Statement of Requirements shall take priority.”
- Z4.2 Clause 41.1: delete and insert, “The *Service Manager* notifies the *Consultant* of any Defects. The *Consultant* includes each Defect (whether or not the *Service Manager* has notified it) in each Performance Report and the Parties discuss the Defects (if any) at each Performance Review Meeting.”
- Z4.3 Clause 41.2: delete the final sentence.
- Z4.4 Clause 42.1: insert a new sentence, “Any such proposal shall be submitted by the *Consultant* to the *Client* under Schedule 7 (*Change Control Procedure*);”
- Z4.5 Clause 42.2: delete.

#### **Clause Z5 Amendments to the PSC NEC4 Core Clauses – Payment**

- Z5.1 Clause 50.1: delete the first bullet point.
- Z5.2 Clause 50.2: insert a new sentence, “The *Consultant*’s application for payment for each Contract Month shall be limited to the relevant part of the Fixed Fee identified in the Price List and any other amounts that the *Client* has agreed, in writing, to pay and such application shall be in the form set out at clause Y(UK)2.”
- Z5.3 Clause 50.3: delete the list of bullet points and insert the following bullet points, “
- relevant part of the Fixed Fee identified in the Price List;
  - any other amounts that the *Client* has agreed in writing to be paid to the *Consultant*;
  - less any Disallowed Costs;
  - less any Service Credits that the *Service Manager* assesses are due to be paid or retained from the *Consultant* for the relevant Contract Month; and
  - less any other amounts to be paid by or retained from the *Consultant*.”
- Z5.4 Clause 51.1: delete “within one week” and insert, “in accordance with the dates and procedure set out in clause Y(UK)2”

- Z5.5 Clause 51.2: delete and insert, "Each certified payment is made in accordance with the dates and procedure set out in clause Y(UK)2."
- Z5.6 Clause 51.5: delete "tax" and insert, "VAT at the prevailing rate"
- Z5.7 Clause 52.1: delete and insert, "Not used."
- Z5.8 Clause 53.1: delete the first bullet point. Delete the final sentence and insert, "The final payment is made in accordance with the dates and procedure set out in clause Y(UK)2."
- Z5.9 Clause 53.3: delete and insert, "Not used."
- Z5.10 Clause 53.4: delete the final sentence.

#### **Clause Z6 Amendments to the PSC NEC4 Core Clauses – Compensation Events**

- Z6.1 Clause 60.1(1): delete and insert,
- "(1) The *Client* or the *Service Manager* (as the case may be) gives an instruction changing the Statement of Requirements except:
- a Minor Change;
  - a change (including a Contract Change):
    - made in order to accept a Defect and/or arising as a result of a Defect;
    - to the Statement of Requirements which is made either at the *Consultant's* request or to comply with this Contract;
    - to any part of the Statement of Requirements provided by the *Consultant*;
    - resulting from the *Service Manager* issuing an instruction under clause 16.2 and/or clause 17.1 of this Contract;
    - relating to an item which is the *Consultant's* responsibility under this Contract; and
    - required in order to achieve a consent or any Law; and/or
  - removing a requirement in Statement of Requirements for the *Consultant* to use a specified or named Subcontractor."
- Z6.2 Clause 60.1(4): after the words "gives an instruction" insert, "except an instruction given because of a Defect" and insert prior to the full stop "and it is not one of the other compensation events stated in this Contract"
- Z6.3 Clause 60.1(6): at the end of the sentence insert, "provided that such failure to reply prevents the *Consultant* from carrying out a material part of the *service*."
- Z6.4 Clause 60.1(7): at the end of the sentence insert, "provided that such failure to reply prevents the *Consultant* from carrying out a material part of the *service*."

- Z6.5 Clause 60.1(8): at the end of the sentence insert, “provided that such failure to reply prevents the *Consultant* from carrying out a material part of the *service*.”
- Z6.6 Clause 61.2: delete the second bullet point and insert, “the event has no effect upon meeting a Performance Indicator or a Key Date.”
- Z6.7 Clause 61.3: delete “the Prices,”. Delete “unless the event arises” until the end of the sentence and insert, “and the *Consultant* shall not be entitled to claim relief from any Service Credits or the levying of Service Failure Points.”
- Z6.8 Clause 61.4: delete the sixth bullet point and insert, “has no effect upon meeting a Performance Indicator or a Key Date.”. Delete “the Prices, the Completion Date and the Key Dates are not to be changed” and insert “the *Consultant* is not entitled to claim relief from any Service Credits or the levying of Service Failure Points and/or that a Key Date is not to be changed”
- Delete the final paragraph and insert, “If the *Service Manager* fails to reply to a notification of a compensation event, the *Consultant* raises this failure at the next Performance Review Meeting and the Parties agree how to deal with the notification of a compensation event at that Performance Review Meeting.”
- Z6.9 Clause 61.7: delete and insert, “Not used.”
- Z6.10 Clause 62.2: delete “the Prices,” and after “Key Dates” insert, “and any relief from Service Credits or the levying of Service Failure Points”
- Z6.11 Cause 62.2: delete and insert, “If the *Service Manager* fails to reply to a quotation, the *Consultant* raises this failure at the next Performance Review Meeting and the Parties agree how to deal with the quotation at that Performance Review Meeting.”
- Z6.12 Clause 63.1: delete and insert, “A compensation event shall not adjust the Fixed Fee (and for the avoidance of doubt this includes the Prices) and it does not entitle the *Consultant* to any other sum, cost, expense or disbursement. Any adjustment to the Fixed Fee (and for the avoidance of doubt this includes the Prices) or to any other sum, cost, expense or disbursement due to the *Consultant* under this Contract shall be pursuant to a Contract Change approved in accordance with Schedule 7 (*Change Control Procedure*).”
- Z6.13 Clause 63.2: delete and insert, “The extent of relief from a Service Credit and/or the levying of a Service Failure Point is assessed as the extent of the causative effect of the compensation event on the *Consultant*’s failure to meet the relevant Performance Indicator.”
- Z6.14 Clause 63.6: delete “to the Prices,” and after “Key Dates” insert, “and any relief from Service Credits and/or the levying of Service Failure Points”
- Z6.15 Clause 63.10: delete “as if the Prices,”
- Z6.16 Clause 63.12: delete and insert, “Any extension to the Completion Date and/or to a Key Date and any relief from Service Credits and/or levying Service Failure Points are reduced by the extent to which the *Consultant*, any Subcontractor, or supplier contributed to the effect of the compensation event.”
- Z6.17 Clause 63.13: delete.

- Z6.18 Clause 64.4: delete the final paragraph and insert, "If the *Service Manager* fails to assess to a compensation event in accordance with this clause 64.4, the *Consultant* raises this failure at the next Performance Review Meeting and the Parties agree how to deal with the assessment at that Performance Review Meeting."
- Z6.19 Clause 66.2: delete "the Prices, " and after "accordingly" insert, "and any adjustment to any Service Credits and/or Service Failure Points is made"

#### **Clause Z7 Amendments to the PSC NEC4 Core Clauses – Rights to Material**

- Z7.1 Clause 70.1: insert a new sentence, "This clause 70 is without prejudice to Clause Z52 (*Intellectual Property Rights*) and if there is any conflict between this clause 70 and Clause Z52 (*Intellectual Property Rights*), Clause Z52 (*Intellectual Property Rights*) shall take priority."

#### **Clause Z8 Amendments to the PSC NEC4 Core Clauses – Liabilities and Insurance**

- Z8.1 Clause 80.1: delete and insert, "The *Client's* liabilities are as stated in the Contract Data."
- Z8.2 Clause 81.1: delete and insert, "From the Contract Date, the liabilities which are not specified in the Contract Data to be the *Client's* liabilities are carried by the *Consultant*."
- Z8.3 Clause 84.1: after "the insurance complies with this Contract" insert, "with a well-established United Kingdom insurance office"
- Z8.4 New clause 84.3: insert new clause, "All insurances required to be effected and maintained under this Contract by the *Consultant* are placed with reputable insurers, to whom the *Client* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989."
- Z8.5 New clause 84.4: insert new clause, "The *Consultant* does not without the prior written approval of the *Client* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Client* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers."
- Z8.6 New clause 84.3: insert new clause, "The *Consultant* immediately informs the *Client* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates."
- Z8.7 Clause 87.1: delete the bullet points and insert, "
- loss of or damage to the *Client's* property;

- death or personal injury caused by the *Consultant's* negligence;
- fraud or fraudulent misrepresentation;
- deliberate and/or wilful default;
- Service Credits; and/or
- the *Consultant's* liability in respect of the indemnities in Clause Z25 (*Increased Monitoring*); Clause Z31 (*Discrimination*); Clause Z38 (*Working with the Client and Third Parties*); Clause Z42 (*VAT Recovery and Invoicing*); Clause Z43 (*Tax Arrangements of Public Appointees*); Clause Z49 (*Data Protection*); Clause Z52 (*Intellectual Property Rights*) and Schedule 3 (*TUPE*)."

## **Clause Z9 Amendments to the PSC NEC4 Core Clauses – Termination**

Z9.1 Clause 90.2: delete "A Party" and insert, "Save for so far as the Corporate Insolvency and Governance Act 2020 applies, a Party"

Delete the Termination Table and insert the following replacement table:

TERMINATION TABLE			
Terminating Party	Reason	Procedure	Amount Due
The <i>Client</i>	R1-R15, R18 or R22 – R41	P1 , P2 and P3	A1 and A2
	R17 or R20	P1 , P2 and P3	A1
	R21	P1 , P2 and P3	A1
The <i>Consultant</i>	R1-R10B, R16 or R19	P1 , P2 and P3	A1 and A3
	R17 or R20	P1 , P2 and P3	A1

Z9.2 Clause 91.1: delete the fourth sub-bullet point of the second main bullet point and insert, "had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the 1986 Act) (R8)"

At the end of the second main bullet point, after (R10) delete the full stop and insert the following additional two sub-bullet points:

- provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction (R10A); or
- applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B)."

Z9.3 Clause 91.2: delete the second bullet point and insert, "Not provide a bond or guarantee which this Contract requires, or such bond or guarantee becomes unenforceable (R12)".

- Z9.4 New clause 91.9: insert a new clause, “The *Client* may terminate the *Consultant’s* obligation to Provide the Service if:
- (1) the occurrence of a Critical Performance Failure (R22);
  - (2) the monthly aggregate amount of Service Credits incurred by the *Consultant* reaches the Monthly Performance Failure Threshold for 3 consecutive Contract Months or 4 Contract Months in any six month period (R23);
  - (3) the Parties are unable to either remove a conflict of interest that is damaging and/or to reduce its damaging effect to a reasonably acceptable level (R24);
  - (4) the warranty given by the *Consultant* in Clause Z41.2 (*Tax Non-Compliance*) in relation to occasions of tax non-compliance is materially untrue (R25); or
  - (5) the *Consultant* commits a material breach of its obligation in Clause Z41.3 (*Tax Non-Compliance*) to notify the *Client* of any occasion of tax non-compliance (R26); or
  - (6) the *Consultant* fails to provide details of proposed mitigating factors in accordance with Clause Z41.3 (*Tax Non-Compliance*) in relation to any occasion of tax non-compliance which in the reasonable opinion of the *Client*, are acceptable (R27);
  - (7) the *Consultant*:
    - is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession (R28);
    - commits or is found to have committed an act of grave misconduct in the course of its business or profession (R29);
    - fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (R30);
    - has made any material misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (R31);
    - any substantial failure arising under Clause Z57 (*Merger, Take-over or Change of Control*) (R32); or
  - (8) the *Consultant* breaches:
    - clause Z33.2 (*Client’s Code of Conduct*) (R33);
    - clause Z38.2 or Z38.4 (*Independence, Conflicts of Interest and Proscribed Conduct*) (R34);
    - clause Z40.4 (*Fair Payment*) (R35);

- clauses Z43.2, Z43.3 or Z43.4 (*Tax Arrangements of Public Appointees*) (R36);
  - Clause Z48 (*Official Secrets Act*) (R37);
  - clause Z55.5 (*Financial Distress*) (R38); and
  - section 4, 5 and/or 6 of Schedule 8 (*Security Policy*) (R39);
- (9) on the occurrence of any of the events set out in clause Z54.1 (*Termination PCRs – Regulation 73*) (R40); and
- (10) on the occurrence of an Improvement Plan Failure; (R41)."

Z9.5 New clause 92.3: insert a new clause: "Where the *Client* gives notice to terminate this Contract, the Parties comply with the provisions of the Exit Plan in relation to the orderly transition of the *service* to the *Client* or any replacement provider of the *service* or part of them (P3)."

Z9.6 New clause 94: insert a new clause:

"94.1 Where the *Consultant* is in material breach and/or a substantial failure occurs in relation to part of the *service*, (a "**Service Exclusion Cause**") the *Client* may give notice to the *Consultant* (a "**Service Exclusion Notice**") giving reasonable details of the Service Exclusion Cause.

94.2 Following service of a Service Exclusion Notice:

- (1) the *Client* takes and/or procures that a third party takes the action set out in the Service Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the *service* (or relevant part of the *service*) are delivered to the standard required pursuant to the terms of this Contract and so that the *Client* is not in breach of any Law, the *Client* policies and/or its statutory duties;
- (2) without double counting with Clause 94.2(3) the *Consultant* is responsible for the *Client's* reasonable and properly incurred costs and expenses (including any internal management time and/or procurement cost associated with appointing a third party) relating to the exercise of the *Client's* rights under this Clause 94; and
- (3) the Fixed Fee shall be adjusted to reflect the removal of the relevant part of the *service* identified in the Service Exclusion Notice."

## **Clause Z10 Amendments to Resolving Disputes and Avoiding Disputes**

Z10.1 New option W3: insert new Option W3 (*Mediation*),

"W3.1 Without prejudice to the *Consultant's* right to adjudicate a dispute or difference at any time, if the dispute cannot be resolved by the Parties pursuant to option W1.1 the Parties shall refer it to mediation pursuant to the procedure published by CEDR unless the *Client* considers that the dispute is not suitable for resolution by mediation or the *Consultant* does not agree to mediation.

- W3.2 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the *Consultant* and its staff shall comply fully with the requirements of this Contract at all times.”

**Clause Z11 Amendments to the Secondary Option Clauses – X1 (Price Adjustment for Inflation)**

Z11.1 Option X1.1 to X1.6: delete and insert:

- “X1.1 The Fixed Fee shall remain fixed for the initial eighteen (18) month period from (and including) the Contract Date (the “**Initial Period**”), following which it will then be subject to annual reviews on each anniversary of the expiry of the Initial Period (each a “**Subsequent Period**”).
- X1.2 If the *Consultant* considers that the *Consultant’s* staff costs have increased during the Initial Period and/or any Subsequent Period, it shall submit a Change Request to adjust the Fixed Fee.
- X1.3 Any adjustment to the Fixed Fee shall not exceed the percentage change in the indices listed in the Contract Data (CPIH) in the eighteen (18) month period starting from the Contract Date, the anniversary of the expiry of the Initial Period or the relevant Subsequent Period (as the case may be).”

**Clause Z12 Amendments to the Secondary Option Clauses – X2 (Changes in the Law)**

Z12.1 Option X2.1: delete and insert,

- “X2.1 In this clause X2 and where used elsewhere in this Contract, the following terms shall have the meanings given in this clause X2.1:

“**Change in Law**” means any change in law which impacts on the performance of the *service* which comes into force from and including the Contract Date;

“**Comparable Supply**” means the supply of services to another customer of the *Consultant* that are the same or similar to any of the *service*;

“**General Change in Law**” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the *Consultant*) or which affects or relates to a Comparable Supply; and

“**Specific Change in Law**” means a Change in Law that relates specifically to the business of the *Client* that would not affect a Comparable Supply.

- X2.2 The *Consultant* shall neither be relieved of its obligations to supply the *service* in accordance with this Contract nor be entitled to an increase in the Fixed Fee as a result of:

- a General Change in Law; or
- a Specific Change in Law where the effect of that Specific Change in Law on the *service* is reasonably foreseeable at the Contract Date.

X2.3 If a Specific Change in Law occurs or will occur during the *service period* (other than as referred to in the second bullet point of option X2.2), the *Consultant* shall:

- notify the *Client* as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
  - whether a Contract Change is required, including to the *service*, the Fixed Fee and/or any other part of this Contract; and
  - whether any relief from the *Consultant's* obligations is required, including an obligation to meet a KPI or SPI; and
- provide the *Client* with evidence:
  - that the *Consultant* has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Subcontractor(s);
  - as to how the Specific Change in Law has affected the cost of providing the *service*; and
  - demonstrating that any expenditure that has been avoided has been taken into account in amending the Fixed Fee.

X2.4 Any Contract Change required as a result of a General Change in Law shall be made by the *Client* to the *Consultant* without the requirement to be made through the Change Control Procedure.

X2.5 Any Contract Change to this Contract, including for the avoidance of doubt, the Fixed Fee or relief from the *Consultant's* obligations resulting from a Specific Change in Law (other than as referred to in the second bullet point of option X2.2), shall be implemented in accordance with the Change Control Procedure.

#### **Clause Z13 Amendments to the Secondary Option Clauses – X4 (Ultimate Holding Company Guarantee)**

Z13.1 Option X4.1: after “another company,” delete the remainder of the option and insert, “the *Consultant* gives the *Client* a guarantee from the *Guarantor* or such other guarantor which the *Client* has accepted (the reasons for such acceptance to be at the *Client's* sole discretion) in the form set out at Schedule 5 (*Template Form of Deed of Guarantee*). If the guarantee is not given by the Contract Date, it is given to the *Client* within two weeks of the Contract Date.”

Z13.2 Option X4.2: delete.

#### **Clause Z14 Amendments to the Secondary Option Clauses – X8 (Undertakings to Others)**

Z14.1 Option X8.1: delete and insert, “The *Consultant* enters into any Undertaking to Others in favour of any beneficiary notified by the *Client* to the *Consultant* within two weeks of being instructed to do so by the *Client*. The Undertaking shall be in the form attached at Schedule 4 (*Template Form of Undertaking to Others*).”

- Z14.2 Option X8.2: delete and insert, “If the *Consultant* subcontracts any part of the *service*, he arranges for the Subcontractor to enter into any *Undertaking to Others* in favour of the *Client* and/or any beneficiary notified by the *Client* to the *Consultant* within two weeks of being instructed to do so by the *Client*. If required to do so by the *Client* the *Consultant* ensures that any such *Undertaking to Others* entitles the *Client* at its election to step-in to the relevant subcontract. The Undertaking shall be in the form attached at Schedule 4 (*Template Form of Undertaking to Others*).”
- Z14.3 Option X8.3: delete and insert, “The *Consultant* procures that the Subcontractor referred to in the Contract Data enter into the Subcontractor collateral warranties that the Subcontractor is required to enter into in accordance with this Contract.”
- Z14.4 New option X8.4: insert new option, “The *Consultant* shall provide the *Client* with duly completed Undertaking to Others and/or Subcontractor collateral warranties in accordance with clauses X8.1 and X8.2 (as appropriate) no later than ten (10) Working Days after the *Client* has provided the *Consultant* with appropriate forms suitable for execution.”
- Z14.5 New option X8.5: insert new option, “If the *Consultant* fails to deliver the required Undertaking to Others and/or Subcontractor collateral warranties (or any one of them) in the manner and within the time stipulated by this Contract, twenty-five per cent (25%) of the Fixed Fee is retained in assessments of the amount due until the *Consultant* has remedied the failure.”

**Clause Z15 Amendments to the Secondary Option Clauses – X11 (Termination by the *Client*)**

- Z15.1 Option X11.2: delete “and A3”.

**Clause Z16 Amendments to the Secondary Option Clauses – X20 (Key Performance Indicators)**

- Z16.1 Option X20.1 to X20.5: delete and insert, “The Performance Indicators and performance management shall be managed in accordance with Schedule 9 (*Performance Indicators*).”

**Clause Z17 Amendments to the Secondary Option Clauses – Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996)**

- Z17.1 Option Y2.1A: insert new option, “All applications for payment and payment provisions shall be made in accordance with this clause Y(UK)2.”
- Z17.2 Option Y2.2: in the first line, delete “seven” and insert, “fourteen”  
  
In the second bullet point of option Y2.2 delete “one week” and insert, “five weeks”  
  
In option Y2.2 after “zero” in the second line of the final paragraph, insert “or a negative amount”
- Z17.3 Option Y2.3: delete and insert, “If either Party intends to pay less than the notified sum, it notifies the other Party not later than five (5) days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. Subject to clauses Y2.4 and Y2.4A, a Party does not withhold payment of an amount due under this Contract unless it

has notified its intention to pay less than the notified sum as required by this Contract.”

- Z17.4 Option Y2.4: delete “R10” and insert, “R10B”
- Z17.5 Option Y2.4A: insert new clause, “If the *Consultant* becomes insolvent (as set out in R1 to R10B of clause 91.1) five (5) days or less before the final date for payment for an amount due under this Contract, the *Client* is not required to pay the *Consultant* the amount due, or any part of the amount due.”
- Z17.6 Option Y2.5: delete and insert, “If the *Consultant* intends to exercise his right under the Housing, Grants and Regeneration Act 1996 to suspend performance of all or any of the *service*, he notifies the *Client* no later than one week before the date he intends to suspend performance. The *Consultant’s* notification states the reasons for suspending performance.”
- Z17.7 New option Y2.6: insert new option, “All applications for payment shall be in the format to be agreed with the *Consultant* during Implementation Phase and be supported with all necessary and required information.”
- Z17.8 New option Y2.7: insert new option, “No sooner than fifteen (15) Working Days after each application date, the *Consultant* may submit an invoice for the notified sum (as defined by the Housing Grants, Construction and Regeneration Act 1996).”
- Z17.9 New option Y2.8: insert new option, “The *Consultant* shall ensure that all invoices are:
- accompanied by:
    - a contact name and telephone number of a responsible person in the *Consultant’s* finance department in the event of administrative queries; and
    - the banking details for payment to the *Consultant* via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
  - cross referenced to the application to which it relates and shall be submitted:
    - to the Finance Controller, DWP Estates, Department for Work and Pensions, Commercial Directorate – the address shall be provided during Implementation Phase; and
    - with a copy to such other person and at such place as the *Client* may notify to the *Consultant* from time to time.”

**Clause Z18 Amendments to the Secondary Option Clauses – Y(UK)3 (The Contracts (Rights of Third Parties) Act 1999**

- Z18.1 Option Y3.1 to 3.3: delete and insert, “For the purposes of the Contracts (Rights of Third Parties) Act 1999, save for those *beneficiaries* referred to in Schedule 3 (*TUPE*), nothing in this Contract confers or purports to confer on a third party any benefit or any right to enforce a term of its contract except where otherwise expressly stated.”

## **Clause Z19 Amendments to the Option Clauses – W2**

Z19.1 Option W2.3(11): delete the second and final sentences.

## **Clause Z20 The Client's liability**

Z20.1 The limit of the *Client's* liability during any year is an amount equal to 100% of the annual Fixed Fee that is due and payable to the *Consultant* in that year, save that the following matters are excluded from such limit:

- (a) death or personal injury caused by the *Client's* negligence; and
- (b) fraud or fraudulent misrepresentation.

## **Clause Z21 Implementation Phase**

Z21.1 The Parties shall comply with and give effect to the provisions of Schedule 10 (*Implementation Plan*).

Z21.2 The *Consultant* shall provide the Implementation Services during the Implementation Phase in accordance with the Implementation Plan.

## **Clause Z22 Business Continuity**

Z22.1 In this Clause Z22 and where used elsewhere in this Contract, the following terms shall have the following meanings:

“**BCDR Plan**” has the meaning given in Clause Z22.2 (*Business Continuity*); and

“**Disaster**” means the occurrence of one or more events which, either separately or cumulatively, mean that the service, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for seven (7) days or such other period as the Parties may agree during the Implementation Phase.

Z22.2 At least thirty (30) Working Days prior to the end of the Implementation Phase, the *Consultant* prepares and delivers to the *Client* for the *Client's* written approval a plan, which shall detail the processes and arrangements that the *Consultant* follows to:

- (a) ensure continuity of the business processes and operations supported by the service following any failure or disruption of any element of the service; and
  - (b) the recovery of the service in the event of a Disaster,
- (the “**BCDR Plan**”).

Z22.3 The BCDR Plan shall be divided into three sections:

- (a) Section 1 which shall set out general principles applicable to the BCDR Plan;
- (b) Section 2 which shall relate to business continuity; and
- (c) Section 3 which shall relate to disaster recovery.

Z22.4 Following receipt of the draft BCDR Plan from the *Consultant* the Parties use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such dispute is resolved in accordance with the dispute resolution procedure in clauses W1.1 and W1.2.

Section 1 of the BCDR Plan – General Principles

Z22.5 Section 1 of the BCDR Plan:

- (a) sets out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- (b) provides details of how the invocation of any element of the BCDR Plan may impact upon the provision of the *service* and any goods and/or services provided to the *Client* by a Client Supply Chain Member;
- (c) contains an obligation upon the *Consultant* to liaise with the *Client* and the Client Supply Chain Members with respect to business continuity and disaster recovery;
- (d) contains a communication strategy including details of an incident and problem management service;
- (e) contains a risk analysis, including:
  - (i) failure or disruption scenarios and assessments of likely frequency of occurrence;
  - (ii) identification of risks arising from the interaction of the provision of the *service* with the goods and/or services provided by the Client Supply Chain Members; and
  - (iii) a business impact analysis of different anticipated failures or disruptions;
- (f) identifies the procedures for reverting to “normal service”; and
- (g) sets out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss.

Z22.6 The BCDR Plan is designed so as to ensure that:

- (a) the *service* is provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster is minimised as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
- (d) it details a process for the management of disaster recovery testing.

Z22.7 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the *service* and the business operations supported by the provision of the *service*.

Z22.8 The *Consultant* is not entitled to any relief from the Performance Indicators or to any increase in the Fixed Fee to the extent that a Disaster occurs as a consequence of any breach by the *Consultant* of this Contract.

Section 2 of the BCDR Plan – Business Continuity

Z22.9 Section 2 of the BCDR Plan sets out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of *service* remain supported and to ensure continuity of the business operations supported by the *service* including:

- (a) the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the *service*; and
- (b) the steps to be taken by the *Consultant* upon resumption of the provision of the *service* in order to address the effect of the failure or disruption.

Section 3 of the BCDR Plan – Disaster Recovery

Z22.10 Section 3 of the BCDR Plan (which shall be invoked only upon the occurrence of a Disaster) is designed to ensure that upon the occurrence of a Disaster the *Consultant* ensures continuity of the business operations of the *Client* supported by the *service* following any Disaster or during any period of *service* failure or disruption with, as far as reasonably possible, minimal adverse impact.

Z22.11 The BCDR Plan includes an approach to business continuity and Disaster recovery that addresses the following:

- (a) loss of access to any Estate Property;
- (b) loss of utilities to any Estate Property;
- (c) loss of the Client's CAFM system;
- (d) loss of a Subcontractor;
- (e) emergency notification and escalation process;
- (f) post implementation review process;
- (g) any applicable Performance Indicators;
- (h) details of how the *Consultant* shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the BCDR Plan is invoked; and
- (i) testing and management arrangements.

#### Review and Amendment of the BCDR Plan

- Z22.12 The *Consultant* reviews the BCDR Plan on a regular basis and as a minimum once every six (6) Contract Months.
- Z22.13 Each review of the BCDR Plan assesses its suitability having regard to any change to the *service* or any underlying business processes and operations facilitated by or supported by the *service* which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and also has regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review is completed by the *Consultant* within such period as the *Client* reasonably requires.
- Z22.14 The *Consultant*, within twenty (20) Working Days of the conclusion of each such review, provides to the *Client* a report setting out the *Consultant's* proposals (if any) for amendments to the BCDR Plan.
- Z22.15 The *Consultant*, as soon as is reasonably practicable following approval by the *Client*, updates the BCDR Plan and effects any change in its practices or procedures necessary as identified in its review pursuant to Clause Z22.13 (*Review and Amendment of the BCDR Plan*). Any such change is at the *Consultant's* expense.

#### Testing the BCDR Plan

- Z22.16 The *Consultant* tests the BCDR Plan regularly and in any event not less than once every year during the *service period*.
- Z22.17 The *Consultant* undertakes and manages testing of the BCDR Plan in full consultation with the *Client* and complies with the reasonable requirements of the *Client*.
- Z22.18 Following each test, the *Consultant* takes all measures necessary to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the *Consultant*, at its own cost, by the date reasonably required by the *Client*.

#### Invocation of the BCDR Plan

- Z22.19 In the event of a complete loss of *service* or in the event of a Disaster, the *Consultant* immediately invokes the BCDR Plan (and informs the *Client* promptly of such invocation). In all other instances the *Consultant* invokes or tests the BCDR Plan only with the prior consent of the *Client*.

#### Compensation Events

- Z22.20 The *Consultant* is not entitled to rely on the Compensation Event provisions, if the *Consultant* would not have been impacted by the Compensation Event had it complied with this Clause Z22.

### **Clause Z23 Performance Indicators**

- Z23.1 The Parties comply with and give effect to the provisions of Schedule 9 (*Performance Indicators*).

## Clause Z24 Improvement Plan

Z24.1 In this Clause Z24, and where used elsewhere in this Contract, the following terms shall have the following meanings:

**“Improvement Plan”** a plan prepared by the *Consultant* setting out the content specified in Clause Z24.5 (*Improvement Plan*) in relation to an Intervention Trigger Event;

**“Improvement Plan Failure”** the meaning given in Clause Z24.10 (*Improvement Plan*); and

**“Intervention Trigger Event”**

(a) a default by the *Consultant* that is material and capable of remedy;

(b) the *Consultant* accrues:

(i) 135 or more Service Failure Points within a period of three (3) consecutive Contract Months; or

(ii) 60 or more Service Failure Points within a single Contract Month,

pursuant to one or more Performance Indicators.

Z24.2 The *Consultant* notifies the *Client* of an Intervention Trigger Event within three (3) Working Days of becoming aware of the same and in such notice sets out details of the actual or anticipated effect of the Intervention Trigger Event.

Z24.3 If the *Client* considers that an Intervention Trigger Event has occurred or the *Client* receives a notice from the *Consultant* under Clause Z24.2, the *Client* may serve notice (an **“Improvement Notice”**) on the *Consultant* setting out sufficient detail to make it clear what the *Consultant* has to rectify.

Z24.4 Where an Improvement Notice is served under Clause Z24.3, the *Consultant* submits to the *Client* a draft Improvement Plan and the *Client* reviews it as soon as possible and in any event within ten (10) Working Days (or such other period as the Parties agree) of the earlier of receipt of the original notification under Clause Z24.2 or Z24.3 or the Performance Review Meeting relating to the Contract Month in which the Intervention Trigger Event occurred. The *Consultant* submits a draft Improvement Plan even if it disputes that it is responsible for the Intervention Trigger Event.

Z24.5 The draft Improvement Plan sets out:

(a) full details of the Intervention Trigger Event; and

(b) the steps the *Consultant* proposes to take to rectify the Intervention Trigger Event (if applicable) and to prevent such Intervention Trigger Event from recurring, including timescales for such steps.

Z24.6 The *Consultant* provides the *Client* with such additional information or documentation as the *Client* reasonably requires.

Z24.7 The *Client* notifies the *Consultant* that it:

- (a) agrees to the draft Improvement Plan; or
  - (b) rejects the draft Improvement Plan because it is inadequate for example because it is not detailed enough to evaluate, will take too long to complete, will not prevent reoccurrence of the Intervention Trigger Event or is otherwise unacceptable to the *Client*. Where the *Client* does so it shall set out its reasons for doing so.
- Z24.8 Where the *Client* accepts the Improvement Plan the *Consultant* immediately implements the actions in the Improvement Plan.
- Z24.9 Where the *Client* rejects the Improvement Plan the *Consultant* resubmits its draft Improvement Plan taking into account the *Client's* comments within five (5) Working Days of notice that the *Client* rejects the preceding Improvement Plan.
- Z24.10 Where an Intervention Trigger Event relates to a PI Failure, the *Client* may terminate this Contract because the *Consultant* fails:
- (a) to submit a draft Improvement Plan to the *Client* in accordance with Clause Z24.4 or Clause Z24.9 (*Improvement Plan*);
  - (b) where the *Client* has previously rejected a draft Improvement Plan in accordance with Clause Z24.7 (*Improvement Plan*), to resubmit such draft Improvement Plan in a form that is acceptable to the *Client* acting reasonably;
  - (c) where an Improvement Plan has been agreed by the Parties, to rectify the relevant Intervention Trigger Event capable of remedy by the date of rectification stipulated in the Improvement Plan; or
  - (d) following successful implementation of an Improvement Plan, a PI Failure occurs within a period of six (6) Contract Months for the same (or substantially the same) root cause as the original Intervention Trigger Event,
- (each an “**Improvement Plan Failure**”), then the *Consultant* shall be deemed to have substantially failed to comply with its obligations and such default shall be deemed not to be capable of being put right and, without prejudice to any other right or remedy of the *Client*, the *Client* may terminate the *Consultant's* obligation to Provide the Service.
- Z24.11 The *Consultant* shall (without prejudice to any other right or remedy of the *Client*) pay to the *Client* any additional costs incurred by the *Client* in connection with approving and/or implementing an Improvement Plan, including, but not limited to, consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

## **Clause Z25 Increased Monitoring**

- Z25.1 At any time the *Client* may notify the *Consultant* that it is increasing its level of monitoring of the *Consultant* and/or (at the *Client's* option) of the *Consultant's* monitoring of its own performance under this Contract until such time as the

*Consultant* demonstrates to the reasonable satisfaction of the *Client* that is performing its obligations under this Contract.

Z25.2 Where the *Client* issues a notice under Clause Z25.1 (*Increased Monitoring*) as a result of any failure by the *Consultant* to perform its obligations under this Contract, the *Consultant* bears its own costs and indemnifies and keeps indemnified the *Client* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Client* (including management costs and professional fees) in relation to such increased monitoring.

Z25.3 Where the *Client* issues a notice under Clause Z25.1 (*Increased Monitoring*) other than as a result of any failure by the *Consultant* to perform its obligations under this Contract, the *Client* bears its own costs and indemnifies and keeps indemnified the *Consultant* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Consultant* in relation to such increased monitoring.

## **Clause Z26 Step-in Rights**

Z26.1 In this Clause Z26 the following terms shall have the following meanings:

### **“Step-In Trigger Event”**

- (a) any event giving rise to a right to terminate this Contract;
- (b) a default by the *Consultant* which is materially preventing or delaying the performance of the *service* or a material part of it;
- (c) circumstances which the *Client* considers to amount to an emergency notwithstanding there is no breach of this Contract by the *Consultant*;
- (d) the *Client* being advised by a Regulatory Body that the exercise of its step-in rights is necessary; or
- (e) the need for the *Client* to exercise its step-in rights to discharge a statutory duty.

Z26.2 On the occurrence of a Step-In Trigger Event the *Client* serves notice on the *Consultant* (a “**Step-In Notice**”) that it will take action under this Clause Z26 (*Step-in Rights*) either itself or via a third party specifying:

- (a) the action(s) that the *Client* wishes to take and in particular the part of the service that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the *Client* believes that the Required Action is due to a default by the *Consultant*;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action; and
- (e) to the extent practicable, the impact that the *Client* anticipates the Required Action will have on the *Consultant's* obligations to Provide the Service during the period that the Required Action is being taken.

- Z26.3 Following service of a Step-In Notice the *Client*:
- (a) takes the Required Action and any consequential additional actions as it reasonably believes is necessary to achieve the Required Action;
  - (b) keeps records of the Required Action taken and provides information about the same to the *Consultant*;
  - (c) co-operates wherever reasonable with the *Consultant* in order to enable the *Consultant* to continue to Provide the Service in relation to which the *Client* is not assuming control; and
  - (d) acts reasonably in mitigating the costs that the *Consultant* will incur as a result of the exercise of the *Client*'s rights under this Clause Z26 (*Step-in Rights*).
- Z26.4 For so long as and to the extent that the Required Action is continuing, then:
- (a) the *Consultant* shall not be obliged to Provide the Service to the extent that it is the subject of the Required Action;
  - (b) no deductions shall be applicable in relation to amounts due under this Contract in respect of parts of the *service* that are the subject of the Required Action; and
  - (c) the *Client* shall deduct its additional costs of providing the Required Action from amounts otherwise due under this Contract.
- Z26.5 Before ceasing to exercise its right to step-in, the *Client* delivers a written notice to the *Consultant* (a "**Step-Out Notice**"), specifying the:
- (a) Required Action it has actually taken; and
  - (b) date on which the *Client* plans to end the Required Action (the "**Step-Out Date**") subject to the *Client* being satisfied with the *Consultant*'s ability to resume the provision of the *service* and the *Consultant* providing a satisfactory Step-Out Plan.
- Z26.6 The *Consultant*, following receipt of a Step-Out Notice and not less than twenty (20) days prior to the Step-Out Date, develops for approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the *Consultant* of the *service*, including any action the *Consultant* proposes to take to ensure that the affected parts of the *service* satisfy the requirements of this Contract.
- Z26.7 If the *Client* does not approve the draft Step-Out Plan, the *Client* informs the *Consultant* of its reasons for not doing so. The *Consultant* shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the *Client* for approval. The *Client* shall not withhold or delay approval of the draft Step-Out Plan unnecessarily.
- Z26.8 The *Consultant* shall bear its own costs in connection with any step-in by the *Client* under this Clause Z26 (*Step-in Rights*), provided that the *Client* shall reimburse the *Consultant*'s reasonable additional expenses incurred directly as a result of any step-in action taken by the *Client* other than as a result of a default or threat of default by the *Consultant*.

#### **Clause Z27 Change Control Procedure**

Z27.1 The Parties comply with and give effect to the provisions of Schedule 7 (*Change Control Procedure*).

#### **Clause Z28 Exit Management**

Z28.1 Upon expiry and in the six (6) months prior to expiry of this Contract the Parties comply with the provisions of Schedule 14 (*Exit Management*) in relation to the orderly transition of the *service* to the *Client* or any replacement provider of the *service* or part of it.

#### **Clause Z29 Staff Transfers**

Z29.1 The Parties agree that:

- (a) where the commencement of the provision of the *service* or any part thereof results in one or more Relevant Transfers, Schedule 3 (*TUPE*) shall apply as follows:
  - (i) where the Relevant Transfer involves the transfer of Transferring Client Employees, Part A of Schedule 3 (*TUPE*) shall apply;
  - (ii) where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Schedule 3 (*TUPE*) shall apply;
  - (iii) where the Relevant Transfer involves the transfer of Transferring Client Employees and Transferring Former Consultant Employees, Parts A and B of Schedule 3 (*TUPE*); and
  - (iv) Part C of Schedule 3 (*TUPE*) shall not apply;
- (b) where commencement of the provision of the *service* or a part of thereof does not result in a Relevant Transfer:
  - (i) Part C of Schedule 3 (*TUPE*) shall apply and Parts A and B of Schedule 3 (*TUPE*) shall not apply; and
- (c) Part E of Schedule 3 (*TUPE*) shall apply on the expiry or termination of the *service* or any part of thereof.

#### **Clause Z30 Consultant Personnel**

Z30.1 The Parties comply with and give effect to the provisions of Schedule 11 (*Consultant Personnel*).

#### **Clause Z31 Discrimination**

Z31.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “**Discrimination Acts**”).

Z31.2 In connection with the *service* the *Consultant* co-operates with and assists the *Client* to satisfy his duty under the Discrimination Acts to eliminate unlawful

discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

- Z31.3 Where any employee or Subcontractor is required to carry out any activity alongside the *Client's* employees, the *Consultant* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.
- Z31.4 The *Consultant* notifies the *Client* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this Contract and:
- (a) provides any information requested by the investigating body, court or tribunal in the timescale allotted;
  - (b) attends (and permits a representative from the *Client* to attend) any associated meetings;
  - (c) promptly allows access to any relevant documents and information; and
  - (d) co-operates fully and promptly with the investigatory body, court or tribunal.
- Z31.5 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.
- Z31.6 The *Consultant* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

#### **Clause Z32 Apprenticeships**

- Z32.1 The *Consultant* is required to take reasonable steps to employ apprentices, and report to the *Client* on a quarterly basis the numbers of apprentices employed and the wider skills training provided, in providing the *service*.
- Z32.2 The *Consultant* is required to make available to its employees and Subcontractors working on this Contract, information about the Government's Apprenticeship programme and wider skills opportunities.

#### **Clause Z33 Client's Codes of Conduct**

- Z33.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Client's* code of conduct to the extent one is provided to the *Consultant* by the *Client*.
- Z33.2 A failure to comply with this Clause Z33 (*Client's Codes of Conduct*) is treated as a substantial failure by the *Consultant* to comply with his obligations.

#### **Clause Z34 Sustainable Development Requirements & Life Chances**

Z34.1 The Parties shall comply with and give effect to the provisions of Schedule 12 (*Sustainable Development Requirements*) and Schedule 13 (*Life Chances and Social Value*).

#### **Clause Z35 Modern Slavery**

Z35.1 The *Consultant* undertakes and warrants that it:

- (a) shall comply with the Modern Slavery Act 2015;
- (b) shall comply with any anti-slavery policy of the *Client*;
- (c) has in place adequate procedures to maintain compliance as described in Clauses Z35.1(a) and Z35.1(b); and
- (d) shall impose on any subcontractors and suppliers obligations equivalent to those imposed on it by this clause.

#### **Clause Z36 Small and Medium Enterprises**

Z36.1 In this Clause Z36 an “**SME**” is a:

- (a) Subcontractor; or
- (b) subcontractor to a Subcontractor,

that also is:

- (c) autonomous;
- (d) a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company; and
- (e) an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Z36.2 For each SME employed in connection with the *service*, the *Consultant* reports to the *Client* on a monthly basis from the Contract Date until Completion and at the *defects date* the:

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

Z36.3 The *Consultant* acknowledges that the *Client* may:

- (a) publish the information supplied under Clause Z36.1(e) (*Small and Medium Enterprises*), along with the *Consultant's* name and this Contract name; and
  - (b) pass the information supplied under this Clause Z36 to any government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this Contract name.
- Z36.4 The *Consultant* ensures that the conditions of contract for each Subcontractor who is an SME include:
  - (a) a term allowing the *Client* to publish the information supplied under Clause Z36.1(e) (*Small and Medium Enterprises*); and
  - (b) obligations substantially similar to those set out in this Clause Z36.
- Z36.5 The *Consultant* further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any subcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in Clause Z36.4 (*Small and Medium Enterprises*).

#### **Clause Z37 Subcontracting**

- Z37.1 Before:
  - (a) appointing a proposed Subcontractor; or
  - (b) allowing a Subcontractor to appoint a proposed sub-sub-contractor;
 the *Consultant* submits to the *Client* for acceptance:
  - (c) a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or sub-sub-contractor; or
  - (d) other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or sub-sub-contractor.
- Z37.2 The *Consultant* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed sub-sub-contractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that the *Client* shows that there are grounds for excluding the proposed Subcontractor or sub-sub-contractor under regulation 57 of the Public Contracts Regulations 2015.
- Z37.3 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under Clause Z37.1 (*Subcontracting*).
- Z37.4 If, following the acceptance of a submission under Clause Z37.2 (*Subcontracting*), it is found that one of the grounds for excluding the Subcontractor or sub-sub-contractor under regulation 57 of the Public Contracts Regulations 2015 applies, the *Client* may instruct the *Consultant* to:

- (a) replace the Subcontractor; or
- (b) require the Subcontractor to replace the sub-sub-contractor.

### **Clause Z38 Working with the Client and Third Parties**

Z38.1 In this Clause Z38 and where used elsewhere in this Contract, the following terms shall have the following meanings:

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

**"Client Supply Chain Contract"** a contract between the *Client* and the relevant Client Supply Chain Member and references to **Client Supply Chain Contracts** shall be construed accordingly;

**"Client Supply Chain Services"** the services provided by the Client Supply Chain Members;

**"Consultant Related Party"** all Consultant Personnel, any Affiliate of the Consultant and any directors, officers employees, agents, consultants and contractors of such Affiliates;

**"Control"** the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and references to **Controlled** shall be interpreted accordingly;

**"Estate Property"** the *Client's* property portfolio, as the same may change, vary or adapt from time to time during the *service period* as notified to the *Consultant* by the *Client*, the portfolio at the Contract Date being that set out in the Statement of Requirements and references to **Estate Properties** shall be construed accordingly;

**"Integrator Agreement"** the integrator agreement dated 13 June 2017 entered into by (1) the *Client* and (2) Sodexo;

**"Integrator Transition Phase"** the period starting on the Contract Date and expiring on the earlier of the expiry or termination of the Integrator Agreement and the expiry of the Implementation Phase;

**"Proscribed Conduct"** the following activities or circumstances:

- (a) performing or delivering any works or services in or in relation to the Estate Properties other than the *service*;
- (b) agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by this Contract to carry out any Client Supply Chain Services, either as a Client Supply Chain Member or as any part of the Supply Chain;
- (c) receiving or being entitled to receive any benefit, financial, commercial or otherwise which is derived expressly or impliedly from the Estate

Properties or the Supply Chain, save for the consideration and/or benefit expressly provided for or impliedly permitted by this Contract;

- (d) being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this Contract), joint venture or otherwise) with any member of the Supply Chain (including but not limited to the Client Supply Chain Members);
- (e) allowing any member of the Supply Chain (including but not limited to the Client Supply Chain Members) to exercise any control or influence over the *Consultant* or any Subcontractor save as expressly or impliedly permitted by this Contract;
- (f) exercising any control or influence over or permitting any Subcontractor to exercise and control or influence over any member of the Supply Chain (including but not limited to the Client Supply Chain Members) save as expressly or impliedly permitted by this Contract; or
- (g) appointing any member of the Supply Chain (including but not limited to the Client Supply Chain members) as a Subcontractor;

**“Supply Chain”** the *Consultant* and the Client Supply Chain Members and its and their sub-contractors and suppliers of any tier, and all employees and agents engaged by any of them in relation to the Estate Properties;

**“Supply Chain Integrator”** the supplier under the Integrator Agreement, and such supplier(s) that the *Client* appoints as its replacement or successor from time to time (whether or not under the Integrator Agreement) to provide all or part of the Supply Chain Integrator Services;

**“Supply Chain Integrator Services”** the management and co-ordination services provided by the Supply Chain Integrator in respect of the Client Supply Chain Members;

**“Tender Documents”** any documents provided to the *Consultant* by the *Client* in connection with the procurement of this Contract;

**“Third Parties”** any supplier to the *Client* (other than the *Consultant*) which is notified to the *Consultant* from time to time and/or which the *Consultant* should have been aware.

#### Independence, Conflicts of Interest and Proscribed Conduct

Z38.2 The *Consultant* shall carry out (and shall procure that Consultant Personnel shall carry out) the *service* in the *Client’s* best interest and independently and impartially.

Z38.3 The *Consultant* shall take appropriate steps to ensure that neither the *Consultant* nor any Consultant Personnel or Consultant Related Party is placed in a position of potential or actual conflict between the financial, commercial or other interests of the *Consultant* and/or any Consultant Related Party and the *Consultant’s* duties to the *Client* under this Contract. Should any conflict arise or become apparent, the *Consultant* will disclose the same to the *Client* immediately with full details.

- Z38.4 Without prejudice to the *Consultant's* general obligation under Clauses Z38.2 and Z38.3 (*Independence, Conflicts of Interest and Proscribed Conduct*), the *Consultant* shall not and shall procure that any Consultant Personnel or any Consultant Related Party shall not engage in Proscribed Conduct and shall notify the *Client* immediately on any breach of this requirement, provided always that for the purposes of this Clause Z38.4 the words "agents", "consultants" and "contractors" shall be deemed to be deleted from the definitions of the terms "Consultant Personnel" and "Consultant Related Party".
- Z38.5 Without prejudice to the *Client's* rights under Clause 90 (*Termination*), where the *Consultant* is in breach of Clause Z38.2 to Z38.4 (*Independence, Conflicts of Interest and Proscribed Conduct*) the *Consultant* shall, within five (5) Working Days of any breach becoming apparent to it, provide proposals to the *Client* for remedying and/or mitigating such breach. Upon any breach of Clauses Z38.2 to Z38.4 (*Independence, Conflicts of Interest and Proscribed Conduct*) becoming apparent to the *Client* (whether or not notified by the *Consultant*), the *Client* may, at the *Consultant's* cost:
- (a) in accordance with Clause 94 (*Service Exclusion*) (as inserted by Clause Z9.6 (*Amendments to the PSC NEC4 Core Clauses – Termination*)), remove any part or parts of the service from the scope of this Contract and carry out such part or parts of the service itself and/or employ a third party to carry out such part or parts of the service;
  - (b) require the *Consultant* to put such measures in place (including but not limited to information barriers) as required by the *Client* in its absolute discretion to rectify and/or mitigate the effect of any such breach; and/or
  - (c) undertake additional monitoring activities pursuant to Clause Z25 (*Increased Monitoring*) to ensure that notwithstanding any breach of Clauses Z38.2 to Z38.4 (*Independence, Conflicts of Interest and Proscribed Conduct*), the *Consultant* continues to comply with its other obligations pursuant to this Contract and in accordance with Clause Z38.2 (*Independence, Conflicts of Interest and Proscribed Conduct*).
- Z38.6 Save in the event of and to the extent consequential on removal of the relevant element of the service pursuant to Clause 94 (*Service Exclusion*) or termination of all or part of the service, where as a result of the matter(s) leading or contributing to a breach of Clauses Z38.2 to Z38.4 (*Independence, Conflicts of Interest and Proscribed Conduct*) the *Consultant* or any Consultant Personnel or a Consultant Related Party realises a profit or other financial benefit:
- (a) the *Consultant* shall account to the *Client* in respect of the same on a monthly basis; and
  - (b) the *Client* shall be entitled to set off an amount equivalent to that financial benefit (as accounted for by the *Consultant* or otherwise as the *Client* may determine) from any amount due to the *Consultant* under this Contract or under any other agreement between the *Consultant* and the *Client*.

Co-operation with the Supply Chain Integrator

Z38.7 The *Consultant* acknowledges that the *Client* has appointed the Supply Chain Integrator to manage the Client Supply Chain Contracts on behalf of the *Client*.

Z38.8 During the Integrator Transition Phase:

(a) the Supply Chain Integrator may, at any time, make direct contact with, and/or provide direct instructions to the *Consultant* and, subject to Clause Z38.8(b), the *Consultant* shall liaise directly with the Supply Chain Integrator and comply with any such instructions (insofar as such instructions are consistent with the *Consultant's* obligations under this Contract); and

(b) where the *Consultant* receives any instruction from the:

(i) Supply Chain Integrator that conflicts with any instruction received by the *Consultant* directly from the *Client*; and/or

(ii) *Client* that conflicts with any instruction received by the *Consultant* from the Supply Chain Integrator,

the *Consultant* shall promptly notify the *Client* and the Supply Chain Integrator to seek clarification in relation to which instruction it should comply with. The *Client* shall confirm which instruction (or any other instruction as may be relevant) the *Consultant* should comply with and the *Consultant* shall do so in accordance with its obligations under this Contract.

#### Co-operation with Third Parties

Z38.9 The *Consultant*:

(a) provides access and co-operation to Third Parties as required by the *Service Manager*;

(b) co-ordinates and integrates the execution of the *service* with the works of Third Parties including those engaged by the *Client* under any contract which the *Client* may enter into in relation to the Estate Property;

(c) complies with such instructions as issued by the *Service Manager* to co-ordinate the *Consultant's* execution of the *service* with the works of Third Parties;

(d) plans and co-ordinates the *service* in accordance with the requirements of the *Service Manager*, taking into account the presence of Third Parties and acknowledging in particular the need to communicate and co-operate with other Client Supply Chain Members so that the *service* and the services provided by Third Parties are delivered in a co-ordinated and efficient manner without delay or disruption to the *service* and avoiding unnecessary disruption or inconvenience to the users of the Estate Property through lack observance of the requirements of this clause;

(e) provides or assists in provision of all information, data, know-how and calculations necessary for the *Client* and/or any person appointed by

the *Client* to carry out any works or services in a timely, economic and efficient manner without delay and disruption and keeps the *Client* informed at all times of all relevant matters pertaining to the Estate Property;

- (f) is fully responsible for identifying and obtaining all information, data, know-how, calculations, drawings, documents, reports, investigations and surveys used for or in connection with the Estate Property, the provision of which is undertaken by Third Parties in order that the service is executed in a timely, economic and efficient manner without delay and disruption to the business of the *Client*; and
- (g) jointly and severally with Third Parties engaged by the *Client* co-operates and manages the interface of the service with the works of such Third Parties and provides all management services, labour, materials, goods, plants and services necessary for the *Consultant's* co-operation and management.

Z38.10 Compliance by the *Consultant* with its obligations under Clause Z38.9 is without additional cost to the *Client*. Without prejudice to Clauses Z38.12 to Z38.16 (*Defaults caused by Client Supply Chain Members*), the *Consultant* shall not be entitled to a Compensation Event or otherwise to additional time or cost as a consequence of failure by it to observe this clause nor by the failure of any Client Supply Chain Member(s) to observe similar provisions in their contracts with the *Client*.

Z38.11 It is agreed and declared that the *Consultant* could reasonably foresee the activities of Third Parties engaged by the *Client* and statutory undertakers referred to in the Statement of Requirements and/or the Tender Documents on or near the Estate Property.

Defaults caused by Client Supply Chain Members

Z38.12 Where a Client Supply Chain Member default causes, or the *Consultant* reasonably believes will cause, the *Consultant* to be in material default in respect of any of its obligations under this Contract, within five (5) Working Days of any material default becoming apparent to it the *Consultant* shall notify the *Client* of such material default, setting out the details of the default or likely default, how such Client Supply Chain Member default has caused or will cause the relevant default and what steps the *Consultant* has undertaken or will undertake to mitigate the default. The *Client* may, at the *Client's* cost (but subject always to compliance with this Clause Z38.12 and Clauses Z38.13 and Z38.15 (*Defaults caused by Client Supply Chain Members*)), require the *Consultant* to put such measures in place (including but not limited to information barriers) as required by the *Client* (acting reasonably) to rectify and/or mitigate the effect of any such material default.

Z38.13 The *Consultant* shall at all times:

- (a) use all reasonable endeavours to mitigate the effects of the Client Supply Chain Member default and proactively liaise with the relevant Client Supply Chain Member as necessary;
- (b) continue to provide the service in accordance with the requirements of this Contract; and

- (c) comply with any reasonable requirements of a Client Supply Chain Member.

Z38.14 The *Client* shall, acting reasonably, determine whether and to what extent the Client Supply Chain Member default has caused the material default and shall notify the *Consultant* of its determination in writing. If there is any dispute in relation to the effects of such default, either Party may refer the dispute to the dispute resolution procedures in Option W1.1 and Option W2 (*Resolving and Avoiding Disputes*). Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, such default.

Z38.15 Where it is determined in accordance with Clause Z38.14 that:

- (a) the Client Supply Chain Member default is not the cause of the relevant default; and/or
- (b) the Client Supply Chain Member default would not have occurred if the *Consultant* had performed its obligations under and in accordance with this Contract,

the relief set out in Clause Z38.16 (*Defaults caused by Client Supply Chain Members*) shall not apply and the *Consultant* shall be liable for the consequences of such default in accordance with the terms of this Contract.

Z38.16 Subject to Clause Z38.15, where the *Client* determines that the material default would not have occurred but for a Client Supply Chain Member default:

- (a) the *Consultant* shall not be treated as being in breach of this Contract to the extent that such default was caused by the Client Supply Chain Member default; and
- (b) the *Client* shall not be entitled to exercise any of the following rights that may arise as a result of the relevant default, to the extent that the default is caused by the Client Supply Chain Member default, to:
  - (i) terminate this Contract pursuant to Clause 90 (*Termination*);
  - (ii) take action pursuant to Clause Z26 (*Step-In Rights*); or
  - (iii) apply Service Failure Points or Service Credits pursuant to Schedule 9 (*Performance Indicators*).

#### Client Supply Chain Indemnity

Z38.17 The *Consultant* shall not, and shall ensure that the Consultant Personnel do not (due to any default or breach of duty):

- (a) cause any impediment, prevention or default to any Client Supply Chain Member; and/or
- (b) cause or contribute to any breach by the *Client* of its obligations to a Client Supply Chain Member under the relevant Client Supply Chain Contract.

- Z38.18 The *Consultant* shall indemnify the *Client* for all expenses, costs, damages and losses incurred by it arising out of or in connection with Clause Z38.17.

**Clause Z39 Recovery of sums due from the *Consultant***

- Z39.1 In this Clause Z39 and where used elsewhere in this Contract, the following term shall have the following meaning:

“**Crown Body**” the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies.

- Z39.2 Where the *Client* is a Crown Body, then Clause Z39.3 applies to the exclusion of Clause Z39.4. Otherwise, Clause Z39.4 applies to the exclusion of Clause Z39.3.

- Z39.3 Where under this Contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this Contract or any other contract with any Department or Office of Her Majesty's Government.

- Z39.4 Where under this Contract or any other contract between the *Consultant* and the *Client* any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this Contract or any other contract with the *Client*.

**Clause Z40 Fair payment**

- Z40.1 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount assessed under this Contract.

- Z40.2 The *Consultant* includes in the contract with each Subcontractor:

- (a) a period for payment of the amount due to the Subcontractor not greater than nineteen (19) days after the date on which payment becomes due under this Contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this Contract;
- (b) a provision requiring the Subcontractor to include in each sub-sub-contract the same requirement, except that the period for payment is to be not greater than twenty-three (23) days after the date on which payment becomes due under this Contract; and
- (c) a provision requiring the Subcontractor to assess the amount due to a sub-sub-contractor without taking into account the amount paid by the *Consultant*.

- Z40.3 The *Consultant* notifies the *Client* of any non-compliance with the timescales for payment. The *Consultant* includes this provision in each subcontract, and requires Subcontractors to include the same provision in each sub-sub-contract.

- Z40.4 A failure to comply with this Clause Z40 (*Fair payment*) is treated as a substantial failure by the *Consultant* to comply with his obligations.

#### **Clause Z41 Tax Non-Compliance**

- Z41.1 In this Clause Z41 and where used elsewhere in this Contract, the following terms shall have the following meanings:

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

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

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

**“General Anti-Abuse Rule”** means:

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

**“Halifax Abuse Principle”** means the principle explained in the CJEU case C-255/02 Halifax and others; and

**“Relevant Tax Authority”** means HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

- Z41.2 The *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

- Z41.3 The *Consultant* notifies the *Client* within one (1) week of any Tax Non-Compliance occurring after the Contract Date and provides details of:

- (a) the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a reoccurrence;
- (b) any mitigating factors that it considers relevant; and
- (c) any other information requested by the *Client*.

- Z41.4 The *Consultant* is treated as having substantially failed to comply with his obligations if the:
- (a) warranty given by the *Consultant* under Clause Z41.2 (*Tax Non-Compliance*) is untrue;
  - (b) *Consultant* fails to notify the *Client* of a Tax Non-Compliance; or
  - (c) *Client* decides that any mitigating factors notified by the *Consultant* are unacceptable.

**Clause Z42 Value Added Tax (VAT) Recovery and Invoicing**

- Z42.1 Where under this Contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.
- Z42.2 The *Client* is an “end user” under section 8(1)(b)(i) of the Value Added Tax (section 55A) (Specified Services and Excepted Supplies) Order 2019 and accordingly the “reverse charge” of VAT under section 55A of the Value Added Tax Act 1994 (“**VATA**”) does not apply to supplies made to the *Client* under this Contract. The *Consultant* shall comply with section 55A of VATA in respect of all supply arrangements with Subcontractors to which it applies.
- Z42.3 The *Consultant* shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the *service* supplied and any other documentation reasonably required by the *Client* to substantiate the invoice should be supplied in accordance with Clause Z42.8 (*Value Added Tax (VAT) Recovery and Invoicing*).
- Z42.4 The *Consultant* shall indemnify the *Client* on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the *Client* at any time in respect of the *Consultant's* failure to account for or to pay any VAT relating to payments made to the *Consultant* under this Contract. Any amounts due under this Clause Z42.4 shall be paid by the *Consultant* to the *Client* not less than five (5) Working Days before the date upon which the tax or other liability is payable by the *Client*.
- Z42.5 The *Client* shall not be liable to the *Consultant* in any way whatsoever for any error or failure made by the *Consultant* (or the *Client*) in relation to VAT, including where the:
- (a) *Consultant* is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with this Contract;
  - (b) *Consultant* has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;
  - (c) *Consultant's* treatment of VAT in respect of any claim for payment made under this Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or

- (d) *Consultant* has specified a rate of VAT, or a VAT classification, to the *Client* but the *Consultant* subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this Clause Z42.5(d), the *Consultant* shall be obliged to repay any overpayment by the *Client* on demand.
- Z42.6 Where the *Consultant* does not include VAT on an invoice, the *Client* will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.
- Z42.7 The *Consultant* acknowledges that the *Client* has advised the *Consultant* that the *Consultant* should seek its own specialist VAT advice in relation to this Contract and, in the event of any uncertainty following specialist advice, the *Consultant* should seek clarification of this Contract's VAT status with HMRC.
- Z42.8 The *Client* and the *Consultant* shall exchange all orders, invoices, claims and payments via electronic methods.

#### **Clause Z43 Tax Arrangements of Public Appointees**

- Z43.1 In this Clause Z43, the following terms shall have the following meanings:
- “**Associated Company**” is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least fifty (50) per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity; and
- “**Staff**” are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subcontractor) made available by the *Consultant* to the *Client* in relation to this Contract.
- Z43.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this Contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration. The *Consultant* indemnifies the *Client* against any income tax, and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the *service* by the *Consultant* or any Consultant Personnel.
- Z43.3 Where any Staff are liable to National Insurance Contributions (“**NICs**”) in respect of consideration received under this Contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration. The *Consultant* indemnifies the *Client* against any NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the *service* by the *Consultant* or any Consultant Personnel.
- Z43.4 The *Client* may, at any time during the term of this Contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with Clauses Z43.2 and Z43.3 (*Tax Arrangements of Public Appointees*) or why those clauses do not apply to it.

Z43.5 If the *Consultant* fails to provide information in response to a request under Clause Z43.4:

- (a) within the period for reply; or
- (b) which adequately demonstrates either how any member of Staff is complying with Clauses Z43.2 and Z43.3 (*Tax Arrangements of Public Appointees*) or why those clauses do not apply to it,

the *Client* may:

- (c) treat such failure as a substantial failure by the *Consultant* to comply with his obligations; or
- (d) instruct the *Consultant* to replace the relevant member of Staff.

Z43.6 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with Clauses Z43.2 and Z43.3 (*Tax Arrangements of Public Appointees*), the *Client* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z43.7 The *Consultant* acknowledges that the *Client* may:

- (a) supply any information which it receives under Clauses Z43.4 or Z43.6 (*Tax Arrangements of Public Appointees*); or
- (b) advise the non-supply of information,

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

#### **Clause Z44 Prevention of fraud and bribery**

Z44.1 In this Clause Z44 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Prohibited Act"** is:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Authority or any other public body a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of the relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; and /or
- (c) committing any offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud the *Client*; or
- (iv) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK; and

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

Z44.2 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

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

Z44.3 Throughout the period in which the *service* is performed the *Consultant* does not:

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

Z44.4 Throughout the period in which the *service* is performed the *Consultant*:

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

Z44.5 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of Clauses Z44.1, Z44.3 and / or Z44.4 (*Prevention of fraud and bribery*),

or has reason to believe that it has or any of the its employees or Subcontractors have:

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

Z44.6 If the *Consultant* makes a notification to the *Client* pursuant to Clause Z44.5, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this Contract.

Z44.7 Without prejudice to Clause Z44.2 (*Prevention of fraud and bribery*) if the *Consultant* breaches Clause Z44.3 (*Prevention of fraud and bribery*), the *Client* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this Contract.

#### **Clause Z45 Financial Transparency**

Z45.1 In this Clause Z45 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Financial Transparency Objectives"** has the meaning given in Clause Z45.2 (*Financial Transparency*); and

**"Unit Rates"** the unit rates set out in the Price List as may be adjusted in accordance with this Contract.

Z45.2 The *Consultant* acknowledges that the provisions of this Clause Z45 are designed (inter alia) to facilitate, and the *Consultant* co-operates with the *Client* in order to achieve, the following objectives:

##### Understanding the Prices

- (a) for the *Client* to understand any payment sought from it by the *Consultant* including an analysis of the Unit Rates (including the *Consultant's* profit margin), expenses (where relevant) and the time spent by Consultant Personnel in Providing the Service;
- (b) for both Parties to be able to understand the Price List and cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

#### Agreeing the impact of Contract Change

- (c) for both Parties to agree the quantitative impact of any Contract Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Price List;
- (d) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the *service*;

#### Continuous Improvement

- (e) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (f) to enable the *Client* to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the “**Financial Transparency Objectives**”).

Z45.3 The *Consultant* acknowledges the importance to the *Client* of the Financial Transparency Objectives and the *Client's* need for complete transparency in the way in which the Fixed Fee and/or Unit Rates are calculated.

#### **Clause Z46 Confidentiality**

Z46.1 In this Clause Z46 and where used elsewhere in this Contract, the following term shall have the following meaning:

“**Contracting Authorities**” has the meaning given to it under Regulation 4 of the Public Contracts Regulations 2015 and “**Contracting Authority**” shall be construed accordingly.

Z46.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

Z46.3 Clause Z46.1 (*Confidentiality*) shall not apply to the extent that:

- (a) such disclosure is a requirement of the law of the contract placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause Z50 (*Freedom of Information*);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

- (e) it is independently developed without access to the other Party's Confidential Information.
- Z46.4 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Client's* Confidential Information received otherwise than for the purposes of this Contract.
- Z46.5 The *Consultant* may only disclose the *Client's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *service* and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this Contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.
- Z46.6 At the written request of the *Client*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Client's* notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- Z46.7 Nothing in this Contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information:
- (a) to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any professional advisor, consultant, supplier or other person engaged by the *Client* or any of the entities described in Clause Z46.7(a) for any purpose relating to or connected with this Contract;
  - (c) for the purpose of the examination and certification of the *Client's* accounts; or
  - (d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- and for the purposes of the foregoing, disclosure of the *Consultant's* Confidential Information shall be on a confidential basis and subject to a confidentiality

agreement or arrangement containing terms no less stringent than those placed on the *Client* under this Clause Z46.7.

- Z46.8 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Subcontractor to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.
- Z46.9 Nothing in this Clause Z46 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of intellectual property rights.
- Z46.10 Each Party shall:
- (a) immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and
  - (b) notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- Z46.11 The *Client* may disclose the Confidential Information of the *Consultant* to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement, to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- Z46.12 The *Consultant* shall not:
- (a) make any press announcements or publicise this Contract or its contents in any way; or
  - (b) use the *Clients* name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the *Client*, which is not be unreasonably withheld or delayed.

#### **Clause Z47 Security Requirements**

- Z47.1 The Parties shall comply with and give effect to the provisions of Schedule 8 (*Security Requirements*).

#### **Clause Z48 Official Secrets Act**

- Z48.1 The Official Secrets Act 1989 applies to this Contract from the Contract Date until the *defects date* or earlier termination.
- Z48.2 The *Consultant* notifies his employees and Subcontractors of their duties under the Official Secrets Act 1989.
- Z48.3 A failure to comply with this Clause Z48 is treated as a substantial failure by the *Consultant* to comply with his obligations.

Z48.4 The *Consultant* complies with the staff vetting and training requirements stated in the Statement of Requirements.

#### **Clause Z49 Data protection**

Z49.1 In this Clause Z49 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Consultant Staff"** all directors, officers, employees, agents, consultants and contractors of the *Consultant* and/or any Sub-Processor engaged in the performance of its obligations under this Contract;

**"Controller"** the same meaning as given in Data Protection Legislation;

**"Data Loss Event"** any event that results, or may result, in unauthorised access to Personal Data held by the *Consultant* under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**"Data Protection Legislation"**

- (a) the Data Protection Act 2018;
- (b) Regulations made under the Data Protection Act 2018;
- (c) the UK GDPR; and
- (d) all applicable Laws and regulations relating to Processing of Personal Data, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation,

in each case as amended from time to time;

**"Data Subject"** the meaning given to it in the Data Protection Legislation, as amended from time to time;

**"Data Subject Access Request"** a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**"Personal Data"** any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

**"Personal Data Breach"** the meaning as given in the Data Protection Legislation;

**"Processing"** the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **"Process"** and **"Processed"** shall be interpreted accordingly;

**"Processor"** the meaning given to it in the Data Protection Legislation, as amended from time to time;

**“Protective Measures”** appropriate technical and organisational measures which shall be sufficient to secure that the Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):

- (a) Pseudonymisation and encrypting Personal Data;
- (b) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (c) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (e) regularly assessing and evaluating the effectiveness of such measures adopted by it;

**“Pseudonymisation”** the same meaning as given in Data Protection Legislation;

**“Restricted Country”** any country which:

- (a) is outside the United Kingdom;
- (b) is not covered by UK adequacy regulations issued under section 17A of the Data Protection Act 2018 or paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018; and
- (c) has not been confirmed by the *Client* as a non-Restricted Country in writing from time-to-time;

**“Special Categories of Personal Data”** the meaning given in the Data Protection Legislation;

**“Sub-Processor”** any third party appointed to Process Personal Data on behalf of the *Consultant* related to this Contract; and

**“UK GDPR”** the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as in force in the UK from time to time;

Z49.2 Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this Contract, the Parties acknowledge that the *Client* is the Controller and that the *Consultant* is the Processor.

Z49.3 The *Consultant* shall:

- (a) ensure that it and the Consultant Staff comply with all of the applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act of omission, place the *Client* in breach or potential breach of Data Protection Legislation;
- (b) process the Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in

accordance with instructions from the *Client* to perform its obligations under this Contract in accordance with Schedule 6 (*Personal Data and Data Subjects*), unless otherwise required by Law. In such case, the *Consultant* shall inform the *Client* of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;

- (c) notify the *Client* immediately if it considers that any of the *Client's* instructions infringe the Data Protection Legislation;
- (d) maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this Clause Z49;
- (e) keep a record of any Processing of Personal Data it carries out on behalf of the *Client* including the records specified in Article 30(2) of the UK GDPR and upon request provide a copy to the *Client*;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against a Data Loss Event, which the *Client* may reasonably reject (but failure to reject shall not amount to approval by the *Client* of the adequacy of the Protective Measures) and which shall be implemented at the *Consultant's* own expense and at no cost to the *Client*;
- (g) not disclose or transfer the Personal Data to any third party or Consultant Staff unless necessary for the provision of the service and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the *Client* (save where such disclosure or transfer is specifically authorised under this Contract);
- (h) take reasonable steps to ensure the reliability and integrity of any Consultant Staff who have access to the Personal Data and ensure that the Consultant Staff:
  - (i) are aware of and comply with the *Consultant's* duties under this Contract;
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Client* or as otherwise permitted by this Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (i) notify the *Client* immediately if it becomes aware of a Data Loss Event or if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the *Client's* obligations under the Data Protection Legislation;

- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (j) provide the *Client* with full co-operation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause Z49.3(i)) at no cost to the *Client* including by promptly providing:
  - (i) the *Client* with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the *Client* to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
  - (iii) the *Client*, on request, with any Personal Data it holds in relation to a Data Subject;
- (k) if requested by the *Client*, provide a written description of the measures that the *Consultant* has taken and the Protective Measures in place, for the purpose of compliance with its obligations pursuant to this Clause Z49.3 and provide to the *Client* copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and
- (l) at the written direction of the *Client*, delete or return Personal Data (and any copies of it) using a secure method of transfer to the *Client* on expiry or earlier termination of this Contract unless the *Consultant* is required by Law to retain Personal Data.

Z49.4 The *Consultant* shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the *Consultant* or any Subcontractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

- (a) the *Consultant* shall give a written request in accordance with Clause Z49.4(b) ("**Third Country Processing Request**") to the *Client* which the *Client* shall consider in its absolute discretion;
- (b) the *Consultant* shall set out in its proposal to the *Client* for a Third Country Processing Request details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed;
  - (iii) any Subcontractor or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and

- (iv) how the *Consultant* will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries (in accordance with Article 46 of the UK GDPR and/or Data Protection Legislation) so as to ensure the *Client's* compliance with the Data Protection Legislation;
- (c) in providing and evaluating the Third Country Processing Request, the Parties shall ensure that they have regard to and comply with the Data Protection Legislation and then-current *Client*, Contracting Authority and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the *Consultant* shall comply with such other instructions and shall carry out such other actions as the *Client* may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the *Client* on such terms as may be required by the *Client*; or
    - (B) a data processing agreement with the *Consultant* on terms which are equivalent to those agreed between the *Client* and the Subcontractor relating to the relevant Personal Data transfer, and

in each case which the *Consultant* acknowledges may include the incorporation of model contract provisions (which are approved as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the *Client* deems necessary for the purpose of protecting Personal Data.

- Z49.5 The *Consultant* shall use reasonable endeavours to assist the *Client* to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the *Client* to breach any of their obligations under the Data Protection Legislation to the extent the *Consultant* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- Z49.6 The *Consultant* shall allow for audits of its Processing activity by the *Client* or the *Client's* designated auditor and comply with all reasonable requests or directions by the *Client* to enable the *Client* to verify that the *Consultant* is in full compliance with its obligations under this Contract.

- Z49.7 The *Consultant* shall designate a data protection officer if required by the Data Protection Legislation.
- Z49.8 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the *Consultant* shall:
- (a) notify the *Client* in writing of the intended Sub-Processor and processing;
  - (b) obtain the written consent of the *Client*; and
  - (c) enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this Clause Z49 such that they apply to the Sub-Processor; and provide the *Client* with such information regarding the Sub-Processor as they may reasonably require.
- Z49.9 The *Consultant* shall remain fully liable for all acts or omissions of any Sub-Processor.
- Z49.10 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any claim or proceedings under any Data Protection Legislation resulting from any act or omission of the *Consultant* or any Sub-Processor.
- Z49.11 Within thirty (30) Working Days of the date of termination or expiry of this Contract, the *Consultant* shall return to the *Client* any Personal Data that are Processed in connection with the exercise of the Parties' rights and obligations under this Contract (unless applicable Law requires storage of the Personal Data) and data belonging to the *Client* that is in the *Consultant's* possession, power or control, either in its then current format or in a format nominated by *Client*, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract, or such period as is necessary for such compliance.

## **Clause Z50 Freedom of Information**

- Z50.1 In this Clause Z50 and where used elsewhere in this Contract, the following terms shall have the following meanings:
- "Environmental Information Regulations"** the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
- "FOIA"** the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- "Information"** has the meaning given under section 84 of the Freedom of Information Act 2000; and
- "Request for Information"** is a request for information or an apparent request under the FOIA or the Environmental Information Regulations and **"Requests for Information"** shall be construed accordingly.

- Z50.2 The *Consultant* acknowledges that unless the *Client* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* co-operates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.
- Z50.3 The *Consultant*:
- (a) transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - (b) provides the *Client* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Client* requires within five (5) Working Days (or such other period as the *Client* may specify) of the *Client*'s request;
  - (c) provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
  - (d) procures that its Subcontractors do likewise.
- Z50.4 The *Client* is responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- Z50.5 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.
- Z50.6 The *Consultant* acknowledges that the *Client* may, acting in accordance with the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.
- Z50.7 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Client* to inspect such records as and when reasonably requested from time to time.

## **Clause Z51 Records and Audit Access**

- Z51.1 In this Clause Z51 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Audit Agents"** the *Client*'s internal and external auditors:

- (a) the *Client*'s statutory or regulatory auditors;
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (c) HM Treasury or the Cabinet Office;

- (d) any party formally appointed by the *Client* to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above;

“**Open Book Data**” complete and accurate financial and non-financial information which is sufficient to enable the *Client* to verify that part of the Fixed Fee already paid or payable and that part of the Fixed Fee forecast to be paid during the remainder of the Service Period, including details and all assumptions relating to:

- (a) the Consultant’s costs broken down against each element of the *service* including actual capital expenditure and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the *service* including an analysis showing:
  - (i) the unit costs and quantity of consumables (if any) and bought-in services;
  - (ii) manpower resources broken down into the number and grade/role of all Consultant Personnel (free of any contingency) together with the applicable Unit Rate;
  - (iii) a list of costs underpinning those rates for each manpower grade, being the Unit Rate less the Consultant’s profit margin;
  - (iv) any expenses; and
  - (v) overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the *service*;
- (e) the Consultant’s profit achieved over the Service Period and on an annual basis;
- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with an not more onerous than such methods applied generally by the Consultant; and
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the *service*, including the amount of money attributed to each risk and/or contingency.

Z51.2 The *Consultant* keeps documents and information, including all Open Book Data, obtained or prepared by the *Consultant* or any Subcontractors in connection with this Contract for the period for retention.

Z51.3 The *Consultant* permits the *Client* and any Audit Agent to examine documents held or controlled by the *Consultant* or any Subcontractor.

- Z51.4 The *Consultant* provides such oral or written explanations as the *Client* and any Audit Agent considers necessary.
- Z51.5 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Client's* accounts or any examination pursuant to section 6(1) of the National Audit Act 1983, the and any Audit Agent may examine documents held or controlled by the *Consultant* or any Subcontractor and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this Contract.

## **Clause Z52 Intellectual Property Rights**

- Z52.1 In this Clause Z52 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Intellectual Property Rights"** patents, inventions, trademarks, service marks, copyright, moral rights, rights in a design, know-how, database rights, applications for any of the foregoing, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or registrable and whether subsisting in any country (including but not limited to the United Kingdom) together with all or any goodwill relating or attached thereto; and

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

- Z52.2 The *Client* shall grant the *Consultant* a non-exclusive, revocable, royalty free licence for the *service period* to use the *Client's* Intellectual Property Rights where it is necessary for the *Consultant* to provide the *service*. The *Consultant* shall have the right to sub-license the Subcontractor's use of the *Client's* Intellectual Property Rights. At the end of the *service period* the *Consultant* shall cease use, and shall ensure that Consultant Staff cease use, of the *Client's* Intellectual Property Rights.
- Z52.3 The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes connected with the *service*. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence.
- Z52.4 The *Consultant* shall not be liable to any licensee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.
- Z52.5 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to

procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Client* in accordance with the foregoing, the *Consultant* procures that the third party grants a direct licence to the *Client* on industry acceptable terms to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the *Client* to sub-license, transfer, novate or assign to another Contracting Body, any replacement consultant or to any other third party supplying services to the *Client*.

- Z52.6 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77 Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*.
- Z52.7 In the event that any act unauthorised by the *Client* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Client* so requests and at the *Client's* expense, to institute proceedings for infringement of the moral rights.
- Z52.8 The *Consultant* warrants to the *Client* that he has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Material.
- Z52.9 The *Consultant* supplies copies of the Material to the *Client* and to the *Client's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.
- Z52.10 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Material as the *Client* may from time to time request and the *Client* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z52.11 In providing the service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Client* against claims, proceedings, compensation and costs and other liabilities arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.
- Z52.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the *Consultant* is likely to be made, the *Consultant* shall notify the *Client* and, at its own expense and subject to the consent of the *Client* (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the service without reducing the performance or functionality, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified service or to the substitute services; or

- (b) procure a licence to use and supply the *service*, which are the subject of the alleged infringement, on terms and conditions which are acceptable to the *Client*,

and in the event that the *Consultant* is unable to comply with Clause Z52.12(a) within twenty (20) Working Days, or such other period of time agreed between the Parties, of receipt of the *Consultant's* notification the *Client* may terminate this Contract with immediate effect by notice in writing.

#### **Clause Z53 Offshoring of data**

Z53.1 In this Clause Z53 and where used elsewhere in this Contract, the following term shall have the following meaning:

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

Z53.2 The *Consultant* does not store any of the *Client's* data that is classified as Official or higher in accordance with “Government Security Classifications” dated April 2014 (or any later revision or replacement):

- (a) offshore; or
- (b) in any way that it could be accessed from an offshore location,

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

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

Z53.3 The *Consultant* ensures that no premises are used to Provide the Service until:

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

Z53.4 The *Consultant* complies with a request from the *Client* to provide any information required to allow the *Client* to:

- (a) gain approval for storing data or allowing access to data from an offshore location in accordance with Clause Z53.2 (*Offshoring of data*); or
- (b) conduct a Risk Assessment for any premises for the purpose of Clause Z53.3 (*Offshoring of data*).

Z53.5 The *Consultant* ensures that any sub-contract (at any stage of remoteness from the *Client*) contains provisions to the same effect as this clause.

Z53.6 A failure to comply with this Clause Z53 is treated as a substantial failure by the *Consultant* to comply with his obligations.

#### Clause Z54 Termination – PCRs, Regulation 73

Z54.1 The occurrence of the following event is deemed to be a substantial failure of the *Consultant* to comply with his obligations:

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

Z54.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service by notifying the *Consultant* if:

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

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

#### Clause Z55 Financial Distress

Z55.1 In this Clause Z55 the following terms shall have the following meanings:

**“Controller”** the single person (or group of persons acting in concert) that:

- (i) has Control of the *Consultant* or a Consortium Member; or
- (ii) holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member;

**“Credit Rating”** is the credit rating of the *Consultant*, a Consortium Member or any *Guarantor* issued by a rating agency accepted by the *Client*; and

**“Ultimate Holding Company Guarantee”** is a guarantee of the *Consultant's* performance in the form set out in Schedule 5 (*Template Form of Deed of Guarantee*).

Z55.2 The *Consultant* notifies the *Client* within one (1) week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or the *Guarantor*:

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

- (d) it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety;
- (e) it commits a material breach of its covenants to its lenders; or
- (f) its financial position or prospects deteriorate to such an extent that it would not meet the *credit rating*.

Z55.3 If any of the events listed in Clause Z55.2 occurs, the *Client* may require the *Consultant* to give to the *Client* a Ultimate Holding Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Client* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in Clause Z55.2 has occurred.

Z55.4 The *Client* may accept an Ultimate Holding Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with Clause Z55.3 if the *Consultant* gives to the *Client* an assurance that the Controller or the alternative guarantor will so comply within six (6) months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will so comply by the end of that period.

Z55.5 If:

- (a) the *Consultant* fails to notify the *Client* that an event listed in Clause Z55.2 (*Financial Distress*) has occurred;
- (b) neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with Clause Z55.3 (*Financial Distress*);
- (c) the *Consultant* does not give to the *Client* a Ultimate Holding Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four (4) weeks of a request from the *Client* to do so; or
- (d) the *Consultant* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will comply with Clause Z55.3 (*Financial Distress*) within six (6) months of the *Client's* acceptance,

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

## **Clause Z56 Assignment and Novation**

Z56.1 The *Client* is entitled to assign or otherwise dispose of its rights under this Contract or any part thereof to any:

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

- Z56.2 The *Consultant* does not, without the written consent of the *Client*, assign or transfer this Contract, or any part of, share of or interest in it. In the absence of the *Client's* written consent no sum of money becoming due under this Contract is payable to any person other than the *Consultant*.
- Z56.3 The *Client* is entitled to, and the *Consultant* gives consent to, the novation of this Contract or any part thereof to any:
- (a) Contracting Authority; or
  - (b) other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*,
- upon such terms as the *Client* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this Contract, the novation shall be a compensation event. Accordingly a new Clause 60.1(13) (*Compensation Events*) shall be added that reads "A novation pursuant to Clause Z56.3 (*Assignment and Novation*) occurs which increases the burden on the *Consultant* pursuant to this Contract".
- Z56.4 Any change in the legal status of the *Client* such that it ceases to be a Contracting Authority does not affect the validity of this Contract. In such circumstances, this Contract binds and inures to the benefit of any successor body to the *Client*.
- Z56.5 If this Contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Client* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the written consent of the *Consultant*.

## **Clause Z57 Merger, take-over or change of control**

- Z57.1 In this Clause Z57 and where used elsewhere in this Contract, the following terms shall have the following meanings:

**"Change of Control"** is an event where a single person (or group of persons acting in concert) acquires:

- (i) Control of the *Consultant*; or
- (ii) a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*;

**"Consortium Member"** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company; and

**"Control"** has the meaning set out in section 1124 of the Corporation Tax Act 2010.

- Z57.2 A Change of Control does not happen without the prior agreement of the *Client*, and if a Change of Control occurs without the *Client's* prior consent, then the *Client*

may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

- Z57.3 The *Consultant* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.
- Z57.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this Contract, the *Client* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z57.5 The *Consultant* notifies the *Client* immediately of any material change in the:
- (a) direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*; or
  - (b) composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this Contract by the *Consultant*.
- Z57.6 The *Consultant* notifies the *Client* immediately of any change or proposed change in the name or status of the *Consultant*.
- Z57.7 If the *Consultant* does not provide a notification required by Clause Z57.5 or Z57.6 (*Merger, take-over or change of control*), the *Client* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.
- Z57.8 In this Clause Z57 a Change of Control in relation to:
- (a) material change in the ownership of shares in; or
  - (b) change in the name or status of,
- a Consortium Member is treated as a change relating to the *Consultant*.
- Z57.9 Where the *Client* consents to a change or proposed change notified pursuant to this Clause Z57, such consent may be conditional on, without limitation, the provision of an Ultimate Holding Company Guarantee.
- Z57.10 Where the *Client* requests an Ultimate Holding Company Guarantee pursuant to Clause Z57.9:
- (a) the *Consultant* procures the provision of such Ultimate Holding Company Guarantee no later than 2 weeks immediately following the date on which the relevant change comes into effect (or such later date as is agreed with the *Client* in writing); and
  - (b) the *Client* may treat a failure of the *Consultant* to provide such Ultimate Holding Company Guarantee in accordance with Clause Z57.10(a) as a substantial failure of the *Consultant* to comply with its obligations.

## **Clause Z58 Appointment of Adjudicator**

- Z58.1 The *Adjudicator's* appointment under the NEC Adjudicator's Contract current at the Contract Date includes the following additional conditions of contract:

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

**Clause Z59 Counterparts**

- Z59.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.
- Z59.2 Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. Without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.