

# **Area 4 Interim Design Services Contract (DSC)**

## **Scope**

**CONTENTS AMENDMENT SHEET**

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## 1. GENERAL

### 1.1. Introduction

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

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

### 1.2. Scope of service

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

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

1.2.3. The *service* between the *starting date* and the *go live* date is defined in the following sections:

- Mobilisation
- Design Validation

1.2.4. The *service* from the *go live* date is defined in the following sections:

- Community
- Design Schemes
- Deliver Schemes
- Incident Response (Rapid Response)
- Demobilisation

1.2.5. The optional parts of the *service* are defined in the following sections:

- Inspect Asset (Optional)
- Identify Network Needs (Optional)
- Develop Network Investment Needs (Optional)
- Deliver Schemes (Optional)

1.2.6. Constraints on how the *Consultant* Provides the Service are defined in the following sections:

- Instruction and Payment Requirements
- Quality Management
- Extension Review
- General Health and Safety
- Customer Service and Stakeholder Liaison
- Traffic Management and Access to Network
- Environmental Management and Sustainability
- Commercial Management
- Risk Management
- Procurement and Supply Chain Management
- Information Technology and Data
- General Obligations

1.2.7. Places, people, or things provided by the *Client* are defined in the following sections:

- Office Space

### 1.3. Affected Property

1.3.1. The Affected Property is:

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

1.3.2. The boundaries and network details of Area 4 are shown in the Affected Property map as shown in Annex 3.

## 2. MOBILISATION

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

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

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

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

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



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

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

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

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

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

### 3. DESIGN VALIDATION

- 3.1.1. The *Consultant* identifies and procures resources to undertake any Design Validation as instructed by the *Client* via a Task Order.
- 3.1.2. Details of the designs that require design validation will be confirmed by the *Service Manager* and may be varied by the *Service Manager* during the Mobilisation Period.
- 3.1.3. Design Validation Services comprise all reviews of the designs carried out by the Outgoing Provider that the *Consultant* considers necessary to enable the *Consultant* to accept full design liability for the already-prepared designs as if they were their own designs.

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

#### **4. COMMUNITY**

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

#### **5. INSPECT ASSET (OPTIONAL)**

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

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

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

- 6.1.1. When instructed by the *Client* using a Task Order, the *Consultant* will:
- (1) provide technical advice to support the *Client* with the identification of network needs and collates future asset needs

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

- 7.1.1. When instructed by the *Client* using a Task Order the *Consultant* will:
- (1) provide technical advice to support the *Client* with the development of scheme options to address identified investment needs.

#### **8. DESIGN SCHEMES**

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

8.1.2. Where instructed by the *Client* under a Task Order, the *Consultant*:

- (1) undertakes the role of principal designer under the CDM Regulations
- (2) undertakes new scheme designs and/or reviews or completes the scheme designs undertaken by Others,
- (3) engages with the *Client's* contractors to support the design,
- (4) prepares specifications for technical surveys and testing to be undertaken by Others where necessary to support the design,
- (5) undertakes surveys, studies and any other works necessary to support the design,
- (6) reviews designs from third parties including developers, and
- (7) prepares tender and contract documentation to various forms of contract.

## **9. DELIVER SCHEMES**

9.1.1. The *Consultant* supports the construction of defect free works as designed and planned including the mitigation of risk and the avoidance of site changes.

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

- (1) undertakes the role of principal designer under CDM Regulations,
- (2) provides design support for schemes during construction, including clarification of designs, re-design of the works and supporting the *Client's* site supervisor in inspections and supervision of construction,
- (3) prepares as constructed drawings in consultation with contractors and provides the data and documentation in the *Client's* Building Information Modelling (BIM) format for the *Client* to input into the *Client's* electronic system,
- (4) prepares the Health and Safety files,
- (5) attends arbitration, alternative dispute resolution proceedings, consultation, inquiries and legal proceedings

9.1.3. The *Consultant* provides the Health and Safety file to the *Service Manager* within 4 weeks of the *Client* certifying completion of the Scheme.

## **10. DELIVER SCHEMES (OPTIONAL)**

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

- (1) provides site supervision services

**11. DELIVER INCIDENT RESPONSE (RAPID RESPONSE)**

- 11.1.1. If agreed by both Parties, the *Consultant* provides emergency technical and design advice where there has been an incident on or affecting the Affected Property. This will then be instructed by the *Service Manager* as an emergency Task Order in accordance with clause Z59.9 of the contract.
- 11.1.2. If instructed using a Task Order, the *Consultant* provides technical advice and design where there has been an incident on or affecting the Affected Property.

**12. DEMOBILISATION**

- 12.1.1. The *Consultant* delivers the following information to the *Client* for acceptance.
- (1) all relevant inventories and records including any electronic inventories/records,
  - (2) records of all services carried out,
  - (3) a report on all outstanding defects, work in progress and the *Consultant's* assessment of all duties that would appropriately be performed by the *Consultant* after the end of the contract.
- 12.1.2. All information must be in a readily accessible format agreed with the *Service Manager*, and is to include the relevant software licenses. A draft of the information is provided three months before the Completion Date and is finalised one week before the Completion Date or at a time agreed with the *Service Manager*.
- 12.1.3. The *Consultant*:
- (1) makes all necessary data available and provides all necessary facilities, including accommodation (as stated in this contract) advice and assistance to enable the Incoming Consultant to perform its duties,
  - (2) co-operates with the Incoming *Consultant* and the *Client* to discuss and agree a detailed plan to ensure a smooth transfer of operation,
  - (3) vacates and hands back premises provided by the *Client* in good order at the Completion Date, and
  - (4) transfers all digital information that is accumulated as a result of Providing the Service to the *Client*, other than the *Consultant's* digital information relating to the acquisition and management of the *Consultant's* resources, at the end of the contract.

**13. OFFICE SPACE**

- 13.1.1. Permanent office space, furniture and facilities will be provided by the *Client* for use by the *Consultant* as shown in Table 1 below.
- 13.1.2. The *Consultant* occupies and uses the office space only to Provide the Service.
- 13.1.3. The *Consultant's* occupation of the office space is as licensee only and the Parties do not intend to create any relationship of landlord and tenant or other interest in land.

**Table 1 – Premises, equipment and facilities supplied by the *Client***

| Item  | Quantity                | Comments   |
|---|-------------------------|--|
| <b>Office 1 – Whealdon House</b><br><b>Address – Eclipse Park, Sittingbourne Road, Maidstone, Kent ME14 3EN</b> |                         |  |
| Work Stations   | 60                      | Hot desk workstations, including desk, chair and storage space.                        |
| Car Park Spaces   | Numbers to be confirmed | Parking will be available; however, the exact number of spaces is yet to be confirmed. |

- 13.1.4. The *Client* provides the *Consultant* with all equipment and facilities listed in Table 1.
- 13.1.5. The *Consultant* provides all necessary equipment to Provide the Service. Table 2 includes an indicative but not exhaustive list of items which the *Consultant* may provide,

**Table 2 – Premises, equipment and facilities supplied by the *Consultant* (Indicative)**

| Item   | Comments |
|--|----------|
| <b>Office 1 – TBA by tenderer.</b><br><b>Address – TBA by tenderer</b> |          |

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

## 14. INSTRUCTION AND PAYMENT REQUIREMENTS

### 14.1. Task Orders

14.1.1. Other than Mobilisation and Demobilisation, the *Service Manager* will instruct the *service* via Task Orders. The *Consultant* performs the Mobilisation / Demobilisation duties without being instructed.

14.1.2. Task Orders are issued in accordance with clause Z59.

14.1.3. The *Service Manager* will issue Task Orders electronically, either using the Forms of Task Order in Annex 3, or via the *Client's* Finance and Works Management System.

### 14.2. Optional Service

14.2.1. Where part of the *service* is defined as Optional, the *Consultant* only performs that work as part of a Task if it is included in a Task Order.

14.2.2. Prior to instructing the change to the Task Order scope, the *Service Manager* consults with the *Consultant* and undertakes an assessment to check and agree that the *Consultant* is capable and has capacity to carry out the *service*, together with any assessment required to discharge the *Client's* CDM responsibilities.

## 15. QUALITY MANAGEMENT

### 15.1. Quality Plan

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

### 15.2. Transition Plan

15.2.1. The *Consultant* implements its Transition Plan.

15.2.2. The *Consultant* submits a revised Transition Plan to the *Service Manager* within two weeks of being instructed to do so. A reason for not accepting the revised

Transition Plan is that it does not set out the improvements needed for the *Consultant* to be able to Provide the Service in accordance with the Scope.

### **15.3. Audits**

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

### **15.4. Performance Management**

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

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

### **15.5. Continual Improvement**

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

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

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

### **15.6. Records**

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

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

## **16. EXTENSION REVIEW - NOT USED**

## **17. GENERAL HEALTH AND SAFETY**

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

## **18. CUSTOMER SERVICE AND STAKEHOLDER LIAISON**

### **18.1. Customer Service**

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



**18.2. Consultation, Liaison and Planning**

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

**18.3. Disclosure Requests**

- 18.3.1. The *Consultant* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Client* and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.
- 18.3.2. When requested to do so by the *Client*, the *Consultant* promptly provides information in its possession relating to this contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.
- 18.3.3. The *Consultant* promptly passes any Disclosure Request which it receives to the *Client*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Client*.

**18.4. Communications**

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

**18.5. Specified Agreements**

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

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

- 19.1.1. The *Client* provides traffic management necessary to allow the *Consultant* to Provide the Service.
- 19.1.2. The *Consultant* collaborates with the *Client* and Others to share traffic management and road space.

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

## **20. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY**

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

## **21. COMMERCIAL MANAGEMENT**

### **21.1. Compensation Events**

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

### **21.2. Cost Capture**

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

### **21.3. Certification of staff rate changes**

- 21.3.1. At the time of calculating a *staff rate* under the Schedule of Cost Components, the *Consultant* provides a certificate from the *Consultant's* Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed in writing by the *Service Manager* before the calculation is carried out) confirming that the calculation.

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

- complies with the contract

## **21.4. Annual Commercial Plan**

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

## **22. RISK MANAGEMENT**

### **22.1. Risk Management**

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

### **22.2. Business Continuity**

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

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

### **23.1. Subcontracting**

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

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

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

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

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

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

### **24.1. Data Protection**

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

- for the purposes of this section only the *Client* is the Controller, and
- the *Consultant* is the Processor and
- this section constitutes a data processing agreement where required by the Data Protection Legislation.

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

24.1.3. The *Consultant* complies with the requirements of Procurement Policy Note 02/18 entitled 'Changes to Data Protection Legislation & General Data

Protection Regulation' ('PPN 02/18') or any later revision and any related supplementary Procurement Policy Notes in Providing the Service.

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

24.1.5. The *Consultant* obtains and maintains until Completion all registrations and notifications that it is obliged to obtain and maintain pursuant to the Data Protection Legislation in respect of Providing the Service.

24.1.6. The *Consultant* only processes Data to the extent it relates to;

- the types of Data,
- the categories of Data Subject and
- the nature and purpose

24.1.7. Without prejudice to paragraph 24.1.2, the *Consultant* processes the Data only in accordance with the instructions of the *Service Manager*, unless the *Consultant* is required to process the Data for other reasons under the laws of the European Union (or a member state of the EEA) to which the *Consultant* is subject. If the *Consultant* is required to process the Data for these other reasons, it informs the *Service Manager* before carrying out the processing, unless prohibited by relevant law.

24.1.8. The *Consultant* immediately informs the *Service Manager* if it believes that an instruction infringes the Data Protection Legislation or any other applicable law.

24.1.9. The *Consultant* has in place and maintains for as long as it holds any Data in accordance with then current good industry practice, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing

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

in each case to ensure that the *Consultant's* processing is in accordance with the Data Protection Legislation and protects the rights of the Data Subjects.

24.1.10. The *Consultant* submits details of its Protective Measures to the *Client* for acceptance. A reason for not accepting them is that they are not appropriate to

protect against a Data Loss Event. Acceptance (or a failure to reject) by the *Client* does not amount to approval by the Controller of the adequacy of the Protective Measure.

24.1.11. The *Consultant* ensures that all persons authorised to process Data are bound by obligations equivalent to those set out in condition Z7 and this section and are aware of the *Consultant's* obligations under the contract and the Data Protection Legislation.

24.1.12. The *Consultant* ensures that access to the Data is limited to those persons who need access in order to Provide the Service and (in each case) to such parts of the Data as are strictly necessary for performance of that person's duties.

24.1.13. Where the *Consultant* obtains or collects Personal Data on behalf of the *Client*, the *Consultant*

- provides to Data Subjects a data protection notice in a form accepted by the *Service Manager* informing the Data Subject of the identity of the *Client*, the identity of any data protection representative it may have appointed, the purpose or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the Personal Data is, or is to be, processed to enable processing in respect of the Data Subject to be fair and
- where applicable, obtains all necessary consents for the processing of Data.

24.1.14. On request, the *Consultant* takes all necessary actions and provides the *Service Manager* with all reasonable assistance necessary for the *Client* to comply with a Data Subjects Request, including:

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

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

- a Data Subject Request (or purported Data Subject Request),

- a complaint or request relating to the *Client's* obligations under the Data Protection Legislation or
- a request from any Supervisory Authority for assistance or information, unless prohibited by relevant law.

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

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

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

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

24.1.18. The *Consultant* complies with the requirements of the *Client* in relation to the storage, dispatch and disposal of Data in any form or medium. Any requirement for the *Consultant* to destroy or delete copies of the Data is subject to any law of the European Union (or a member state of the EEA) to which the *Consultant* is subject that requires the Data to be retained.

24.1.19. The *Consultant* notifies the *Service Manager* within 24 hours of becoming aware of a Security Incident or any other breach of this section. The notification includes, as far as possible

- a description of the nature of the Security Incident, including the categories and approximate number of Data Subjects concerned,
- the likely consequences of the breach and
- the measures taken or to be taken to address the breach, including measures taken to mitigate any possible adverse effects.

24.1.20. In the event of a Security Incident, the *Consultant* provides the *Service Manager* with full co-operation and assistance in dealing with the Security Incident, in particular in notifying individuals affected by the Security Incident or a Supervisory Authority as required by the Data Protection Legislation.

24.1.21. On request (but not more than once in any 12 month period) the *Consultant* provides to the *Service Manager* all necessary information to demonstrate the *Consultant's* compliance with this section.

24.1.22. The *Consultant* promptly provides all assistance and information requested by any Supervisory Authority or required by the *Service Manager* requires in order for the *Client* to ensure compliance with its obligations under the Data Protection Legislation, including in relation to

- security of processing,
- preparation of any necessary data protection impact assessments and
- undertaking any necessary data protection consultations.

24.1.23. The *Consultant* maintains electronic records of all processing activities carried out on behalf of the *Client*, including:

- the information described in 24.1.6 of this section,
- the different types of processing being carried out (if applicable),
- any transfers of Data outside the EEA or the United Kingdom, identifying the relevant country or international organisation and any documentation required to demonstrate suitable safeguards and
- a description of the technical and organisational security measures referred to in paragraph 24.1.9.

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

24.1.24. The *Consultant* does not engage any Sub-Processor without the prior consent of the *Service Manager*.

24.1.25. Before allowing any Sub-Processor to process any Personal Data related to this agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause such that they apply to the Sub-Processor; and
- (d) provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.

24.1.26. The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.



- 24.1.27. The Controller may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 24.1.28. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 working days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 24.1.29. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 24.1.30. If it is or becomes a requirement that, under the Data Protection Legislation or other applicable laws, this section must be governed by the laws of a member state of the European Union, and the law of the contract does not or ceases to satisfy this requirement, this section is governed by and construed in accordance with the laws of Ireland.
- 24.1.31. A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **24.2. Information Security**

- 24.2.1. The *Consultant* prepares and maintains a robust information security plan complying with the *Client's* security policy and submits it to the *Client* for acceptance. The *Consultant* includes the security plan in its quality management system. The security plan includes procedures which:
- (1) ensure compliance with the Data Protection Legislation,
  - (2) protect information against accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of Personal Data,
  - (3) ensure that unauthorised persons do not have access to Personal Data or to any equipment used to process Personal Data, and
  - (4) protect IT systems from viruses and similar threats.
- 24.2.2. The *Consultant* provides training for its employees and Subcontractors in accordance with the security plan.

## **24.3. Offshoring of Data**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the management of information and records relating to the Affected Property,
- (2) the support of decisions relating to programmes of work for maintenance and improvement of the Affected Property,

- (3) receiving and transmitting communications, information, records and data from and to the *Client* and
  - (4) the operation of management information systems, which are part of the information and communication technology owned and managed by the *Client*.
- 24.4.2. The *Consultant* operates the *Client's* Current Systems and the *Client's* New Systems detailed in Annex 6.
- 24.4.3. The *Consultant* uses those systems, standards and procedures detailed in Annex 6, and facilitates new operating practices required as a result of the *Client's* amendments to the systems, standards and procedures detailed in Annex 6.
- 11.4.2 Confidentiality and disclosure of information
- 11.4.2.1. Within two weeks of a termination for any reason, the *Consultant* returns to the *Client* any confidential or proprietary information belonging to the *Client* in the *Consultant's* possession or control and deletes (and procures that any Subcontractor deletes) any electronic information or data held by the *Consultant* or any Subcontractor relating to the *Client* or the contract.

## **25. GENERAL OBLIGATIONS**

### **25.1.1. In Providing the Service, the *Consultant* :**

- (1) ensures that the key objectives for this contract set out in Annex 2 are met, including designing and implementing processes and procedures in its Quality Plan in a manner that achieves the key objectives and continually looks to identify new innovative more efficient ways of delivering the key objectives,
  - (2) minimises the risk of damage or disturbance to or destruction of third party property, and
  - (3) ensures the *Client* and *Others* with statutory duties or functions in relation to the Affected Property or other adjoining roads are able to perform those duties and functions unimpaired.
- 25.1.2. *Consultant* co-operates with the *Service Manager* in obtaining and providing information which they need in connection with the Affected Property.
- 25.1.3. The *Consultant* manages its activities in such manner as to assist the *Client* to meet the targets in the *Client's* business plan as modified and updated from time to time.
- 25.1.4. Identified and defined terms are set out in Appendix A.

## **25.2. Statutory Powers**

- 25.2.1. The *Consultant* advises the *Client* where it becomes aware that it is necessary or beneficial for the *Client* to use any statutory power in order for the *Consultant* to fulfil its duties.
- 25.2.2. The *Consultant* carries out additional services not required to undertake the *Consultant's* other responsibilities under this contract, when instructed by the *Client* to support the *Client* in exercising their statutory powers.

## **25.3. Reference Documents**

- 25.3.1. The *Client* has developed and identified reference documents to meet its procedural and technical requirements. The current documents are set out in Annex 3. In Providing the Service, the *Consultant* meets the *Client's* requirements and complies with the requirements of the reference documents in Annex 3.

## **25.4. Confidentiality, Security and Conflict of Interest**

- 25.4.1. The *Consultant* arranges for staff to be vetted in accordance with the requirements of the *Consultant* in Annex 8 whether this be during or after mobilisation.
- 25.4.2. The *Consultant* manages conflict of interest in accordance with the requirements of the *Consultant* in Annex 8

## **25.5. Official Secrets Act**

- 25.5.1. The Official Secrets Act 1989 applies to the contract from the *starting date* until the *defects date* or earlier termination. The *Consultant* notifies its employees and Subcontractors of their duties under this Act.
- 25.5.2. A breach of paragraph 24.5.1 is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **25.6. Anti-Bribery and Anti-Fraud**

- 25.6.1. The *Consultant* complies (and ensures that any person employed by it or acting on its behalf complies) with the *Client's* Anti Bribery Code of Conduct and Anti-Fraud Code of Conduct, collectively "the Codes". The *Consultant* complies with the Codes until Completion of the whole of the *service* and with
- paragraph 4 of the *Client's* Anti-Bribery Code of Conduct and

- paragraph 3 of the *Client's* Anti-Fraud Code of Conduct

until 12 years after Completion of the whole of the *service*.

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

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

## **25.7. Discrimination, Bullying and Harassment**

25.7.1. The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Discrimination Acts.

25.7.2. In Providing the Service, the *Consultant* co-operate with and assist the *Client* to satisfy its duty under the Discrimination Acts to

- eliminate unlawful discrimination, harassment and victimisation,
- advance equality of opportunity between different groups and
- foster good relations between different groups.

25.7.3. Where any *Consultant's* employee or subcontractor, and its employees (at any stage of remoteness from the *Client*), is required to carry out any activity on the *Client's* premises or alongside the *Client's* employees on any other premises, the *Consultant* ensures that each such employee or Subcontractor, and its employees (at any stage of remoteness from the *Client*), complies with the requirements of the Discrimination Acts and with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

25.7.4. The *Consultant* notifies the *Service Manager* as soon as it becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with the contract and

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

- 25.7.5. The *Consultant* complies with all applicable human rights and employment laws in the jurisdictions in which they work and have robust means of ensuring that the subcontractors (at any stage of remoteness from the *Client*) also comply.
- 25.7.6. The *Consultant* implements due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 25.7.7. The *Consultant* carries out an annual audit to monitor its compliance with the Modern Slavery Act 2015 which covers all its obligations under all its existing *Client* contracts. The *Consultant* prepares and delivers to the *Service Manager* no later than 1st August each year an annual
- slavery and human trafficking report,
  - transparency statement and
  - a risk register with mitigating actions
- which complies with the Modern Slavery Act 2015 and sets out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 25.7.8. The *Consultant* notifies the *Client* as soon as it becomes aware of any actual or suspected slavery or human trafficking in any of its supply chains or any part of its business.
- 25.7.9. The *Consultant* uses reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour and child labour in its operations or practice.
- 25.7.10. The *Consultant* complies (and ensures that any subcontractor complies) with the *Client's* policies relating to bullying and harassment. If the *Service Manager* considers that the presence or conduct of any of employees (at any stage of remoteness from the *Client*) at any location relevant to the performance of the *works* is undesirable or in breach of the *Client's* policies, the *Service Manager* instructs the *Consultant* to implement corrective action.
- 25.7.11. The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, contains provisions to the same effect as this section. The *Consultant* proposes to the *Service Manager* for acceptance, that a specific subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, does not comply with the requirements of this section 25.7. The *Consultant* provides a detailed reason for not including some or all of the requirements of this section 25.7 in the specific contract. The *Consultant* provides further detail when requested by the *Service*

*Manager* to assist their consideration. If accepted by the *Service Manager*, the *Consultant* is relieved from including some or all of the requirements of this section 25.7 in the specific contract.

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

## **25.8. Pensions**

25.8.1 Appointed Actuary is the actuary appointed to the *Consultant's* Pension Plan from time to time in accordance with Section 47 of the Pensions Act 1995 and the regulations made under it.

25.8.2 *Consultant's* Alternative Pension Plan is the pension scheme established or nominated by the *Consultant* for the purposes of paragraph 25.8.14 and which satisfies the conditions set out in paragraph 25.8.15.

25.8.3 *Consultant's* Pension Plan is the pension scheme established or nominated by the *Consultant* for the purposes of paragraph 25.8.8 and which satisfies the conditions set out in paragraph 25.8.9.

25.8.4 GAD Certificate is the certificate issued by the Government Actuary's Department in respect of the *Consultant's* Pension Plan (or any replacement pension scheme established or nominated by a Subcontractor) confirming the broad comparability of the *Consultant's* Pension Plan (or the replacement scheme) to the Original Scheme.

25.8.5 Local Government Pension Scheme is the pension scheme governed by the Local Government Pension Scheme Regulations (SI 1997/1612) as amended from time to time.

25.8.6 Original Scheme is the Local Government Pension Scheme or such other public service pension scheme as was applicable.

25.8.7 Outgoing Consultant's Pension Scheme is the registered pension scheme or schemes operated by an Outgoing Consultant immediately prior to the *go live date* which has been certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Original Scheme.

25.8.8 The *Consultant* ensures that any Transferring Employees

- who were originally employed by a public sector Client in providing services similar to the service and were members of the Original Scheme,

- whose employment transferred to a private sector employer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE and who have been continuously employed in providing services similar to the service up to the go live date and
- who immediately before the go live date are members of the Outgoing Consultant's Pension Scheme
- automatically become members of the Consultant's Pension Plan on and from the go live date and (except in the case of any such Transferring Employee who opts out of membership of the Consultant's Pension Plan in writing in a form approved by the *Client*) remain members of the Consultant's Pension Plan throughout the period of their employment in connection with Providing the Service.

25.8.9 The *Consultant* ensures that the *Consultant's* Pension Plan

- is a registered pension scheme for the purposes of the Finance Act 2004,
- is a scheme which (in the opinion of the Government Actuary's Department acting in accordance with its Statement of Practice) is a broadly comparable scheme to the Original Scheme assessed at the point the Transferring Employees left the Original Scheme, or with the *Client's* agreement assessed at the go live date on the basis that the Transferring Employees had remained active members of the Original Scheme and
- is a scheme which satisfies all of the Consultant's benefit obligations under TUPE and the Pensions Act 2004.

25.8.10 The *Consultant* submits such documents and information as the *Client* may reasonably require to enable the *Client* to satisfy itself that the *Consultant's* Pension Plan complies with the requirements of paragraph 25.8.9 and the *Consultant* delivers a GAD Certificate to the *Client* at least three months before the *go live date*.

25.8.11 Unless the prior written consent of the *Client* is given, the *Consultant*

- complies with the requirements of the Pensions Act 2004, the Occupational Pension Schemes (Member-Nominated Trustee and Directors) Regulations 2006, the Pension Regulator's Code of Practice no 8 (member-nominated trustee and directors - putting in place and implementing arrangements) and all other applicable legislative or regulatory requirements insofar as they relate to the appointment of member nominated trustees or directors,



- ensures that the Consultant's Pension Plan contains a provision requiring that no amendment to the Consultant's Pension Plan can be made in respect of the Transferring Employees referred to in paragraph 25.8.8 which could reduce the value of the accrued benefits of any such Transferring Employee (or any beneficiary claiming by or through them), such value to be calculated on a basis which allows for service (including, but not restricted to, service credited following transfers of assets to the Outgoing Consultant's Pension Scheme from other pension schemes) to the date upon which the power to amend is exercised and the expected future growth in earnings of the Transferring Employee in question as determined by the trustees of the Consultant's Pension Plan from time to time having consulted the Appointed Actuary and
- ensures that the Consultant's Pension Plan contains a provision requiring that the transfer value payable in respect of any Transferring Employee referred to in 25.8.8 or any group of such Transferring Employees who leaves the employment of the Consultant as a result of the transfer of any undertaking which is part or the whole of an undertaking transferred to the Consultant under the contract will be a value reflecting expected future increases in salary of such Transferring Employee or Transferring Employees concerned and will, as a minimum, be no less (in the opinion of the Government Actuary's Department) than the transfer value calculated on the same, or a more generous basis as that used to calculate the transfer value to the Consultant's Pension Plan as provided for in paragraph 25.8.12.

If the transfer payment paid by the trustees or administrators of the *Consultant's* Pension Plan is less (in the opinion of the Government Actuary's Department) than the transfer payment which would have been paid, the *Consultant* shall pay to the receiving scheme the amount of the difference.

25.8.12 The *Consultant* procures that the *Consultant's* Pension Plan will accept a bulk transfer from the trustees or administrators of the Outgoing Consultant's Pension Scheme or the Original Scheme (as appropriate) on terms agreed between the actuary to the Outgoing Consultant's Pension Scheme or the actuary to the Original Scheme (as appropriate) and the Appointed Actuary in respect of all of the Transferring Employees referred to in paragraph 25.8.8 who become members of the *Consultant's* Pension Plan and requests the trustees or administrators of the Outgoing Consultant's Pension Scheme or the Original Scheme to make such a transfer in respect of them. The *Consultant* further procures that, in the cases of Transferring Employees in respect of whom a bulk transfer is made, the benefits granted under the *Consultant's* Pension Plan in respect of pensionable service before the *go live date* are granted on the equivalent of a day for day service credit basis or the actuarial equivalent thereof as agreed between the appropriate actuary and the Appointed Actuary.

25.8.13 If any of the Transferring Employees referred to in paragraph 25.8.8 has their employment terminated by the *Consultant* for reasons of redundancy or operational efficiency during the period up to and including the Completion Date, the *Consultant* (to the extent that the relevant benefit has not been provided under any other provision of the contract)

- uses its best endeavours to procure that an amount, equivalent to any additional pension benefits which would have been paid to the Transferring Employee from the Original Scheme had they remained in service with their previous public sector employer and been made redundant by that employer on the date on which their employment is actually terminated by the *Consultant*, is paid from the *Consultant's* Pension Plan,
- in the event that the *Consultant* is unable to procure the additional benefits from the *Consultant's* Pension Plan, pays compensation to the Transferring Employee which is equivalent in terms of value and manner of payment to that which would have been paid from the *Consultant's* Pension Plan and
- procures the payment of any benefit other than on redundancy or for reasons of operational efficiency which is not an old age invalidity or survivors' benefit either through the relevant *Consultant's* pension scheme or, if that is not possible, by paying compensation, where the obligation to do so has transferred to the *Consultant* under TUPE, on the same basis as that which applies on redundancy.

25.8.14 The *Consultant* ensures that any Transferring Employees who immediately before the *go live date* are members of the Outgoing *Consultant's* (non-Government Actuary's Department certified) pension scheme and who were not members of the Original Scheme automatically become members of the *Consultant's* Alternative Pension Plan on and from the *go live date* and (except in the case of any such Transferring Employee who opts out of membership of the *Consultant's* Alternative Pension Plan in writing in a form approved by the *Client*) remain members of the *Consultant's* Alternative Pension Plan throughout the period of their employment in connection with Providing the Service.

25.8.15 The *Consultant's* Alternative Pension Plan is

- a registered pension scheme for the purposes of the Finance Act 2004 and
- a scheme which, as a minimum, fulfils the *Consultant's* benefit obligations under TUPE and the Pensions Act 2004.

25.8.16 Where the employment of any Transferring Employee is transferred to a Subcontractor, the *Consultant* procures that the Subcontractor

- complies with the requirements of paragraph 25.8.9 to 25.8.12 in relation to any Transferring Employee to whom paragraph 25.8.8 applies and complies with the requirements of 25.8.15 in relation to any Transferring Employee to whom 25.8.14 applies (as the case may be) and
- imposes similar requirements on any subsequent transferee of the Transferring Employees.

25.8.17 The *Consultant* ensures that no announcement (whether or not in writing) will be made by the *Consultant* or any Subcontractor to the Transferring Employees without the consent in writing of the *Client*.

## **25.9. Parent Company Guarantee**

25.9.1. The *Consultant* provides a Parent Company Guarantee as set out in Annex 24 where required by the *Client*.

## **25.10. Form of Novation**

25.10.1. The *Consultant* provides a Form of Novation as set out in Annex 25 where required by the *Client*.

**APPENDIX A****IDENTIFIED AND DEFINED TERMS**

In this Scope, terms identified in the Contract Data are in italics. Terms with capital initials are defined in the *conditions of contract* or have the meanings given to them below:

- (1) The term Contractor when used in the Annexes means the *Consultant*.
- (2) The Partners are consultants and contractors notified by the *Client* to the *Consultant* with whom the *Client* has entered into contracts for the provision of construction works, design, specialist support and other *services* in connection with the maintenance, repair, renewal and improvement of the Affected Property.
- (3) The Community is the group comprising one representative each from the *Client*, the *Consultant* and each of the Partners and formed for the purposes described in this Annex or Annex 11.
- (4) The Current System is a system that is authorised for use by the *Client* at the Contract Date and includes all of the systems set out in Table 3 of Annex 6.
- (5) The Regional Operations Centre (ROC) is the *Client's* 24 hour emergency/incident contact facility (combining the functions of the previous Network Control Centre and Regional Control Centre).
- (6) The New System is a revision to a Current System or a system development identified in Table 4 of Annex 6 for which the *Client* will specify the training and implementation programme and System requirements necessary for its implementation and operation by the *Consultant*.
- (7) The System includes processing equipment, application programs, digital data or digital reference information.
- (8) A Task Brief is the document issued by the *Client* describing the services and other information pertinent to Provide the Service.
- (9) A Task Quotation is the document issued by the *Consultant* in response to the Task Brief.
- (10) Personal Data is defined in the conditions of contract.
- (11) Data are all Personal Data collected, generated or otherwise processed by the *Contractor* in the course of Providing the Service.
- (12) Data Subject is an individual who is the subject of Personal Data.

- (13) Data Protection Acts are prior to 25 May 2018, the Data Protection Act 1998, from 25 May 2018, the General Data Protection Regulation (EU 2016/679) and at all times, any other data protection laws and regulations applicable in England and Wales.
- (14) EEA is the European Economic Area.
- (15) Security Incident is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data.
- (16) Sub-Processor is a third party (including an Associated Company) engaged by the *Consultant* to process Data.
- (17) Supervisory Authority is any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Acts.
- (18) Efficiency and Reform Group Supplier Feedback Services are the feedback services established by the Government from time to time in connection with the purposes of making Government more efficient and reforming the way public services are provided.
- (19) Mobilisation Period is the period commencing on the *starting date* and ending on the day before the *go live date*.
- (20) Nonconformity has the meaning given to it in ISO 9000.
- (21) Process has the meaning given to it in ISO 9000.
- (22) Quality Plan has the meaning given to it in ISO 9000.
- (23) SME is a Subcontractor or a subcontractor to a Subcontractor that
- is autonomous,
  - is a European Union enterprise not owned or controlled by a non-European Union parent company,
  - for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
  - for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
  - for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

- (24) Data is all Personal Data collected, generated or otherwise processed by the *Consultant* in the course of Providing the Service
- (25) Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor for the purposes of this contract, and/or actual or potential and/or destruction of Personal Data in breach of this Agreement, including any Personal Data breach.
- (26) Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- (27) Data Protection Legislation is:
  - i. the General Data Protection Regulation (EU2016/679)
  - ii. the LED (Law Enforcement Directive (Directive (EU) 2016/680)
  - iii. the Data Protection Act 2018 and
  - iv. any other data protection laws and regulations applicable in England and Wales.
- (28) Data Subject is an individual who is the subject of Personal Data
- (29) Data Subject Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- (30) EEA is the European Economic Area
- (31) Joint Controllers means where two or more Controllers jointly determine the purposes and means of processing.
- (32) Personal Data is any data relating to an identified or identifiable individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- (33) Protective Measures are appropriate, technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in PPN 02/18.
- (34) Security Incident is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data.
- (35) Sub-Processor is a third party (including Associated Company) engaged by the *Consultant* to process Data.

- (36) Supervisory Authority is any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Legislation.