**SS**

**Assessment And Report Recommending Greenfield Runoff Rates For Kent**

Environment, Planning and Enforcement



**Important Notice**

This document has been prepared by The Kent County Council (“the *Client*”) to present the *Client’s* requirements and provides details to bidders for this stage of the tender process.

This document shall be read in conjunction with:

* Covering letter
* Annex 1

If a bidder considers that any of the information submitted in its tender should not be disclosed by the *Client* under a Freedom of Information Act 2000 request, it will have to set this out in the Freedom of Information Form provided by the Client in Schedule 2 (Forms for Completion). The bidder will accept any decision made by the *Client* as set out in the Freedom of Information Form.

AMENDMENT SHEET

|  |  |  |  |
| --- | --- | --- | --- |
| **Version Number** | **Amendment** | **Initials** | **Issue Date** |
| V1 |  | SN | 22/03/19 |
| V2 |  | DA | 28/03/19 |
| V3 |  | BB | 07/05/19 |
| V4 |  | MT | 14/05/19 |
| V5 |  | BB | 14/05/19 |
| V6 |  | SN | 14/05/19 |
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|  |  |  |  |

Professional Service Short

Contract

This contract should be used for the appointment of a supplier to provide a professional service which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both client and consultant

**An NEC document**

**June 2017**

**This amended Contract is based on the NEC family of Contracts, copyright of which belongs to the Institute of Civil Engineers. Kent County Council pays copyright to reproduce this in full**

**The Government Construction Board, Cabinet Office UK**

The Government Construction Board (formerly Construction Clients’ Board) recommends that public sector organisations use the NEC contracts and in particular the NEC4 contracts where appropriate, when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of the Government Construction Strategy.

**The Development Bureau, HKSAR Government**

The Development Bureau recommends the progressive transition from NEC3 to NEC4 in public works projects in Hong Kong. With suitable amendments to adapt to the Hong Kong local environment, NEC4 is expected to further enhance collaborative partnering, unlock innovations and achieve better cost management and value for money in public works projects.

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| --- | --- | --- |
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|  | If the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act) applies to the contract, the following additional conditions apply |  |
|  |  |  |

**THE *CONTRACTOR’S* OFFER**

**The *Contractor* is**

Name: …………………………………………………………………………

Address: …………………………………………………………………………

…………………………………………………………………………

…………………………………………………………………………

…………………………………………………………………………

Telephone: ……………………………………

E-mail address …………………………………………………………………………

**To:- The Kent County Council**

Sessions House

County Hall

Maidstone

Kent

ME14 1XQ

**Assessment And Report Recommending Surface Water Discharge Rates For Kent**

Sir

1. The *Contractor* offers to Provide the Works in accordance with the following documents:

1.1 *Conditions of contract*, being the NEC4 Professional Services Contract, June 2013,

1.1.1 The *Client’s* Contract Data

1.1.2 The *Contractor’s* Contract Data

1.1.3 The *Consultant’s* Offer and *Client’s* Acceptance

1.1.4 Price List

1.1.5 Scope

1.1.6 Conditions of Contract

1.1.7 Z Clauses

1.1.8 Annex 1

1. We undertake to start and complete the *service* on the dates stated in the Contract Data.
2. We understand that the total of the Prices will be calculated in accordance with the *conditions of contract* and the tendered prices.
3. We certify that this tender is made in good faith and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not, and we undertake that we will not:
	1. Before the award of any contract for the *service*:
		1. Communicate to any person other than the person calling for this tender or a person duly authorised by him in that behalf the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
		2. Enter into any agreement or arrangement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted;
	2. Pay, give or offer or agree to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the service, any act or thing of the sort described at (a) (i) or (ii).
4. We also certify that the principles described in paragraph (a) and (bi) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such subcontractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
5. In this certificate, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions. The word 'person' includes any persons and any body or association, corporate or unincorporated; 'any agreement or arrangement' includes any transaction, formal or informal and whether legally binding or not; and 'the works' means the work in relation to which this tender is made.

Dated this ............................. day of ............................................ 20 ........

Signature ....................................................... In capacity of ..................................................

(eg Director, Secretary etc.)

Name…………………………………………………….

(in capitals)

Duly authorised to sign tenders for and on behalf of:-

………………………………………………………

Registered Address:- ......................................

Tel no: . ………………………………

E-mail: ...........................................

**THE *CLIENT’S* ACCEPTANCE**

The *Client* accepts the *Contractor’s* Offer to Provide the Services. This constitutes a binding agreement between yourselves and the Kent County Council.

Signed on behalf of the *Client*

Name: ………………………………………………………..

Position: ……………………………………………………….

Signature: …………………………………………………….

Date: ………………………

|  |  |
| --- | --- |
|  | Professional Service |
| Short Contract |  |
| A contract between | The Kent County Council  |  |
| And |  |  |
| For | Assessment And Report Recommending Greenfield Runoff Rates For Kent  |  |
|  | Contents | Page |
|  | Contract Forms |  |
|  | Contract Data The *Consultant*’s Offer The *Client*’s Acceptance Price List ScopeConditions of Contract |   |
|  |  |
|  |  |

| Contract Data |
| --- |
| The *Client’s* Contract Data |
|  |  |  |
|  | The *Client* is |  |
| NameAddress for Communications | The Kent County CouncilSessions House, County Road, Maidstone, Kent ME14  |
| Address for electronic communications | Sophia-harri.nicholaou@kent.gov.yk |
| The *service* is | To investigate greenfield runoff rates across the county of Kent, on an District and Borough basis, with the ultimate aim to provide a report recommending set greenfield runoff rates for all major developments by district. |
| The *starting date* is | 10 June 2019  |
| The *completion date* is | 9 August 2019 |
| The *delay damages* are | Nil per day. |
| The *law of the contract* is | English. |
| The *period for reply* is | Two weeks |
| The *defects date* is | 26 weeks after completion. |
| The *assessment day* is the | First day of each month. |
| Work **is not** to be carried out on a time charge basis |
| The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does not** apply  |
| The *Adjudicator* is | To agree in writing by both parties or if no agreement can be reached, they are to be appointed by the Institution of Civil Engineers |
|  |  |
| The interest rate on late payment is  | 0.5 | % per complete week of delay. |
| The *Client* provides this insurance | The *Clien*t Provides no insurances |
|  |
|  | The *Consultant* provides the following insurance cover |
|  |

|  |  |  |
| --- | --- | --- |
| **Insurance against** | **Minimum amount of cover** | **Period following Completion or earlier termination** |
| Failure of the *Consultant* for claims made against it arising out of the *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service* | £100,000 in respect of each claim, without limit to the number of claims |  6 years. |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service. | £5,000,000 in respect of each claim, without limit to the number of claims | 12 months. |
| Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract | £5,000,000 in respect of each claim, without limit to the number of claims | 12 months |

 |
|  |
| The *Consultant’s* total liability to the *Client* which arises under or in connection with the contract is limited to | ten times the fee rendered |
| The *Adjudicator nominating body* is | The Institution of Civil Engineers |
| The *tribunal* is | Arbitration |
| If the *tribunal* is arbitration, the arbitration procedure is | The Latest Edition of the ICE Arbitration Procedure |
|  |
| The conditions of contract are the NEC4 Professional Service Short Contract June 2017 and the following additional conditions |
|

|  |  |
| --- | --- |
| Z1 | Additional conditions of contract |
| Z6 | ***Compliance with Policies*** |
| Z8 | ***Conflict of Interest*** |
| Z9 | ***Corruption, Gifts, Fraud and the Payment of Commission*** |
| Z10 | ***Confidentiality and Publicity*** |
| Z12 | ***Equality and Diversity Compliance*** |
| Z13 | ***Data Protection and Freedom of Information*** |
| Z14 | ***Local Government Ombudsman*** |
| Z18 | ***Financial Procedures and Cost Capture*** |
| Z26 | ***Intellectual Property Rights*** |
| Z31 | ***Whistleblowing*** |
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| Contract Data |
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| The *Consultant*’s Contract Data |
|  |  |  |
|  | The *Consultant* is |  |
| NameAddressTelephoneE-mail address | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Address for communications |  |
|  Address for electronic communications |  |
| The *fee percentage* is |  | % |
|  |
| The *people rates* are |
|

|  |  |  |
| --- | --- | --- |
| **category of person** | **unit** | **rate** |
| . . . . . . . . . . . . . . . . . . . . . . . .  | . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . .  |
| . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . .  |
| . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . .  |
| . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . .  |
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| --- |
| The *Consultant’s* Offer and *Client*’s Acceptance |
|  |  |  |
| The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*. |
| offered total of the Prices is |  |
| **Enter the total of the Prices from the Price List. If all work is to be carried out on a time charge basis, enter ‘Not Applicable’** |
| Signed on behalf of the *Consultant* |
| Name |  |
| Position |  |
| Signature |  |
| Date |  |
|  |  |
| The *Client* accepts the *Consultant’s* Offer to Provide the Service |
| Signed on behalf of the *Client* |  |
| Name |  |
| Position |  |
| Signature |  |
| Date |  |
|  |

| Price List |
| --- |
| Part 1The Consultant will provide a fixed fee quotation for the service described broken down as below

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Activity No** | **Activity Description** | **Unit** | **Expected Quantity** | **Rate** | **Price** |
| 1 | Draft report | lump | 1 |  |  |
| 2 | Final report | lump | 1 |  |  |
| 3 | Meetings | lump | 1 |  |  |
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| **Expenses**

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| --- | --- | --- | --- | --- | --- |
| **Activity No** | **Activity Description** | **Unit** | **Expected Quantity** | **Rate** | **Price** |
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 |
|  | **The total of the Prices** |  |
| **The method and rules used to compile the Price List are** |
| The staff rates are fully inclusive The Client shall pay a fixed fee for the services detailed in these documents. Payment will be on receipt of an application for payment on a monthly basis. The Prices shall include for everything necessary to meet this requirement for the *services* including all expenses and disbursements.The fixed fee shall be deemed to cover the total cost of undertaking the *services* described in the Scope by staff suitably qualified and experienced in this type of work. The prices shall include: * Payment to staff
* Payments in relation to staff
* Provision of and all costs in relation to accommodation
* Travel costs and subsistence (other than the *expenses*)
* Insurances
* All taxes and other legal requirements
* Consumables
* Profit
* Staff to manage and administer the Contract including all key meeting and preparation of quotations and Task Orders
* Administrative staff and other support
* Equipment including all IT hardware and software
* Telephony and communication
* All management, supervisory and other overhead costs
* Allowing for attendance at the meetings detailed to discuss progress and/or issues. Attendance shall be by the manger directly involved in the *services*

For the avoidance of doubt the above list is not exhaustive. |
| **Part 2:** **Additional Staff Rates** |
| The Consultant shall price the staff rates in the Consultant’s Offer.The Consultant’s offer list the staff rates of the key staff that are to work on this Contract and that will be used for time charge work such as:* Attendance at additional meetings requested by the Client over and above those required in the Services
* Any additional specified work by the Client that is above that described in the Scope
* Anything else the Client requires that is not part of the services but is related work

The staff rates shall be deemed to cover the total cost of undertaking any additional works. The staff rates shall include: * Payment to staff
* Payments in relation to staff
* Provision of and all costs in relation to accommodation
* Insurances
* All taxes and other legal requirements
* Consumables
* Profit
* Staff to manage and administer the Contract including all key meeting and preparation of quotations and Task Orders
* Administrative staff and other support
* Equipment including all IT hardware and software
* Telephony and communication
* All management, supervisory and other overhead costs

The definitions of the staff are:* Director/Partner - Minimum 10 years post qualification
* Team Leader/Project Manager - Min five years post qualification
* Senior Engineer/Scientist - Min three years post qualification
* Engineer/Scientist - qualified
* Engineer/Scientist - trainee working towards qualification
 |
|

|  |  |  |
| --- | --- | --- |
| **Staff Category** | **unit** | **Rate** |
| Director/Partner | Per hour |  |
| Team Leader/Project Manager | Per hour |  |
| Senior Engineer/Scientist | Per hour |  |
| Engineer/Scientist - qualified | Per hour |  |
| Engineer/Scientist - trainee | Per hour |  |

 |
|  |  |

| Scope |
| --- |
| 1 Purpose of the *services* |
| The purpose of this service is to determine greenfield runoff rates across the county of Kent for each district and borough. The aim of the project is to provide a report recommending greenfield runoff rates for each district and borough that can be used in planning for major developments to help make the assessment of surface water drainage requirements straightforward. **Background**As part of the Client’s role as LLFA, we have a statutory role to review and provide technical advice to Local Planning Authorities (LPAs) on the surface water drainage strategies, design and maintenance arrangements put forward by developers for any major planning application. The Client’s Drainage and Planning Policy Statement sets out how, as Lead Local Flood Authority and statutory consultee, we will review drainage strategies and surface water management provisions associated with major planning applications. The Client’s SuDS Policy 3 relates to greenfield runoff and states that site drainage should follow natural or existing drainage routes, utilise existing natural low-lying areas or conveyance pathways, and match greenfield runoff rates for all events up to and including the climate-change adjusted 1 in 100 year (1% AEP) design event. Greenfield runoff rates vary for each site as they are based upon the underlying geology. Two LPAs, Canterbury and Ashford, have a set policy on greenfield runoff rates to be incorporated into drainage design. This approach has demonstrated advantages in relation to management of flood risk and consistency of approach to drainage design. The Client would therefore like to determine the appropriate greenfield runoff rates for the other districts and boroughs in the county to aid the preparation and review of a drainage strategies. This project will inform the next revision of the Drainage and Planning Policy statement. Public consultation will occur from mid-August to September. This document needs to be final and complete by this time. Following public consultation comments will be considered and we may need to review the results developed as part of this commission. **This is not considered part of the project and will be commissioned separately.** |
| 2 Description of the *services* |
| The assessment should include the following activities: * Evaluate different methodologies for setting greenfield runoff rates across the county;
* Undertake an assessment and definition of the different parameters which may be required for the preferred methodology across the county;
* Undertake an assessment of how these greenfield runoff rates can be applied to each district or borough in the county to provide a simple and easy to understand greenfield runoff rate(s) for planning applicants (for example an average rate across a district, or specific greenfield runoff rates within districts based on geology, etc);
* Identify other factors which may require an alternative local discharge rate such as within urban areas, impacts of existing flood risk, drainage network issues or local geological areas; and,
* Determine the appropriate greenfield runoff rate(s) for each district and borough.

The consultant will prepare a report that describes the different methodologies available for applying the greenfield runoff rates to each district and borough, including their strengths and weaknesses. The report should set out the preferred method and state the greenfield runoff rate(s) for each of the districts and boroughs in a written format accompanied by suitable graphical representation.It should be noted that two LPAs within Kent, Ashford and Canterbury, already have a greenfield runoff policy with set greenfield runoff rates for their district. These areas are not to be considered as part of the project, although reference can be made when considering methodologies. The *Consultant* will allow in the fixed cost for the following meetings:* A start-up meeting at Invicta House of 3 hours duration to discuss the work prior to commencement.
* 2no Technical Progress meetings scheduled to provide review of methodology to be applied and at a later stage in the programme to review project progress.

Teleconference meetings are assumed to be included the scope as needed. |
| 3 Existing informationBoth Ashford and Canterbury have policies which set greenfield runoff rates. Ashford’s Sustainable Drainage SPD was adopted in 2010 but a Discahgre Rate Assessment was undertaken as part of the Local Plan in 2018. <https://www.ashford.gov.uk/media/6054/2016s3783-discharge-runoff-assessment-draft-report-v20.pdf> Canterbury adopted a Drainage Impact Assessment in 2003 but recent work has been undertaken in support of the latest Strategic Flood Risk Assessment. Unfortunately, the latest revisions of both LPA policies have only been developed as draft documents and are not publicly available. Where agreed with the respective authorities, Kent will share draft documents on the latest proposals with respect to greenfield runoff rates.Kent County Council has licensed access to the BGS Infiltration SuDS Map. This may provide additional input for development of the greenfield runoff rates. Access can be provided to the *Consultant* if work is undertaken within Kent County Council offices. The software will not be able to be accessed by the *Consultant* after the end of the project. |
| 4 Specifications and standards |
| The work is to be carried out using the current standards, codes of practice and the skill and care normally used by professionals providing services similar to the service.GIS results should be presented as ArcMap shapefiles.  |
| 5 Constraints on how the *Consultant* is to Provide the Services |
| * Intellectual ownership of all items produced under this commission will rest with the *Client*.
* The *Consultant* and his/her employees and sub-consultants will in all aspects of this commission act in a co-operative and professional manner bringing the full benefit of his/her knowledge and experience to bear on the issues outlined here.
* The *Consultant* shall comply with GDPR and other data/information regulations as appropriate to this project.
* The *Consultant* shall not publicise the project (e.g. submit for awards, include it in external media) without the express written permission of the Client.
* The *Consultant* shall allow a minimum of 10 working days for the *Client* to review draft deliverables and shall provide two weeks’ notice of submission for review.
* The *Consultant* shall be responsible for the quality and quantity of any new data collected and provided as part of this commission.
* Detailed hydraulic modelling is not required as part of this commission.
* The *Consultant* will comply with the *Client’s* financial systems. Work shall not start until the *Consultant* receives a Purchase Order Number. Invoices will be submitted in accordance with payment terms in the contract.
* The *Client* has a maximum budget of £10,000 for this work. The *Consultant* will provide a fixed cost within this budget for the work detailed or if the cost is likely to exceed the budget the *Consultant* will detail what can be achieved for this budget i.e limited methodologies to be used in the assessment, reduced desk top study. Any reduced scope of work is to be clearly detailed in the offer made.
 |
| 6 Requirements for the programme |
| * A draft programme is proposed as follows:

|  |  |
| --- | --- |
| Tender issue | Tuesday 21 May 2019 |
| Tender submission | Tuesday 4 June 2019 |
| Project award | Monday 10 June 2019 |
| Start-up meeting | Monday17 June 2019 |
| Draft report completed | Friday 19 July 2019 |
| Final report issued | *Friday 9 August 2019* |

* These programme requirements are set by the parallel program for the update of KCC’s Drainage and Planning Policy Statement.
* The Consultant may propose an alternative program but the *Consultant* must complete the draft report no later than 19 July 2019. The finalisation of the report will be dependent upon Kent County Council internal review. An estimated date for final issue is therefore proposed.
 |
| 7 Information and other things provided by the *Client*On award of the contract the following existing GIS information for the study area will be made available to the consultant:* OS Mastermap
* BGS Geology, 1:50,000 scale
* uFMfSW
* District and Borough layers

Any other data requests will be considered when the tender is awarded. Any specific data needs should be identified and discussed within the submission as part of the project |

Professional Services Short Contract

CONDITIONS OF SUBCONTRACT

1 General

|  |  |  |
| --- | --- | --- |
| Actions | **10**10.1 | The Parties shall act as stated in this contract. |
|  | 10.2 | The Parties act in a spirit of mutual trust and co-operation |
| Identified and defined terms | **11**11.1 | In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials. |
|  | 11.2 | (1) Completion is when the *Consultant* has completed the *service* in accordance with the Scope except for correcting notified Defects which do not prevent the *Client* from using the *service* or others from doing their work.(2) The Completion Date is the *completion date* unless later changed in accordance with the contract.(3) A Corrupt Act is* the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or
* abusing any entrusted power for private gain

in connection with this contract or any other contract with the *Client*. This includes any commission paid as an inducement which was not declared to the *Client* before the date of the *Client’s* Acceptance.(4) A Defect is a part of the *service* which is not in accordance with the Scope or the applicable law.(5) Defined Cost is the cost of the following components incurred by the *Consultant* inProviding the Service.* People employed directly or indirectly by the *Consultant*, calculated by multiplying each of the People Rates by the total time appropriate to that rate.
* Work subcontracted by the *Consultant*, the amount paid by the *Consultant* to the subcontractor.

(6) The Fee is the amount calculated by applying the *fee percentage* to the amount ofDefined Cost.(7) The Parties are the *Client* and the *Consultant*.(8) The People Rates are the *people rates* unless later changed in accordance with the contract.(9) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.(10) To Provide the Service means to do the work necessary to complete the *service* in accordance with the contract and all incidental work, services and actions which the contract requires.(11) The Scope is information which* specifies and describes the *service* or
* states any constraints on how the *Consultant* Provides the Service

and is either* in the document called Scope or
* in an instruction given in accordance with the contract
 |
| Interpretation and the Law | **12**12.1 | In the contract, except where the context shows otherwise, words in the singular also mean plural and the other way around. |
|  | 12.2 | The contract is governed by the *law of the contract*. |
|  | 12.3 | No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties. |
|  | 12.4 | This contract is the entire agreement between the Parties. |
| Communications | **13**13.1 | Each communication which the contract requires has effect when it is received in a form that can be read copied and recorded at the last address notified by the recipient for receiving communications. |
|  | 13.2 | If the contract requires the *Client* or the *Consultant* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*. |
| The *Client’s* authority and delegation | **14**14.1 | The *Consultant* obeys an instruction which is in accordance with the contract and is given by the *Client*. |
|  | 14.2 | The *Client* may give an instruction to the *Consultant* which changes the Scope. |
|  | 14.3 | The *Client* gives an instruction to correct a mistake in the Price List which is* a departure from the method and rules stated in the Price List and used to compile it or
* due to an ambiguity or inconsistency.
 |
|  | 14.4 | The *Client’s* acceptance of a communication from the *Consultant* or acceptance of the work does not change the *Consultant’s* responsibility to Provide the Service. |
|  | 14.5 | The *Client*, after notifying the *Consultant*, may delegate any of the *Client’s* actions and may cancel any delegation. A reference to an action of the *Client* in the contract includes an action by its delegate. |
|  | 14.6 | The *Client* does not give an instruction to the *Consultant* which would require it to act in a way that is outside its professional code of conduct. |
| Early warning | **15**15.1 | The *Consultant* and the *Client* give an early warning by notifying the other as soon as either becomes aware of any matter which could* increase the total of the Prices,
* delay Completion,
* impair the usefulness of the *service* to the *Client* or
* affect the work of the *Client* or others with whom the *Client* is in contract.

The *Client* or the *Consultant* may give an early warning by notifying the other of any other matter which could increase the *Consultant’s* total cost. Early warning of a matter for which a compensation event has previously been notified is not required. |
|  | 15.2 | The *Consultant* and the *Client* co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken. |
| Provision of information | **16**16.1 | The *Client* provides information and other things which the contract requires the *Client* to provide by the dates stated in the Scope or a later date if agreed. |
| Corrupt Acts | **17**17.1 | The *Consultant* does not do a Corrupt Act. |
|  | 17.2 | The *Consultant* takes action to stop a Corrupt Act of a subcontractor or supplier of which it is, or should be, aware. |
|  | 17.3 | The *Consultant* includes equivalent provisions to these in subcontracts |

2 The Consultant’s main responsibilities

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| --- | --- | --- |
| Providing the Service | **20**20.1 | The *Consultant* Provides the Service in accordance with the Scope. |
|  | 20.2 | The *Consultant’s* obligation is to use the skill and care normally used by professionals providing services similar to the *service*. |
|  | 20.3 | The *Consultant* is not liable for a Defect unless it failed to carry out the *service* using the skill and care normally used by professionals providing services similar to the *service*. |
| Subcontracting and people | **21**21.1 | If the *Consultant* subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. |
|  | 21.2 | The *Consultant* either uses each *key person* named to do the job stated in the Contract Data or, following acceptance by the *Client*, uses a replacement person with qualifications and experience as good as those of the person who is replaced. |
|  | 21.3 | The *Client* may, having stated the reasons, instruct the *Consultant* to stop using a personto Provide the Service. The *Consultant* then arranges that, after one day, the person has no further connection with the work included in the contract. |

3 Time

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| Starting and Completion | **30**30.1 | The *Consultant* does not start work until the *starting date* and does the work so thatCompletion is on or before the Completion Date. |
|  | 30.2 | The *Consultant* submits a forecast of the date of Completion to the *Client* each week from the *starting date* until Completion. |
|  | 30.3 | The *Client* decides the date of Completion and certifies it to the *Consultant* within one week of the date. |
|  | 30.4 | The *Client* may instruct the *Consultant* to stop or not to start any work. The *Client*subsequently gives an instruction to the *Consultant to** re-start or start the work or
* remove the work from the Scope
 |
| The programme | **31**31.1 | The *Consultant* submits programmes to the *Client* as stated in the Scope. |

4 Quality Management

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| Notifying Defects | **40**40.1 | The *Client* may notify a Defect to the *Consultant* at any time before the *defects date*. |
|  | 40.2 | At Completion, the *Consultant* notifies the *Client* of the Defects which have not been corrected. |
|  | 40.3 | The *Client’s* rights in respect of a Defect which the *Client* has not found or notified by the *defects date* are not affected. |
| Correcting Defects | **41**41.1 | The *Consultant* corrects a Defect whether or not the *Client* has notified it. |
|  | 41.2 | The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Client* or others who are using the *service*. |
| Accepting Defects | **42**42.1 | The *Consultant* and the *Client* may each propose to the other that the Scope should be changed so that a Defect does not have to be corrected. If the *Consultant* and the *Client* are prepared to consider the change, the *Consultant* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Client* for acceptance. If the *Client* accepts the quotation, it changes the Scope, the Prices and the Completion Date accordingly |
| Uncorrected Defects | **43**43.1 | If the *Consultant* has not corrected a notified Defect within the time required by thecontract, the *Client* assesses the cost of having the Defect corrected by other people and the *Consultant* pays this amount. |

5 Payment

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| Assessing the amount due | **50**50.1 | The *Consultant* assesses the amount due and submits an invoice to the *Client* for *payment* before each *assessment day*. There is an *assessment day* in each month from the *starting date* until the earlier of* the month after the *defects date* and
* ether Party gives notice to the other to terminate the *Consultant’s* obligation to Provide the Service.
 |
|  | 50.2 | The *Consultant’s* invoice includes details of how the amount due has been assessed. |
|  | 50.3 | If the *Consultant* submits an invoice for payment before the *assessment day,* the amount due at the *assessment day* is* the Price for each lump sum item in the Price List which the *Consultant* has completed,
* where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Consultant* has completed by the rate,
* the amount of the expenses stated in the Price List properly spent by the *Consultant*,
* for work carried out on a time charge basis, the time expended on work which has been completed multiplied by the appropriate People Rates,
* plus other amounts to be paid to the *Consultant*,
* less amounts to be paid by or retained from the *Consultant*.
 |
|  | 50.4 | If the *Consultant* does not submit an invoice for payment before the *assessment day* the amount due at the *assessment day* is the lesser of* the amount the *Client* assesses as due at the *assessment day*, assessed as though the *Consultant* had submitted an invoice for payment before the *assessment day*, and

• the amount due at the previous *assessment day*.If the *Client* assesses an amount due it gives details of the how the amount has been calculated. |
|  | 50.5 | If the *Consultant* has incorrectly assessed the amount due in an invoice submitted before the *assessment day*, the *Client* corrects the amount due and gives details of how the corrected amount has been calculated before payment. |
|  | 50.6 | The *Consultant* pays *delay damages* for each day from the Completion Date until Completion. |
| Payment | **51**51.1 | A payment is made within three weeks after the *assessment day*. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Consultant* to the *Client* if the amount due is less than the amount due in the previous assessment. Other payments are made by the *Client* to the *Consultant*. |
|  | 51.2 | Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay. |
|  | 51.3 | Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract. |

6 Compensation events

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| Compensation events | 6060.1 | The following events are compensation events.(1) The *Client* gives an instruction changing the Scope unless the change is in order to make a Defect acceptable.(2) The *Client* does not provide something which it is to provide by the date stated in the contract. (3) The *Client* gives an instruction to stop or not to start any work.(4) The *Client* does not work within the conditions stated in the Scope.(5) The *Client* does not reply to a communication from the *Consultant* within the period required by the contract.(6) The *Client* changes a decision which it has previously communicated to the *Consultant*. (7) Either Party notifies the other of a correction to an assumption made for the assessment of a compensation event.(8) The *Client* gives an instruction to correct a mistake in the Price List. |
| Notifying compensation events | 6161.1 | The *Client* and the *Consultant* notify the other of an event which has happened or which they expect to happen as a compensation event. |
|  | 61.2 | If the *Client* notifies the compensation event, it also instructs the *Consultant* to submit a quotation for the compensation event. The *Consultant* submits the quotation within one week of being instructed to do so by the *Client*. If the *Consultant* notifies the compensation event, it submits a quotation with the notification. |
|  | 61.3 | If the *Consultant* does not notify a compensation event within four weeks of becoming aware that the event has happened the Prices and Completion Date are not changed unless the event arises from a correction to an assumption stated by the *Client* or the *Client* giving an instruction or changing an earlier decision. |
|  | 61.4 | A compensation event is not notified by the *Client* or *Consultant* after the *defects date*. |
| Quotations for compensation events | **62**62.1 | A quotation for a compensation event comprises proposed changes to the Prices and Completion Date assessed by the *Consultant*. The *Consultant* submits details of its assessment with each quotation*.* If the effects of a compensation event are too uncertain to be forecast reasonably, the *Consultant* states assumptions about the compensation event in the quotation. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party. |
|  | 62.2 | The *Client* replies within one week of the *Consultant’s* submission. If the *Client* decides that an event notified by the *Consultant** arises from the fault of the *Consultant,*
* has not happened and is not expected to happen,
* has not been notified within the timescales set out in these *conditions of contract* or
* is not one of the compensation events stated in the contract

the *Client* notifies the *Consultant* that the Prices and Completion Date are not to be changed. If the *Client* decides otherwise, it notifies the *Consultant* accordingly and includes in the notice* acceptance of the *Consultant’s* quotation or
* a statement that it does not agree with the quotation and details of the *Client’s* own assessment.
 |
|  | 62.3 | If the *Client* does not reply to a quotation in accordance with the contract and within the time allowed, it is treated as acceptance by the *Client* of the quotation. |
|  | 62.4 | If the *Consultant* does not provide a quotation which the contract requires it to submit in the time allowed, the *Client* assesses the compensation event and notifies the *Consultant* of the *Client’s* assessment within one week of when it should have received the *Consultant’s* quotation. |
|  | 62.5 | The *Client* includes details of its assessment of a compensation event when it notifies the *Consultant* of the assessment. If the effects of a compensation event are too uncertain to be forecast reasonably, the *Client* states assumptions about the compensation event in the assessment. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party. |
| Assessing compensation events | **63**63.1 | For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List. |
|  | 63.2 | For other compensation events, the change to the Prices is assessed as the effect of the compensation event upon* the actual Defined Cost of the work already done,
* the forecast Defined Cost of the work not yet done and
* the resulting Fee.
 |
|  | 63.3 | The *Client* and the *Consultant* may agree rates or lump sums to assess the change to the Prices |
|  | 63.4 | The effects of compensation events upon the Defined Cost are calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. |
|  | 63.5 | If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the *Client* and *Consultant* may agree a new rate. If they do not agree the *Client* assesses the rate based on the People Rates*.* The agreed or assessed rate becomes the People Rate for that category of person. |
|  | 63.6 | A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed. |
|  | 63.7 | An assessment of the effect of a compensation event made using Defined Cost* includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events and
* is based upon the assumptions that
* the *Consultant* reacts competently and promptly to the event and
* any additional Defined Cost and time due to the event are reasonably incurred.
 |
|  | 63.8 | A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the *Consultant.* |
|  | 63.9 | Assessments for changed prices for compensation events are in the form of changes to the Price List. |
|  | 63.10 | If* the Client has accepted a *Consultant’s* quotation,
* a *Consultant’s* quotation is treated as accepted or
* the *Client* has notified the *Consultant* of a *Client’s* own assessment

for a compensation event, the assessment of that compensation event is not revised except as stated in these *conditions of contract*. |

7 Rights to material

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| The Parties’ use of material | **70**70.1 | The *Client* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. The *Consultant* obtains from a subcontractor equivalent rights to use material prepared by a subcontractor. |
|  | 70.2 | The *Consultant* has the right to use the material provided by the *Client* only to Provide the Service. The *Consultant* may make this right available to a subcontractor. |
|  | 70.3 | The *Consultant* may use the material provided by it under the contract for other work unless stated otherwise in the Scope. |

8 Liabilities and insurance

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| *Client’s* liabilities | **80**80.1 | The following are *Client‘s* liabilities.* Claims and proceedings from others and compensation and costs payable to others which are due
	+ to the unavoidable result of the *service*,
	+ negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Consultant*.
* A fault of the *Client* or any person employed by or contracted to it, except the *Consultant.*
 |
| *Consultant’s*liabilities | **81**81.1 | The following are *Consultant‘s* liabilities unless they are stated as being *Client‘s* liabilities.* Claims and proceedings from the *Client* and others and compensation and costs payable to the *Client* and others which arise from a failure by the *Consultant* to use the skill and care normally used by professionals providing services similar to the *service.*
* Death or bodily injury to the employees of the *Consultant*.
 |
| Recovery of costs | **82**82.1 | Any cost which the *Client* has paid or will pay as a result of an event for which the *Consultant* is liable is paid by the *Consultant*. |
|  | 82.2 | Any cost which the *Consultant* has paid or will pay as a result of an event for which the *Client* is liable is paid by the *Client*. |
|  | 82.3 | The insurances provide cover for events which are the *Consultant’s* liability from the *starting date* until the end of the periods stated in the Contract Data. |
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| **INSURANCE TABLE** |
| **INSURANCE AGAINST MINIMUM AMOUNT OF COVER** |
| Liability of the *Consultant* for claims made against it arising out of the *Consultant’s* failure to usethe skill and care normally used by professionals providing services similar to the *service.* | The amount stated in the Contract Data |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service. | The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately |
| Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract. | The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event |

 |
| Limitation of liability | **84**84.1 | The *Consultant’s* total liability to the *Client* which arises under or in connection with the contract is limited to the amounts stated in the Contract Data. These liabilities and limits apply in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*. |
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9 Termination and resolving disputes

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| Termination and reasons for termination | **90**90.1 | A Party may terminate the *Consultant’s* obligation to Provide the Service for a reason stated in these *conditions of contract* by notifying the other Party and giving details of the reason for terminating. After a notification to terminate has been issued, the *Consultant* does no further work necessary to Provide the Service. |
|  | 90.2 | Either Party may terminate if the other Party has become insolvent or its equivalent (Reason 1). |
|  | 90.3 | The *Client* may terminate if the *Client* has notified the *Consultant* that the *Consultant* has not stopped one of the following defaults within two weeks of the date when the *Client* notified the *Consultant* of the default.* Substantially failed to comply with the contract (Reason 2).
* Substantially hindered the *Client* (Reason 3).
* Substantially broken a health or safety regulation (Reason 4).
 |
|  | 90.4 | The *Consultant* may terminate if* the *Client* has not paid an amount due under the contract within thirteen weeks of the *assessment day* which followed receipt of the *Consultant’s* invoice for it (Reason 5) or
* the *Client* has instructed the *Consultant* to stop or not to start any substantial work or all work for a reason which is not the *Consultant’s* fault and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within eight weeks (Reason 6).
 |
|  | 90.5 | The *Client* may terminate if the *Consultant* does a Corrupt Act, unless it was done by a subcontractor or supplier and the *Consultant** was not and should not have been aware of the Corrupt Act or
* informed the *Client* of the Corrupt Act and took action to stop it as soon as the *Consultant* became aware of it (Reason 7).
 |
|  | 90.6 | The *Client* may terminate for any other reason (Reason 8). |
| Procedures on termination | **91**91.1 | On termination, the *Client* may complete the *service* and use any material to which it has title. |
|  | 91.2 | After the final payment has been made, the *Consultant* gives to the *Client* information which it has obtained or prepared which it has a responsibility to provide under the contract. |
| Payment on termination | **92**92.1 | The amount due on termination includes* an amount due assessed as for normal payments and
* other costs reasonably incurred by the *Consultant* in expectation of completing the *service* and to which the *Consultant* is committed.
 |
|  | 92.2 | If the *Client* terminates for Reason 1, 2, 3, 4 or 7 the amount due on termination also includes a deduction of the forecast additional cost to the *Client* of completing the *service*. |
|  | 92.3 | If the *Consultant* terminates for Reason 1, 5 or 6 or if the *Client* terminates for Reason 8, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments. |
|  | 92.4 | Within thirteen weeks of termination, the *Client* assesses the final amount due. The final payment is the amount due on termination less the total of previous payments. The *Client* gives the *Consultant* details of the assessment. Payment is made within three weeks of the *Client’s* assessment. |
| Dispute resolution | **93**93.1 | A dispute arising under or in connection with the contract is referred to and decided by the *Adjudicator*. A Party does not refer a dispute to the *Adjudicator* that is the same, or substantially the same, as one that has already been referred to the *Adjudicator.* |
| The *Adjudicator* | 93.2 | (1) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*. The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.(2) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.(3) The *Adjudicator* and the *Adjudicator’s* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith. |
| The adjudication | 93.3 | (1) A Party may refer a dispute to the *Adjudicator* if* the Party notified the other Party of the dispute within four weeks of becoming aware of it and
* between two and four further weeks have passed since the notification.

If a disputed matter is not notified and referred within the times set out in the contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.(2) The Party referring the dispute to the *Adjudicator* includes with its referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within two weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.(3) The *Adjudicator* may* review and revise any action or inaction of the *Client* related to the dispute and alter a matter which has been treated as accepted or correct,
* take the initiative in ascertaining the facts and the law related to the dispute,
* instruct a Party to provide further information related to the dispute within a stated time and
* instruct a Party to take any other action which is considered necessary for the *Adjudicator* to reach a decision and to do so within a stated time.

(4) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.(5) If the *Adjudicator’s* decision includes assessment of additional cost or delay caused to the *Consultant,* the assessment is made in the same way as a compensation event is assessed.(6) The *Adjudicator* decides the dispute and informs the Parties of the decision and reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties.If the *Adjudicator* does not inform the Parties of the decision within the time allowed, either Party may act as if the *Adjudicator* has resigned.(7) Unless and until the *Adjudicator* has notified the Parties of the decision, the Parties proceed as if the matter disputed was not disputed.(8) The *Adjudicator’s* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator’s* decision is final and binding if neither Party has notified the other within the times required by the contract that it intends to refer the matter to the *tribunal*. |
| The *tribunal* | 93.4 | A Party may refer a dispute to the *tribunal* if* the Party is dissatisfied with the *Adjudicator’s* decision or
* the *Adjudicator* did not inform the Parties of a decision within the time allowed and a new adjudicator has not been chosen,

except that neither Party may refer a dispute to the *tribunal* unless they have notified the other Party of their intention to do so not more than four weeks after* the *Adjudicator* notifies the Parties of the decision, or, if the *Adjudicator* did not inform the Parties of the decision within the time allowed,
* the end of the time allowed for the *Adjudicator’s* decision.
 |

**Option Z: Additional conditions of contract**

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| **Additional conditions of contract** | **Z1** | The *additional conditions of contract* stated in the Contract Data are part of this contract |
| **Part A - Kent County Council Z Clauses** |
| **Compliance with Policies** | **Z6**Z6.1 | In providing the Services, the *Consultant* shall comply with all relevant *Client’s* policies as specified and detailed in the Scope. For the avoidance of doubt, the *Client* reserves the right to amend the *Client’s* policies from time to time without seeking the *Consultant’s* consent or approval. |
|  |  |  |
| **Conflict of Interest** | **Z8**Z8.1 | The *Consultant* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the Services or the *Client*, save to the extent fully disclosed to and approved in writing by the *Client*. |
|  | **Z8.2** | The *Consultant* undertakes ongoing and regular conflict of interest checks and in any event not less than once in every six months and notifies the *Client* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the Services under this Contract or the *Client* and shall work with the *Client* to do whatever is necessary (including the separation of staff working or, and data relating to, the Service from the matter in question) to manage such conflict to the *Client’s* satisfaction. provided that, where the *Client* is not so satisfied (in its absolute discretion) it shall be entitled to terminate this contract with immediate effect. |
|  | **Z8.3** | If the Parties are unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right (In its absolute discretion) to terminate the contract whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11. |
|  |  |  |
| **Corruption, Gifts, Fraud and the Payment of Commission** | **Z9**Z9.1 | The *Consultant* does not and warrants that in entering into this Contract it has not done any of the following and ensures that its Employees, agents and Subcontractors do not and have not done any of the following: * offer or give or agree to the giving to any person in the service of the *Client* any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the *Client* or for showing or forbearing to show favour or disfavour of any person in relation to this or any other contract with the *Client*; or
* enter into this or any other contract with the *Client* in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless full details of any such arrangements have been disclosed in writing to the *Client* before execution of this Contract committed any offence under the Bribery Act 2010.
 |
|  | Z9.2 | If any fraudulent activity comes to the attention of the *Consultant* in relation to this Contract the *Consultant* notifies the *Client* by the most expeditious means available. The *Consultant* cooperates with the *Client* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under this Contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Subcontractors. |
|  | Z9.3 | The *Client* has the right to audit any and all such records necessary to confirm compliance with this clause at any time the contract has not expired or has not been terminated and during the twelve (12) year period following expiry or termination of this Contract. Breach of this clause shall entitle the *Client* to terminate this Contract and any other contracts between the *Consultant* and the *Client* with immediate effect. whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11 |
|  | Z9.4 | In every contract with a Subcontractor the *Consultant* incorporates such provisions in order to impose on the Subcontractor liabilities similar to those imposed on the *Consultant* by this clause Z9 and such provisions as will entitle the *Consultant* to terminate the subcontract on terms equivalent to those contained in clause Z9.3. In the event of any breach by the Subcontractor of any such provision the *Consultant* shall without prejudice to any of his obligations under this Contract take action in accordance with the terms of the subcontract to exercise his rights against the Subcontractor. Failure by the *Consultant* to take action shall constitute a reason for the *Client* to exercise his right under clause Z9.3 to terminate the Contract whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11. When the *Consultant* exercises his rights against a Subcontractor in accordance with this clause he has no entitlement to make a claim or agree to any claim being made on his behalf against the *Client* in respect of any consequential delays and extra costs arising from this Contract. |
|  | Z9.5 | In the event of any breach of this clause by the *Consultant* the *Client* recovers any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Consultant* from the Consultant. |
|  |  |  |
| **Confidentiality and Publicity** | **Z10**Z10.1 | The *Consultant* acknowledges and agrees that in Providing the Services he may receive, obtain, prepare or create Confidential Information. The *Consultant* ensures that he and his Employees and Subcontractors:1. receive and/or maintain the Confidential Information in strictest confidence and acknowledge that such information is of a proprietary and confidential nature;
2. do not use the Confidential Information for any purposes whatsoever (and in particular do not use the Confidential Information to the detriment of the *Client*) other than for the purpose of Providing the Services;
3. do not disclose the Confidential Information to any third party without the prior written consent of the *Client* except that the *Consultant* is entitled to the extent strictly necessary to disclose the Confidential Information:
4. to such of the *Consultant’s* personnel who need to know the Confidential Information to Provide the Services provided that the *Consultant* is responsible for any breach of its obligations occasioned by any act or omission of such personnel;
5. or to the *Consultant’s* auditors and any other person or body having a legal right or duty to know the Confidential Information in connection with the *Consultant’s* business provided that prior to such disclosure the *Consultant* consults with the *Client* as to the proposed form of such disclosure;
6. informs each of the persons referred to in (a) and (b) above and to whom Confidential Information is disclosed of the restrictions as to use and disclosure of the Confidential Information and uses its best endeavours to ensure that each of them observe such restrictions;
7. at the *Client’s* request and in any event upon the termination or expiry of this contract, promptly delivers to the *Client* or destroys as the *Client* directs all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the *Client* in writing, removes all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks; and
8. does not, except with the prior written consent of the *Client*, disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.
 |
|  | Z10.2 | The obligations set out in the clause above do not apply to any Confidential Information which:1. the *Consultant* shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Consultant* by the *Client*; or
2. is lawfully disclosed to the *Consultant* without any obligations of confidence, by a third party who has not derived it directly or indirectly from the *Client*; or
3. is or has come into the public domain through no fault of the *Consultant* or its personnel; or
4. is required by law or by order of a court of competent jurisdiction to be disclosed.
 |
|  | Z10.3 | The *Consultant* does not advertise or announce this Contract or the Service without the prior written consent of the *Client* and provides the *Client* with any advertisement or announcement for approval. |
|  | Z10.4 | The *Consultant* does not and ensures that his Employees and Subcontractors do not give information concerning the Service for publication in the press or on radio, television, screen or any other media without the prior written consent of the *Client*. In order to obtain such consent the *Consultant* provides the *Client* with a full copy of the information to be released for approval by the *Client*. The *Consultant* does not and ensures that his Employees and Subcontractors do not, without the prior written approval of the *Client*, take any photographs of the works for use in any publicity or advertising. |
|  | Z10.5 | No advertisement will be erected within the *Client*’s highways network or work site by the *Consultant* or any Subcontractor without the written approval of the *Client*. All advertisements will be removed within three (3) months of the completion of the relevant service or scheme, unless the *Client* agrees in writing for any advertisement to remain for a further period. |
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| **Equality and Diversity Compliance** | **Z12**Z12.1 | Without limiting the generality of any other provision of this Contract, the *Consultant*:* does not unlawfully discriminate;
* procures that its personnel do not unlawfully discriminate; and
* uses reasonable endeavours to procure that its Subcontractors do not unlawfully discriminate in relation to the Services within the meaning and scope of:
* the Employment Equality (Sexual Orientation) Regulations 2003;
* the Employment Equality (Religion or Belief) Regulations 2003;
* the Employment Equality (Age) Regulations 2006
* the Equality Act 2010;
* the Commission for Race Equality’s Statutory Code of Practice on Race Equality in Employment
* and any other relevant enactments in force from time to time relation to discrimination in employment (the Acts).
 |
|  | Z12.2 | The *Consultant* acknowledges that the *Client* is under a duty under Section 149 of the Equality Act 2010 (“the Act”) to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act, advance equality of opportunity between persons who share a relevant protected characteristic (“Characteristic”) and persons who do not share it, foster good relations between persons who share a Characteristic and persons who do not share it.  |
|  |  | Characteristics are: Age;Disability;Gender reassignment;Pregnancy and maternity;Race;Religion or belief;Sex;Sexual orientation; |
|  | Z12.3 | In the performance of this Contract, the *Consultant* exercising public functions under this Contract, must, in the exercise of these functions, have due regard to the matters mentioned in Z12 and assists, cooperates and uses his reasonable endeavours to procure that his Subcontractors cooperate with the *Client* where possible in complying with this duty. |
|  | Z12.4 | The *Consultant* acknowledges that the *Client* is under a duty to have due regard to the need to:* advance equality of opportunity between persons who share a Characteristic and persons who do not share it which includes having due regard, in particular, to the need to:

(a) remove or minimise disadvantages suffered by persons who share a Characteristic that are connected to that Characteristic;(b) take steps to meet the needs of persons who share a Characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a Characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. * Foster good relations between persons who share a Characteristic and persons who do not share it in particular, to the need to:

(a) tackle prejudice, and (b) promote understanding* and the *Consultant* assists and co-operates and uses reasonable endeavours to procure that its Subcontractors assist and co-operate with the *Client* where possible to enable the *Client* to satisfy its duty.
 |
|  | Z12.5 | The *Client’s* Workplace Policy requires the *Client’s* own staff and those of its Subcontractors to comply fully with the Workplace Policy to eradicate harassment in the workplace. The *Consultant*:* + ensures that its staff, and those of its Subcontractors who are engaged in the performance of this contract are fully conversant with the requirements of the Workplace Policy;
	+ fully investigates allegations of workplace harassment in accordance with the Workplace Policy; and
	+ • ensures that appropriate effective action is taken where harassment is found to have occurred.
 |
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|  | Z12.6 | The *Consultant* notifies the *Client* in writing as soon as it becomes aware of any investigation of or proceedings brought against the *Consultant* under any one or more of the Acts. |
|  | Z12.7 | The *Consultant* shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its staff. For the avoidance of doubt and where applicable the *Client* reserves the right to request the *Consultant t*o comply with the National Living Wage as determined and in force from time to time in the United Kingdom.  |

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| **Data Protection** | **Z13** |  |
| **Identified and Defined terms** | Z13.1 | (1) Data Protection Laws is the laws as applicable and binding on the *Client*, the *Consultant* and Services:* in the United Kingdom:
	+ the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
	+ the GDPR, and/or any corresponding or equivalent national laws or regulations;
	+ in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
	+ any applicable law replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

(2) Data Protection Impact Assessment is the assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.(3) Data Subject, Controller, Processor, Personal Data, Data Protection Officer is defined in the Data Protection Laws(4) Data Loss Event is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data(5) Data Subject Access Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data(6) GDPR is the General Data Protection Regulation (EU) 2016/679(7) Processing and process is defined by the Data Protection Laws and for the purposes of this Contract, it shall include both manual and automated processing.(8) Sub-processor is any third Party appointed to process Personal Data on behalf of the *Consultant* related to this Contract |
|  | Z13.2 | The *Consultant* (and shall ensure that all of its Staff) complies with any notification requirement under the Data Protection Laws and the *Client* and the *Consultant* duly observe all their obligations under the Data Protection Laws which arise in connection with this Contract. |
|  | Z13.3 | The *Consultant* complies with all of its obligations under the Data Protection Laws in performance of its obligations under this Contract and in processing Personal Data on behalf of the *Client*. |
|  | Z13.4 | The *Consultant* provides all reasonable assistance to the *Client* and *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any data processing in accordance with this Contract |
|  | Z13.5 | Insofar as the *Consultant* processes Personal Data on behalf of the *Client*, the *Consultant*, in relation to any Personal Data processed in connection with its obligations under this Contract:* processes that Personal Data only for the Provision of the Services only in accordance with the *Client*’s documented instructions set out in the Scope, and updates provided from time to time by the written agreement of the Parties (Processing Instructions)
* agree that the processing carried out by the *Consultant* under this Contract comprises the processing set out in the Scope (Data Processing Details ), and such other processing as agreed by the Parties in writing from time to time.
* if the Law requires it to process Personal Data other than in accordance with the Processing Instructions, the *Consultant* notifies the *Client* and *Client* of any such requirement before processing the Personal Data.
* notifies the *Client* immediately if it considers that any of the *Client*'s instructions or Processing Instructions infringes the Data Protection Laws.
* ensures that it implements and maintains, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Personal Data which are submitted for acceptance by the *Client* to ensure a level of security in respect of the Personal Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.
 |
|  | Z13.6 | The *Consultant* ensures that access to Personal Data is limited to the authorised persons who need access to it to provide the Services:* The *Consultant* l ensures that the Staff do not process Personal Data except in accordance with this Contract and in the manner which has been agreed with the *Client*
* it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
	+ the Staff are aware of and comply with the *Consultant*’s duties under this clause;
	+ the Staff are subject to appropriate confidentiality undertakings with the *Consultant* or any Sub-processor;
	+ the Staff 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
	+ the Staff have undergone adequate training in the use, care, protection and handling of Personal Data; and
* The *Consultant* does not cause or permit the transfer Personal Data to a country or territory outside the European Economic Area.outside of the EU unless the prior written consent of the *Client* has been obtained.
 |
|  | Z13.7 | The *Consultant* notifies the *Client* immediately (and if applicable, immediately notifies in stages as the details become available) if it: * receives a Data Subject Access Request (or purported Data Subject Access Request);
* receives a request to rectify, block or erase any Personal Data;
* receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
* receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
* receives 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; or
* becomes aware of a Data Loss Event.
 |
|  | Z13.8 | The *Consultant* does not respond to any Data Subject Access Request or request or compliant or communication without the *Client*s prior written acceptance and it maintains complete and accurate records and information to demonstrate its compliance with this clause Z13. |
|  | Z13.9 | The *Consultant* (at no costs to the *Client*) allows for audits of its Data Processing activity and the *Consultant*s Personnel by the *Client* or the *Client*’s designated auditor. |
|  | Z13.10 | The *Consultant* designates a data protection officer if required by the Data Protection Legislation. |
|  | Z13.11 | The *Consultant* keeps the *Client* fully indemnified against all actions claims costs expenses and damages suffered by the *Client* arising out of any breach of this Z13 (save to the extent that such matters are not due to any act neglect or default of the *Client* its agents or employees). |
|  | Z13.12 | The *Client* remains solely responsible for determining the purposes and manner in which Personal Data is to be processed. Before allowing any Sub-processor to process any Personal Data related to this Contract, the *Consultant* must * notify the *Client* in writing of the intended Sub-processor and processing;
* obtain the written consent of the *Client*
* Enter into a written agreement with the subcontractor which requires the Sub – procecesor to:
	+ only process Personal Data in accordance with the Data Processing Details set out in the Scope, and such other processing as agreed by the Parties in writing from time to time.; and
	+ comply with the same Data Protection Laws that the *Consultant* is required to comply with under this contract.
 |
|  | Z13.13 | The *Consultant* remains fully liable for all acts or omissions of any Sub-processor. |
|  | Z13.14 | The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The *Client* may on not less than 30 Working Days’ notice to the Consultant amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office. |
|  | Z13.15 | The provision of this Z 13 applies during the duration of this Contract and indefinitely after its expiry. |
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| **Freedom of Information** | **Z14**Z14.1 | Notwithstanding any other provision in this Contract regarding confidentiality the *Consultant* agrees and the *Client* reserves the right to disclose information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 1992 as amended or the DPA or the Audit Commission Act and the Accounts and Audit Regulations 2003 and the Local Government Act 2000 and Part IV of the Local Government Act 1974 as the *Client* considers appropriate and that for such purposes information that would otherwise be regarded as confidential by either Party may be disclosable under these provisions and may include information provided by the *Consultant* to the *Client* |
|  | Z14.2 | Without prejudice to any other provision in this Contract the *Consultant* shall assist and co-operate with the *Service Manager* (at the *Consultant’s* expense) to enable the *Client* to comply with its information disclosure requirements under the FOIA and the Environmental Protection Regulations (“Information Disclosure Requirements) |
|  | Z14.3 | The *Consultant* shall and shall procure that its sub-Consultants shall:* transfer any request for information received from a person seeking information under Information Disclosure Requirements to the *Client* as soon as practicable after receipt and in any event within two Days of receiving it;
* provide the *Client* with a copy of all information in its possession or power, relating to any request for information received under 4.3.1 above, in the form that the *Client* requires, within five Days (or such other period as the *Client* may specify) of the *Client* requesting that information; and
* provide all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to a request for information under Information Disclosure Requirements within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations
 |
|  | Z14.4 | The *Client* shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other information:* is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
* is to be disclosed in response to a request for information under Information Disclosure Requirements and in no event shall the *Consultant* respond directly to such a request for information unless expressly authorised to do so by the *Client*.
 |
|  | Z14.5 | The *Consultant* shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the *Client* to inspect such records as requested from time to time. |
|  | Z14.6 | The *Client* acknowledges that the *Consultant* may wish to assert that information which is subject to disclosure may be exempt from disclosure in circumstances where disclosure is likely to affect its interests. The *Client* agrees to observe paragraph 27 of the Code of Practice |
|  | Z14.7 | Notwithstanding any other provision of this Contract, the *Consultant* hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA. |
|  | Z14.8 | In preparing a copy of this Contract for publication the *Client* may consult with the *Consultant* to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the *Client’s* absolute discretion. |
|  | Z14.9` | The *Consultant* must assist and co-operate with the *Client* to enable the *Client* to publish this Contract. |
|  | Z14.10 | In order to comply with the Government’s policy on transparency in the areas of contracts and procurement the *Client* may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the *Consultant’s* name and the monthly Periodic Payment paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information |
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| **Local Government** | **Z15**Z15.1 | The *Consultant* is aware that he could be subject to investigation by the Ombudsman if a complaint is made about his actions when undertaking work on behalf of the *Client*. The *Consultant* co-operates fully in any such investigation. |
|  | Z15.2 | In the event that following any investigation the Ombudsman finds maladministration and/or injustice as a result of fault by the *Consultant* the *Consultant* reimburses the *Client* on demand for any payments made by the *Client* to a complainant. |
|  | Z15.3 | Similarly the *Consultant* reimburses the *Client* for any payments made under the terms of a settlement agreed without a formal investigation and report of a complaint made to the Ombudsman |

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| **Financial Procedures and Cost Capture** | **Z19**Z19.1 | The *Consultant* complies with the requirement of the Scope.  |
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| **Intellectual Property Rights** | **Z27**Z27.1 | The *Consultant* hereby assigns with full title guarantee to the *Client* all Intellectual Property in all photographs taken by or on behalf of the *Consultant* in relation to this contract and provides to the *Client* upon request copies of all such photographs in such format as the *Client* requires. |
|  | Z27.2 | Intellectual Property in all Documents in any medium which have been created and/or developed or further developed by the *Consultant* in the course of performing its obligations under this contract will vest in the *Client*. |
|  | Z27.3 | Intellectual Property in any medium, including but not limited to software, systems, data, databases, additions and algorithms, which have been created and/or developed or further developed by the *Consultant* in the course of performing its obligations under this Contract will vest in the *Client*. |
|  | Z27.4 | The *Consultant* grants and/or agrees to grant to the *Client* with effect from the Contract Date (or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property), a perpetual, irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of this contract) to use the Intellectual Property in the Documents and any medium created and/or developed by the *Consultant* in the course of performing its obligations under this contract and to reproduce such Documents and medium for any purpose whatsoever relating to the *Client’s* business. Such licence carries the right to grant sub-licences and is be transferable to third parties. |
|  | Z27.5 | The *Consultant* warrants that the Documents and medium (except to the extent that duly authorised Subcontractors have been used to prepare the same) are the *Consultant*’s own original works and that in any event their use will not infringe the rights of any third party. The *Consultant* further warrants that where duly authorised Subcontractors are used their work will be original and the *Consultant* will obtain the necessary consents in relation to the above clause. |
|  | Z27.6 | The *Consultant* does not grant to any third party the right to use any of the Documents and mediums except under any warranty it is obliged to give under this contract or as otherwise required to enable it to fulfil its obligations under this contract. |
|  | Z27.7 | The *Consultant* agrees on reasonable request at any time and following reasonable prior written notice to give to the *Client*, or those authorised by the *Client*, access to the Documents and mediums and to provide copies (including copy negatives and CAD disks) of the Documents and mediums in a format which is compatible with the *Client*’s systems. |
|  | Z27.8 | Intellectual Property in all items supplied and owned by the *Client* to the *Consultant* remains the property of the *Client*. |
|  | Z27.9 | The *Client* grants to the *Consultant* a non-exclusive, non-transferable, revocable licence to use all Intellectual Property owned (or capable of being so licensed) by the *Client* and required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract. |
|  | Z27.10 | The *Consultant* promptly notifies the *Client* upon becoming aware of an infringement, alleged infringement or potential infringement of any Intellectual Property (including any claims and demands relating to the same) which affects or may affect the Provision of the Service. |
|  | Z27.11 | Subject to the *Client’s* proper observance of its obligations under this contract, the *Consultant* indemnifies the *Client* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property. |
|  | Z27.12 | The *Client*, at the request of the *Consultant*, gives the *Consultant* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Consultant* reimburses the *Client* for all costs and expenses (including legal costs) incurred in doing so. The *Consultant* conducts any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Consultant* consults with the *Client* in respect of the conduct of any claim, demand or action and keeps the *Client* regularly and fully informed as to the progress of such claim, demand or action. |
| **Whistleblowing** | **Z31**Z31.1 | The *Consultant* shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the *Consultant*) and shall establish and where necessary update from time to time a procedure for the *Consultant's* personnel encouraging those personnel to report to the *Consultant* any incidents of malpractice within the Consultant or *Client.* In this context “malpractice” shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration. |

**ANNEX 1**

 **Schedule of Processing, Personal Data and Data**

1. The *Contractor* shall comply with any further written instructions with respect to processing by the *Employer*.
2. Any such further instructions shall be incorporated into this Schedule.

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| **Description** | **Details** |
| Subject matter of theProcessing | It is envisaged that no personal data will be collected or transferred between the parties to this contract. Should this change either party will be required to notify the other. |
| Duration of theProcessing | Should personal data be collected it could be required for the periods defined in the insurances page of the Contract Data.  |
| Nature and purposes ofthe processing | Further information can be found at <http://www.kent.gov.uk/business/grow-your-business/doing-business-with-kent-county-council/how-we-buy-goods-and-services/gdpr>and[http://www.kent.gov.uk/about-the-council/contact-us/access-to-information/gdpr-privacy-notices/highways,-transportation-and-waste](http://www.kent.gov.uk/about-the-council/contact-us/access-to-information/gdpr-privacy-notices/highways%2C-transportation-and-waste) |
| Type of Personal Data | No personal data anticipated to be collected. |
| Categories of DataSubject |  |
| Plan for return anddestruction of the dataonce the processing iscomplete UNLESSrequirement under unionor member state law topreserve that type ofdata |  |

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