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| Owner's Engineer Appointment Agreement  (Based on The NEC4 Professional Service Contract June 2017 edition, as amended) | | |
| [Name of Party]  the *Client*  and  [Name of Party]  the *Consultant* | | |
| Relating to the development of a small modular nuclear reactor at [] | |  |
| Date: | | |

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THIS AGREEMENT is made on

BETWEEN:

1. [**CLIENT**] (Company no. []) whose registered office is at [] (the "***Client***", which expression includes its legal successors in title and permitted assignees); and
2. [**CONSULTANT**] (Company no. []) whose registered office is at [] (the **"*Consultant*"**, which expression includes its legal successors in title and permitted assignees),

each a '**Party**' and together, the '**Parties**'.

Recitals:

1. The *Client* intends to undertake the design, engineering, construction, commissioning, operation, maintenance, alteration, adjustment, repair, modification, replacement, decommissioning, demolition, financing, refinancing and/or insurance of a small modular nuclear reactor power plant (and the ancillary facilities upon which it is dependent) at the Site (the "**Project**").
2. The *Client* intends to enter into a contract with [] (the "**Contractor**") to provide the works which form part of the Project (the "**TP Contract**").
3. The *Client* wishes to appoint the *Consultant* and the *Consultant* has agreed to be appointed in accordance with the terms and conditions set out below to Provide the Service in connection with the Project.
4. The terms and conditions of the contract have been fully negotiated between the *Client* and the *Consultant* as parties of competent capacity and equal standing.

articles:

The Parties agree as follows:

1. Definitions and Interpretation
   1. In this Agreement, unless the context otherwise requires:
      1. any word or term beginning with a capital letter has the meaning given to it in the *conditions of contract*; and
      2. any italicised term has the meaning given to it in the Contract Data.
   2. In the contract, article and clause headings are for information purposes only and do not affect the interpretation of the contract.
2. The Contract
   1. The *Consultant* is required to Provide the Service in accordance with the contract and all applicable Statutory Requirements.
   2. The *Client* pays the *Consultant* the amount due in accordance with the contract at the times and in the manner prescribed by the contract.
   3. The contract consists of the following Contract Documents which, save as set out in article 2.4 and 2.5 below, apply in the following order of priority:
      1. this Agreement;
      2. the following Schedules:

**Schedule 1: Conditions of Contract**

The NEC4 Professional Services Contract June 2017 edition (with amendments January 2023):

* + - 1. Core clauses;
      2. Main Option E clauses;
      3. Dispute Resolution Option W2 clauses; and
      4. Secondary Option clauses X1, X2, X4, X9, X11, X20, X29 and Y(UK)2,

in each case as amended and supplemented by the *additional conditions of contract* Z1-Z20;

**Schedule 2: Contract Data**

Part One: Data Provided by the *Client*; and

Part Two: Data Provided by the *Consultant*;

**Schedule 3: Schedule of Cost Components**;

**Schedule 4: Scope**

**Schedule 5: Activity Schedule**

**Schedule 6: Performance Security**

Part 1: Parent Company Guarantee;

Part 2: Legal Opinion; and

Part 3: Sub-Contractor Collateral Warranty

* 1. The Parties acknowledge and agree that, given the subject matter of the contract and the nature of the Project, they are committed to delivering the *Client's* standards with respect to nuclear safety in accordance with UK nuclear industry standards and regulatory expectations, throughout all stages of the Project, in accordance with the nuclear site license granted for the development. Accordingly, notwithstanding article ‎2.3 above, the Parties agree that the following *additional conditions of contract* rank in order of priority equal with the articles of this Agreement:
  + Z8: Regulatory Interface
  + Z9 Documentation
  + Z10: Security Requirements[[1]](#footnote-2)
  1. With respect to any ambiguity or inconsistency between the different sections which comprise the Scope, the following order of priority shall apply:
     1. [] ;
     2. .

1. Service Plan
   1. The *Consultant* provides a plan including and detailing the information set out in article 3.2 in relation to the *service* to be performed in respect of the next Financial Year[[2]](#footnote-3) or such longer period as may be agreed between the Parties and the costs in connection with such *service* for acceptance by the *Service Manager* (the 'Service Plan'). The *Consultant's* initial accepted Service Plan is set out in [Section [] to the Scope] and runs to the period up to [31 March 2027]. If the initial Service Plan has not been agreed at the Contract Date the provisions of clause 31.1 in the contract apply. Updated Service Plans are prepared and submitted to the *Service Manager* for approval no later than ten weeks in advance of the expiry of the then current Service Plan.
   2. The Service Plan
      1. includes:
         1. detailed forecasts of:
            1. the *service* to be provided in the period covered by the Service Plan (including any deliverable items) and in respect of each part of the *service* confirmation of whether:

each part of the *service* will be Reimbursable Service, Target Cost Service, or Lump Sum Service;

a Task Order may be required in respect of part of the *service;*

the *Consultant* proposes it will comprise Core Team Services or Specialist Services; and

the *Consultant* proposes the Core Team, Subcontractors or Non-Core Team Employees will perform each part of the *service*;

* + - * 1. the Prices (including an apportionment of the time the Core Team will be required to spend on particular elements of the *service*);
        2. the *expenses* the *Consultant* anticipates incurring in connection with the *service*
        3. any anticipated risks in relation to the Project including but not limited to anything which may lead to delays or increased costs in respect of the Project; and
        4. the Indicative Project Cost in accordance with the requirements set out in the Scope,
      1. any proposed changes to the Core Team;
      2. any part of the *service* that the *Consultant* considers it necessary to subcontract;
      3. updated Rate Cards pursuant to clause X1 or as are otherwise agreed between the Parties;
      4. updated Key Performance Indicators and/or an updated version of the Incentive Schedule as agreed between the Parties pursuant to clause X20.6; and
      5. the information that the Scope specifies should be included in the Service Plan (if any).
    1. is prepared in accordance with and contains any information specified in any instructions issued by the *Client* from time to time;
    2. uses rates which reflect market rates for personnel of equivalent qualification, experience and expertise at the point in time when Service Plan is submitted;
    3. includes proposals for any Bespoke Specialist Rates in accordance with clause 20.9;
    4. contains a programme for acceptance by the *Service Manager* which has been prepared in accordance with clause 32.1 and [paragraph [] of Section [] (*[]*) of the Scope;
    5. provides in respect of any proposed subcontracting of the *service* the information that the *Consultant* is required to submit for the *Service Manager's* approval pursuant to clauses 23.2 – 23.4 of the contract;
    6. includes an explanation of the changes made to the Indicative Project Cost forecast since the previous forecast was submitted;
    7. is prepared in accordance with the Scope;
    8. ensures that the *Client* does not incur unnecessary costs in relation to Others;
    9. is fully complete, without containing omissions or qualifications;
    10. is compliant with the other requirements of the contract; and
    11. is prepared in good faith for the purposes of representing value for money to the *Client.*
  1. Within four weeks of the *Consultant* submitting an Service Plan for acceptance, the S*ervice Manager* either accepts the Service Plan or notifies the *Consultant* of the reasons for not accepting it. A reason for not accepting the Service Plan is that;
     1. it does not comply with the requirements of article 3.2;
     2. the *Service Manager* is not satisfied that the Prices or any changes to the Prices, the Defined Cost or the *expenses* have been properly assessed;
     3. the *Service Manager* does not agree to the *Consultant's* proposed updates to the Rate Card;
     4. it does not properly account for all of the *service* to be performed in the relevant period;
     5. the *Service Manager* or the *Client* does not agree with the assessment of the basis of any part of the *service* pursuant to article 3.2(a)(i)(A)(aa);
     6. a proposed Subcontract or Subcontractor is not in compliance with clause 23.5 of the contract;
     7. the *Client* does not agree with the proposed changes to the Key Performance Indicators or the Incentive Schedule; or
     8. it does not comply with the resourcing requirements set out in clause 21.3 or clause 21.4 in the *conditions of contract*.
  2. If the *Service Manager* does not accept an Service Plan, the *Consultant* makes a revised submission taking account of the *Service Manager's* reasons. The *Consultant* makes its revised submission within two weeks (or such longer period as may have been specified by the *Service Manager*) after receiving the instruction. An instruction to submit a revised Service Plan is not a compensation event
  3. The Parties acknowledge that at the Contract Date a Service Plan containing all of the information set out in Article 3.2 may not be available and that, notwithstanding any other provision of the contract, the *service* to be provided by the Core Team for the six month period commencing from the Contract Date is as set out in Section [] of the Scope. The *Consultant* agrees that its entire remuneration during that period is the Core Team Cost, save in respect of the sums agreed under any Task Orders issued during that period.
  4. Subject to article 3.5, the cost of any *service* that is not included in the accepted Service Plan or subsequently instructed under a Task Order is treated as a Disallowed Cost, unless and to the extent that such cost is incurred as a result of a compensation event referred to in clause 60.1 which is notified by either Party or the *Service Manager* after submission of the Service Plan.
  5. Notwithstanding any updates to the Rate Cards pursuant to clause X1, the *Consultant* may submit further revisions to the Rate Cards as part of its Annual Plan submission under article 3.1. The *Consultant* provides its rationale for including the revised Rate Cards. The *Client* may approve any proposed revisions at its sole discretion.
  6. Any Tasks detailed in an agreed Service Plan do not require a Task Order to be issued in respect of the *service* to which the Tasks relate. The instruction of *service* pursuant to Tasks included in the agreed Service Plan is not a compensation event
  7. On expiry of half of the duration of the current Service Plan, or such other date as the *Service Manager* specifies, the Parties and the *Service Manager* meet to review the Service Plan and the progress made against it by the *Consultant* and to assess the *Consultant's* resourcing of the *service* to ensure compliance with the *Consultant's* obligations under clause 21.2.

1. At Risk Fee
   1. The *Consultant* includes in its applications for payment an amount calculated by applying the relevant At Risk Fee Percentage to:
      1. the Price for Service Provided to Date; and
      2. the aggregate amount of Defined Cost in respect of which the Prices are adjusted in accordance with clause 63.1 as a result of a compensation event,

and such amount is the "At Risk Fee".

* 1. Deduction of At Risk Fee

In accordance with the Incentive Schedule and clause X20 (Key Performance Indicators), in assessing the amount due in respect of an application for payment following the *Service Manager's* assessment under clause X20.4 or (where applicable) the *Client's* assessment under clause X20.8, the *Service Manager* may for the purposes of clause 50.3 retain from the amount due to the *Consultant* a portion of the At Risk Fee paid to the *Consultant* in the preceding Assessment Period equal to the Service Credits accrued in that period in accordance with paragraph [] of the Incentive Schedule.

* 1. Retention of Incentive

Notwithstanding the foregoing provisions of this article 4 and the provisions of article 5, the *Client* may withhold (and retain at its absolute discretion) any payment of the At Risk Fee or Long-Term Behaviour Incentive if, during the period in which such amounts becomes due for payment, the *Consultant* or an entity for which it is responsible, has committed a breach of a Statutory Requirement relating to health and/or safety or is the subject of a regulatory enforcement notice served by a UK Regulator or the ONR. The *Client* may, at its absolute discretion, elect to release any amount withheld in accordance with this article 4.3 if the material breach is remedied by the *Consultant* or the enforcement notice is complied with and discharged by the *Consultant* and the *Client* has suffered no other adverse effect as a consequence thereof.

1. Long-Term Behaviour Incentive
   1. Upon the *Consultant* achieving a sufficiently high Overall Aggregate Score in respect of the KPIs in accordance with paragraph 4 of the Incentive Schedule, the *Consultant* becomes entitled to payment of the relevant amount set out in paragraph [] of the Incentive Schedule (the "Long-Term Behaviour Incentive").
   2. The amount of any Long-Term Behaviour Incentive to which the *Consultant* is entitled pursuant to the provisions of this article 5 and/or the Incentive Schedule, shall be included in an application for payment which the *Consultant* submits in accordance with clause 50.3, provided always that the *Consultant* only submits one such application including Long-Term Behaviour Incentive at the end of each three year period from the Contract Date, or such shorter periods as the *Client* may instruct at its sole discretion, until and including the date of achievement of commercial operation of the last Unit (as defined in the TP Contract) . Each such instalment of Long-Term Behaviour Incentive is applied for by the *Consultant* prior to expiry of the relevant year in which the *Consultant* is entitled to include it in a payment application (and not any later period).
   3. The *Consultant* acknowledges that the *Client* may at its sole discretion vary the Long-Term Behaviour Incentive, provided that the *Client* may not reduce such amounts that would apply in the year current to when such variations are made or for any years prior.
2. Relationship with Others
   1. The *Consultant* will co-operate and work with the Contractor and the *Client*'s other contractors and consultants in relation to the Project to develop a culture of collaboration, transparency in dealings, innovation and outstanding performance in delivering the Project.
   2. If the *Client* appoints a delivery partner in relation to the Project and nominates the delivery partner to perform any of the functions of the *Client* or the *Service Manager* under the contract, the *Consultant* treats such delivery partner as if it were the *Client* or the *Service Manager* in relation to such functions, including complying with any relevant instructions of the delivery partner. The *Consultant* will otherwise co-operate and work with the delivery partner in accordance with article 6.1.
3. Execution
   1. Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the contract and the transactions contemplated by it.
   2. This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts each of which, when executed and delivered, shall be deemed to be an original, but all the counterparts taken together shall constitute one and the same Agreement.

**IN WITNESS** whereof this Agreement has been executed and delivered as a deed by the Parties on the date first before written.

[**Execution blocks to be inserted]**



Conditions of Contract

Professional Service Contract

This contract should be used for the appointment of a supplier to provide a professional service

**An NEC document**

**June 2017**

**(with amendments January 2023)**

**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.

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a suite of standard contracts, each of which has these characteristics:

* Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
* It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
* It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC4 Professional Service Contract is one of the NEC suite and is consistent with all other NEC4 documents. Also available are User Guides and Flow Charts.

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Core Clauses

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| **1. GENERAL** |

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| --- | --- | --- | --- |
| Actions | 10 10.1 |  | The Parties and the Service Manager shall act as stated in this contract. The concept of reasonableness in the contract shall be interpreted accordingly |
| 10.2 |  | The Parties and the Service Manager 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. The **Accepted Programme** is the programme identified in the Contract Data or is the latest programme accepted by the Service Manager. The latest programme accepted by the Service Manager supersedes previous Accepted Programmes. 2. **The Activity Schedule** is the *activity schedule* unless later changed in accordance with these conditions of contract. 3. **Ad Hoc Request** means a request made by the *Service Manager* using the relevant contract management system for information in connection with the *service* or for a specific work in connection with the Project whether or not such work relates to an existing element of the Scope. 4. **Affiliate** means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded. 5. **Agreement** means the form of agreement to which these *conditions of contract* are attached. 6. **Anti-Slavery Policy** means a policy implemented by the *Consultant* which sets out the procedures the *Consultant* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act. 7. **Associated Person** has the meaning given to it by section 26 of the Procurement Act. 8. **At Risk Fee Percentage** means the percentage stated in Part [] of the Incentive Schedule to be applied in accordance with the terms of the contract. 9. **Bespoke Specialist Rate** is a rate not included in the Rate Card against which the cost of certain Specialist Services may be assessed as agreed between the *Client* and the *Consultant* in accordance with the terms of the contract. 10. **Business Day** is any day which is not a Saturday, a Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales. 11. **CDM Regulations** means the Construction (Design and Management) Regulations 2015. 12. **Certified Ethical Labour Provider** means a labour provider who meets the qualifying requirements of a Certified Ethical Labour Scheme and who is verified, at or within six months (or such longer period as the *Client* may agree, acting reasonably) of the *starting date*, by a competent and independent third party as meeting such qualifying requirements. 13. **Certified Ethical Labour Scheme** means any of the following  * the BRE Ethical Labour Sourcing standard BES 6002 ('**BRE Standard'**), * the Clearview Global Labour Provider Certification Scheme ('**Clearview Scheme'**), or * an alternative standard or scheme, which in the reasonable opinion of the *Client*, is an acceptable substitute to the BRE Standard or Clearview Scheme ('**Alternative Labour Scheme**'),   and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time   1. **Change of Ownership** means in respect of the *Consultant* (or, if the *Consultant* is a joint venture, in respect of any member of the joint venture) or in respect of any guarantor which has provided a guarantee pursuant to clause X4  * a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or * a sale, transfer or disposal of any legal, beneficial or equitable interest in 25% or more of its shares (including control over the right to appoint or remove directors or the rights to dividends); or * any other arrangements that have or may have or which result in the same effect as either of the bulleted paragraphs above,   other than a change in the legal or beneficial ownership of shares that: (i) are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or (ii) arises out of or in connection with any such listing on a recognised investment exchange   1. **Completion** is when the Consultant has  * done all the work which the Scope states is to be done by the Completion Date and * corrected Defects which would have prevented the Client from using the service or Others from doing their work.   If the work which the Consultant is to do by the Completion Date is not stated in the Scope, Completion is when the Consultant has done all the work necessary for the Client to use the service and for Others to do their work.   1. The **Completion Date** is the completion date unless later changed in accordance with the contract. 2. **Confidential Information** is any information of whatever kind (whether commercial, technical, financial, operational or otherwise, in whatever form and whether or not recorded in any way) relating to the *Client,* the *Consultant* or the Project. 3. **Connected Persons** has the meaning given to it in paragraph 45, Part 3, Schedule 6 of the Procurement Act. 4. **Consent** is any permit, approval or consent required pursuant to the provisions of any Statutory Requirement or otherwise necessary to be obtained from a third party for the *Consultant* to Provide the Service in accordance with the contract. 5. **Consultant Information** is information provided or made available to the *Client* by the Consultant pursuant to the terms of the contract or otherwise and recorded in any form held by the *Client* or held by the Consultant on behalf of the *Client*. 6. **Consultant Personnel** means any person employed or engaged in the provision of the *service*, whether such person is employed or engaged by the *Consultant* or any third party including any subcontractor of the *Consultant.* 7. The Contract Date is the date of the Agreement. 8. **Contract Documents** has the meaning given in article ‎‎2.3 in the Agreement. 9. **Contract Material** are any and all drawings, specifications, details, models, reports, schedules of levels, setting out dimensions, other design proposals and the like, or reports in respect of the same, which are required to be prepared by the *Consultant* and provided to the *Service Manager* or the *Client* pursuant to the terms of the contract. 10. **Core Team** are the individuals employed by the *Consultant* to Provide the Service on a full time basis detailed in the Service Plan who may supplemented or be replaced in accordance with clause Z2 or Z3. 11. **Core Team Cost** is the total aggregate cost inclusive of all overheads and fee in connection with the Core Team as assessed by reference to the Core Team Rates in the Schedule of Cost Components. 12. **Core Team Overtime** is work carried out by the Core Team during a weekend or public holiday pursuant to clause Z2.3. 13. **Core Team Rates** are the rates set out in the Rate Card applicable to the Core Team or any Subcontractor or Non-Core Team Employee performing Core Team Services. 14. **Core Team Services** are parts of the *service* to which the Core Team Rates apply as specified in the Service Plan or under a Task Order. 15. 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 Contract Date.   1. **Cost Saving** is a reduction in the overall cost of the Project achieved by any suitable means, including but not limited to direct monetary savings or increasing the efficiency or accelerating the programme of the Project. 2. **Data Controller** has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of 'Controller'. 3. **Data Processor** has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of 'Processor'. 4. **Data Protection Legislation** means all applicable laws relating to data protection, the Processing of Personal Data or privacy, including:  * the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (the "UK GDPR"); * the Data Protection Act 2018; * the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the General Data Protection Regulation on Privacy and Electronic Communications); and * any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data.  1. **Debarment List** has the meaning given to it in section 57 of the Procurement Act. 2. **Defect** is a part of the service which is not in accordance with the Scope, the applicable law or any other requirement of the contract. 3. **Defined Cost** is the cost of the components in the Schedule of Cost Components less Disallowed Cost: 4. **Disallowed Cost** is cost which  * is not justified by the Consultant's accounts and records, * should not have been paid to a Subcontractor or supplier in accordance with its contract, * was incurred only because the Consultant did not * follow an acceptance, review or procurement procedure referred to in the Scope, * give an early warning which the contract required it to give or * give notification to the Service Manager of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Consultant and a Subcontractor or supplier   and the cost of   * correcting Defects after Completion, * correcting Defects caused by the Consultant not complying with a constraint on how it is to Provide the Service stated in the Scope, * resources not used to Provide the Service (after allowing for reasonable availability and utilisation), * preparation for and conduct of an adjudication or proceedings of the tribunal between the Parties, * providing a replacement person referred to in clause Z3.4, until the completion of the applicable handover period * fines, charges, penalties and fees imposed on or accepted by the *Consultant* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement * was incurred as a result of compliance with an instruction issued by the *Service Manager* in accordance with clause 16.1 or clause 16.2; and * anything which is expressly stated to be Disallowed Cost under the contract.  1. **Disclosed Adverse Rights** are all rights of light and air and other rights, servitudes and wayleaves whatsoever (including those in respect of conduits) and all other restrictions over the Site enjoyed by Others, the existence of which has been disclosed within the Site Information 2. **Disclosure Obligation** means, for the purposes of clause Z16, any obligation to publish information arising under Procurement Legislation which the *Client* considers applicable to the contract, including obligations to publish copies of the contract and information relating to the *Consultant's* performance under the contract. 3. The **Early Warning Register** is a register of matters which are  * listed in the Contract Data for inclusion and * notified by the Service Manager or the Consultant as early warning matters.   It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.   1. **Excludable Supplier** has the meaning given to it by section 57 of the Procurement Act. 2. **FID** means the financial investment decision in respect of the Project to be made by His Majesty's Government to determine whether the Project will proceed to the construction phase. 3. **[Financial Monitoring Event** means each of the events designated as such in the Financial MonitoringSchedule.][[3]](#footnote-4) 4. **Financial Monitoring Schedule** means Appendix 2 to the Contract Data, Part One. 5. **[Financial Remediation Plan** is a plan prepared by the *Consultant* which sets out the *Consultant*'s intended plan to address the concerns regarding the *Consultant*'s financial strength and/or its ability to provide the whole of the *service,* which have been identified in a notice given by the *Service Manager* under clause Z12.3.] 6. **Financial year** is each 12 month period from 1 April to 31 March. 7. **FOI Legislation** is the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time and the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act and/or Regulations 8. **Force Majeure Event** is the occurrence, after the Contract Date, of:  * war, civil war, rebellion, revolution, insurrection, military or usurped power, armed conflict or terrorism * nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach of the contract by the *Consultant* or any Subcontractor; * strikes, riots, Protestor Action and civil commotion, in each case not confined to the *Consultant*'s employees, Subcontractors or suppliers; * earthquake, flood, fire   which:   * stops the *Consultant* completing the whole of the *service* or * stops the *Consultant* completing the whole of the *service* by the date for planned Completion shown on the Accepted Programme,   and which   * neither Party could prevent and * an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it,  1. **Good Industry Practice** means that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a properly qualified and competent professional engaged in carrying out services similar to an experienced owner's engineer for projects of the nature, size, scope and complexity of a new nuclear power plant project. 2. **Incentive Schedule** means Appendix 1 to the Contract Data, Part One. 3. **Indicative Project Cost** is the total amount paid and forecast to be paid by the *Client* to the *Consultant* under the contract. 4. **Indirect Loss** is any loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any indirect loss of any nature provided that, notwithstanding the foregoing, any Losses incurred by the *Client* pursuant to the terms of any Project Agreement shall not constitute Indirect Loss. 5. **Information Request** is a request for information under the FOI Legislation. 6. **Intellectual Property Rights** means all ideas, concepts, know-how, methods, procedures, processes, improvements, inventions, discoveries, patents, design rights, petty patents, design patents, utility models, copyrights, database rights, electronic files, rights in computer programs, rights to inventions, confidential technical and scientific information and all other intellectual or industrial property rights including, where such rights are obtained or enhanced by registration, any registration of such rights (including the right to apply for such registrations) and applications therefor (including the right to claim priority from patent applications) but excluding any trade marks (registered or unregistered). 7. **ITT** is the invitation to tender in relation to the *service* issued by the *Client on []* 8. **Joint Venture** has the meaning given in clause 12.10. 9. A **Key Date** is the date by which work is to meet the Condition stated. The Key Date is the key date stated in the Contract Data and the Condition is the condition stated in the Contract Data unless later changed in accordance with the contract. 10. **Losses** are any expenses, liability, losses, claims, proceedings, compensation, obligations, causes of action, awards, judgments, settlements, demands, damages, costs, expenses, fines, penalties and fees (including without limitation the fees, expenses, disbursements and costs of lawyers and advisors) whatsoever or howsoever arising. 11. **Lump Sum Service** is *service* provided by the Core Team and any *service* forming part of a Task that is payable on a lump sum basis as agreed in the Service Plan or the relevant Task Order. 12. **Lump Sum Service Prices** is the Core Team Cost and the lump sum prices for Tasks payable on a lump sum basis as agreed in the Service Plan or the relevant Task Order. | |
|  |  |  | 1. **Monthly Report** is the report that the *Consultant* is required to provide pursuant to clause Z13 which complies with the requirements set out in Section [] of [the Scope]. 2. **NIA** means the Nuclear Installations Act 1965 (as amended). 3. **Non-Core Team Employees** means any persons employed directly by the *Consultant* that perform the *service* in accordance with the terms of the contract that are not members of the Core Team. 4. **Nuclear Site Licence** means the nuclear site licence granted to the *Client* pursuant to sections 1.1, 4.1 and 4.2 of the Nuclear Installations Act 1965 in respect of the Project. 5. **Others** are people or organisations who are not the Client, the Service Manager, the Adjudicator, the Consultant or any employee, Subcontractor or supplier of the Consultant. 6. **ONR** is the Office for Nuclear Regulation, including the Civil Nuclear Security and Safeguards Programme or anybody having responsibility for safety and security at nuclear installations in the United Kingdom or any part thereof which replaces the same from time to time. 7. The **Parties** are the Client and the Consultant. 8. **Performance Improvement Plan** is a plan provided by the *Consultant* in accordance with clause X20.3 which details how the *Consultant* will improve upon its performance against the relevant Key Performance Indicators in accordance with [Section [] of the Scope]. 9. **Personal Data** has the meaning given to it in Data Protection Legislation. 10. The **Price for Service Provided to Date** is:  * the total of the Lump Sum Service Prices for each completed activity. A completed activity is one without notified Defects the correction of which will delay following work, and * the total of the Reimbursable Service Prices and the Target Cost Service Prices which the Service Manager forecasts will have been paid by the Consultant before the next assessment date.  1. The **Prices** is the total of:  * the Lump Sum Service Prices, * the Reimbursable Service Prices, * the Target Cost Service Prices.      1. **Processing** has the meaning given to it in Data Protection Legislation and '**Process**', '**Processes'** and **Processed'** will be construed accordingly. 2. **Procurement Act** means the Procurement Act 2023. 3. **Procurement Legislation** means the Procurement Act, and all regulations made under it and any amendment or re-enactment of any of them and any relevant guidance or recommendations issued by the Cabinet Office (including its successors or assigns). 4. **Prohibited Materials** means any products or materials which are generally known to be deleterious at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:  * the report entitled “Good Practice in the Selection of Construction Materials” (latest edition, by Hoare Lea published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report; * relevant British or European Standards or Codes of Practice; or * any publications of the Building Research Establishment related to the specification of products or material.  1. **Project Agreements** means the TP Contract and each of the other project agreements which are detailed within the Scope,[[4]](#footnote-5) as updated or supplemented from time to time in accordance with clause Z4. 2. **Protestor Action** any action (other than hostilities) taken or threatened to be taken at the Site by any person or persons protesting against or in relation to the Project or any part thereof or nuclear power plants in general (but not, for the avoidance of doubt, protesting against or in relation to industrial relations at the Site) which directly or indirectly affects performance of the *service.* 3. **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. 4. **Public Procurement Termination Event** means the *Client* considers that the contract was awarded or modified in material breach of the Procurement Act for the purposes of section 78(2)(a) of the Procurement Act. 5. **Quality Assurance Plan** has the meaning given to that term in Section [] of the Scope. 6. **Rate Card** means the table of rates set out in the Schedule of Cost Components. 7. **Reimbursable Services** are Tasks agreed as cost reimbursable in respect of which the *Consultant* is paid Defined Cost. 8. **Reimbursable Service Prices** is the forecast of the total Defined Cost for the whole of the Reimbursable Service; 9. **Required Electronic Form** means a form that:    1. complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1: 2017 (Electronic invoicing – Part 1: Semantic data model of the core element of an electronic invoice); and    2. uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution. 10. **Restricted Entity** means  * any legal entity or person or any member of a group of legal entities or persons acting together, any one of which is the target of any Sanctions or that is located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealing with such government, country or territory or * any legal entity in respect of whom any current and/or future member of its board of directors, trustees or its senior executive managers has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence other than minor traffic offences, less than five years prior to the date on which the consideration of whether such legal entity is a Restricted Entity is made under the contract.  1. **Sanctions** means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, the European Union and/or His Majesty’s Treasury. 2. **Scope** is information which  * specifies and describes the service or * states any constraints on how the Consultant Provides the Service   and is   * in the documents which the Contract Data states it is in * included in an accepted Service Plan or * in an instruction given in accordance with the contract including any Task Orders.  1. **Set Aside Order** means an order setting aside the contract, any part of the contract or any modification of the contract, in each case made by a court of competent jurisdiction in accordance with section 104 of the Procurement Act. 2. **Site** is the site of the Project as further detailed in the Site Information. 3. **Site Information** is information which describes the Site and its surroundings and is provided by the *Service Manager* from time to time. 4. **Special Statutory Administration Regime** is the special administration regime applicable to relevant licencee nuclear companies pursuant to Part 3 of the Nuclear Energy (Financing) Act 2022. 5. **Specialist** is a Subcontractor or Non-Core Team Employee providing Specialist Services. 6. **Specialist Rates** are the rates set out in the Rate Card applicable to the Specialists. 7. **Specialist Services** are parts of the *service* to which the Specialist Rates apply as specified in the Service Plan or under a Task Order. 8. **Stage 2 NTP** means the Notice to Proceed to Stage Two as defined in and issued in accordance with the TP Contract. 9. **Statutory Requirements** means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law or any regulation or by-law of any local authority or statutory undertaker which has any jurisdiction with regard to the works and any notices or permissions (including planning permissions) served or granted under any such statute, statutory instrument, regulation, rule or order, regulation or by-law. 10. **Subcontract** means a contract between the *Consultant* and a Subcontractor. 11. **Subcontractor** is a person or organisation who has a contract with the Consultant to provide part of the service, except for the supply of people paid for by the Consultant according to the time they work. 12. **Supplier Code of Conduct** is the policy document set out in [[] of the Scope] as may be updated, supplemented or replaced by the *Client* from time to time. 13. **Supplier Exclusion Ground** means:     1. the *Consultant* is or since the award of the contract becomes an Excluded Supplier or an Excludable Supplier (including by reference to an Associated Person) for the purposes of section 78(2)(b) of the Procurement Act; and/or     2. a Subcontractor is or becomes an Excluded Supplier or an Excludable Supplier for the purposes of section 78(2)(c) of the Procurement Act. 14. **Target Cost Services** are *service* in respect of which payment is assessed on a target cost basis. 15. **Target Cost Service Task** is a Task in respect of which the *service* are Target Cost Services. 16. **Target Cost Service Prices** are the lump sum prices for each of the activities on the Activity Schedule in connection with a Target Cost Service Task unless later changed in accordance with the contract. 17. **Task** is work included in the *service* which is set out in the agreed Service Plan or which the *Service Manager* instructs the *Consultant* to carry out under a Task Order. 18. **Task Completion** is when the *Consultant* has done all the *service* in the Task and corrected Defects. 19. **Task Completion Date** is the date for completion stated in the Task Order or Service Plan unless changed in accordance with the contract. 20. **Task Order** is the *Service Manager's* instructions to carry out a Task including such Tasks as are included in the agreed Service Plan. 21. **TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). 22. **UK Regulators** means the Environment Agency, the Health and Safety Executive, Natural Resources Wales and the ONR or any similar regulatory body that may take enforcement action or issue regulations in relation to the Project and **'UK Regulator'** means each or any of them. 23. **Unsuitable Transferee** means an entity which:     1. the *Client*, acting in the national interest or on grounds of defence, national security or national interest, considers to be inappropriate to become involved or interested in the *Consultant*, the contract or the *service* (whether directly or indirectly) pursuant to section 29 of the Procurement Act,     2. the *Client* considers to be inappropriate to become involved or interested in the *Consultant*, the contract or the *service* (whether directly or indirectly) because the Client has received specific information from the Serious Fraud Office or the Crown Prosecution Service or any successor to either body about the suitability of the relevant entity to act in such capacity in relation to the *Consultant* (whether directly or indirectly); or     3. has within the previous two years prior to the relevant transfer or assignment:        1. been convicted of a criminal offence relating to the conduct of its business or profession;        2. been determined by a governmental or regulatory authority to have materially failed to comply with any obligations relating to the payment of any taxes or social security contributions; or        3. to the satisfaction of the *Client*, a Supplier Exclusion Ground applies in accordance with the provisions of clause Z18; or        4. been subject to any Sanctions. | |
| Interpretation and the law | 12 12.1 |  | In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round. | |
|  | 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 |  | The contract constitutes the entire and only agreement between the Parties relating to the subject matter of the contract and each Party acknowledges that it has not been induced to enter into it in reliance upon, nor has any such Party been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in the Contract Documents and, to the extent that either of them has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto. | |
|  | 12.5 |  | Reference to any Statutory Requirement in the contract shall be construed as including a reference to any modification, extension or re-enactment of it and any orders, regulations, directions, schemes, guidance and rules made under it. | |
|  | 12.6 |  | In the contract, the words "including", "includes" or "include" are to be construed without limitation. | |
|  | 12.7 |  | If any provision of the contract shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from the contract and shall be deemed to be deleted from the contract and the validity, legality and enforceability of the remaining provisions shall not be affected. In the event that any provision of the contract is held to be illegal, invalid or unenforceable in whole or in part, the Parties shall negotiate in good faith to reach an equitable agreement which reflects the intent of the Parties as set out in the contract. | |
|  | 12.8 |  | The headings in the contract are for information only and are to be ignored in construing it. | |
|  | 12.9 |  | Failure by the *Client* to exercise its rights under the contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Consultant* from any of its obligations under the contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement. | |
|  | 12.10 |  | If the *Consultant* comprises two or more persons in joint venture, partnership, consortium or other unincorporated grouping (a **'Joint Venture'**), all such entities comprising the Joint Venture are jointly and severally bound to the *Client* for the purposes of the contract and, except where the context shows otherwise, a reference to the *Consultant* is a reference to each entity comprising the Consultant as specified in the Agreement individually and to all of them jointly. The entities comprising the Joint Venture designate one of them to act as a partner in charge with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture is accepted by the *Client* and is not altered without the prior acceptance of the *Client*. | |
|  | 12.11 |  | Save as expressly set out in the contract, the rights, power and remedies of each Party under the contract are in addition to, and do not exclude or limit any right, power or remedy provided by law or by any other agreement. | |
| Communications | 13 13.1 |  | Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the language of the contract. | |
|  | 13.2 |  | If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.  If the Scope does not specify a communication system and subject to clause 13.7, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data or if none is stated, at the registered office of the recipient. | |
|  | 13.3 |  | If the contract requires the Service Manager or the Consultant to reply to a communication, unless otherwise stated in these conditions of contract, they reply within the period for reply. Where a reply is required in connection with a request issued via a contract management system, the *period for reply* commences on the date and time of the issue of that request as shown in the contract management system. | |
|  | 13.4 |  | The Service Manager replies to a communication submitted or resubmitted by the Consultant for acceptance. If the reply is not acceptance, the Service Manager states the reasons in sufficient detail to enable the Consultant to correct the matter. The Consultant resubmits the communication within the period for reply taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the Consultant’s submission fully. | |
|  | 13.5 |  | The Service Manager may extend the period for reply to a communication if the Service Manager and the Consultant agree to the extension before the reply is due. The Service Manager informs the Consultant of the extension which has been agreed. | |
|  | 13.6 |  | The Service Manager issues certificates to the Client and the Consultant. | |
|  | 13.7 |  | A notification or certificate which the contract requires is communicated separately from other communications. Any notification to be given under or in connection with the contract shall be in writing and shall be delivered by hand or by courier or by e-mail or Recorded Signed for or Special Delivery post or prepaid first class post and shall be deemed to have been duly given as follows:  (a) if delivered by hand or by courier, upon delivery at the address of the relevant party referred to in clause ‎13.2  (b) if sent by post, two Business Days after the date of posting and  (c) if sent by electronic mail/electronic communication when actually received by the intended recipient in readable form  provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day. | |
|  | 13.8 |  | The Service Manager may withhold acceptance of a submission by the Consultant. Withholding acceptance for a reason stated in these conditions of contract is not a compensation event. | |
|  | 13.9 |  | The Consultant retains copies of drawings, specifications, reports and other documents which record the service for the period for retention. The copies are retained in the form stated in the Scope. | |
|  | 13.10 |  | Notwithstanding clause 13.3, if the *Service Manager* issues an Ad Hoc Request to the *Consultant* the relevant *period for reply* is as follows depending on the priority level of the request as specified in the relevant contract management system:  (a) two Business Days where the request is marked as high priority  (b) four Business Days where the request is marked as medium priority or  (c) eight Business Days where the request is marked as low priority. | |
|  | 13.11 |  | The *Consultant's* reply to an Ad Hoc Request is provided via the relevant contract management system and includes the following:  (a) for all Ad Hoc Requests, an acknowledgement of the request and submission of a proposed timeline to respond to such request in full (which may take the form of a quotation pursuant to clause 19.1 where the *Service Manager* instructs that one is required or where the *Consultant* considers that a Task Order may be required in connection with the Ad Hoc Request) and  (b) for Ad Hoc Requests that are specified as being high priority, the *Consultant's* availability in the *period for reply* or in the period immediately after the expiry of the *period for reply* (up to but no later than 10 Business Days following receipt of the Ad Hoc Request) for a discussion with the *Client* and the *Service Manager* in respect of the scope and programme requirements in connection with the Ad Hoc Request. | |
| The **Service Manager** | 14 14.1 |  | No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Service Manager* or the *Client*, or any enquiry or inspection which the *Service Manager* or the *Client* makes or has carried out for its benefit or on its behalf at any time operates to reduce, extinguish, exclude, limit or modify the *Consultant's* duties and obligations under the contract in any way unless it is in writing from the *Service Manager* or the *Client*, refers to the contract and clearly identifies the duty or obligation and the extent to which it is to be reduced, extinguished, excluded, limited or modified.. | |
|  | 14.2 |  | The Service Manager, after notifying the Consultant, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the Service Manager in the contract includes an action by their delegate. The Service Manager may take an action which they have delegated. | |
|  | 14.3 |  | The Service Manager may give an instruction to the Consultant which changes the Scope, the *access date* or a Key Date. Without limiting the foregoing, the *Service Manager* may give an instruction to the *Consultant* which changes the Scope by extending the Completion Date to reflect the progress of the TP Contract and the Parties acknowledge that the Competition Date may be extended to align with the Completion Date under the TP Contract (as defined therein), but the *Consultant* is not entitled to any change to the Prices. After Completion, an instruction is given only if it is necessary to Provide the Service. If information provided by the Client is found to be incorrect, the Service Manager gives an instruction correcting it. | |
|  | 14.4 |  | The Service Manager does not give an instruction to the Consultant which would require it to act in a way that was outside its professional code of conduct. | |
|  | 14.5 |  | The Client may replace the Service Manager after notifying the Consultant of the name of the replacement. | |
|  | 14.6 |  | The *Client* reserves the right to:   * appoint persons (other than the *Service Manager*), including any project manager integrator to act on its behalf and/or perform its functions under the contract; and * exclude such persons from the definition of "Others" for the purposes of the contract on the basis that they form part of the *Client*'s organisation, by written notice to the *Consultant*. | |
| Early warning | 15 15.1 |  | The Consultant and the Service Manager 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, * adversely affect the work of the *Client* or any Other, * lead to a breach of any Consent or Project Agreement, * adversely affect the *Client* (including by increasing the monies payable by the *Client* to Others engaged on the Project) and/or cause any disruption to any ongoing *Client* operations at or adjacent to the Site * delay meeting a Key Date, * impair the usefulness of the service to the Client or * affect the work of the Client, a Client’s contractor or another consultant.   The Service Manager or the Consultant may give an early warning by notifying the other of any other matter which could increase the Consultant’s total cost. In the notification the *Consultant* and the *Service Manager* state whether the early warning must be dealt with immediately or can wait until the next scheduled early warning meeting. The Service Manager enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required. | |
|  | 15.2 |  | The Service Manager prepares a first Early Warning Register and issues it to the Consultant within one week of the starting date. The Service Manager instructs the Consultant to attend a first early warning meeting within two weeks of the starting date.  Later early warning meetings are held   * if either the Service Manager or Consultant instructs the other to attend an early warning meeting, and, in any case, * at no longer interval than the interval stated in the Contract Data until Completion of the whole of the service.   The Service Manager or Consultant may instruct other people to attend an early warning meeting if the other agrees.  A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken. | |
|  | 15.3 |  | At an early warning meeting, those who attend co-operate in   * making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,   seeking solutions that will bring advantage to all those who will be affected, | |
|  |  |  | * deciding on the actions which will be taken and who, in accordance with the contract, will take them, * deciding which matters can be removed from the Early Warning Register and   reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them. | |
|  | 15.4 |  | * The Service Manager revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the Consultant within one week of the early warning meeting. If a decision needs a change to the Scope, the Service Manager instructs the change at the same time as the revised Early Warning Register is issued. For the avoidance of doubt, the *Consultant's* only entitlement to a change in the Prices, the Completion Date, a Key Date or a Task Completion Date as a result of any revision to the Early Warning Register is in accordance with clauses 60 and 65 | |
| Requirements for instructions | 16 16.1 |  | * The Service Manager or the Consultant notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The Service Manager states how the ambiguity or inconsistency should be resolved. | |
|  | 16.2 |  | * The Service Manager or the Consultant notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the Service Manager gives an instruction to change the Scope appropriately. | |
| 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. | |
| Prevention | 18 18.1 |  | * If a Force majeure Event occurs the Service Manager gives an instruction to the Consultant stating how the event is to be dealt with. | |
| Tasks | 19  19.1 |  | The *Consultant* notifies the *Service Manager* if it considers that any part of the *service*, whether or not identified in the relevant Service Plan, requires subcontracting or the provision of *service* by persons not included in the Core Team.  The *Service Manager* may issue a Task Order to the *Consultant*, including without limitationin connection with the *service* to be performed by a Subcontractor or Non-Core Team Employee if it is not covered in the Service Plan. The *Service Manager* may instruct that the *service* to be performed under a Task order is Lump Sum Service, Target Cost Service or Reimbursable Service. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The quotation includes:   * a detailed description of the *service* in the Task * whether the task is proposed as comprising Core Team Services, Specialist Services or both (if not already specified by the *Service Manager*) * whether the Task is proposed to be a Lump Sum Service, a Target Cost Service or a Reimbursable Service * if the Task is proposed to be a Target Cost Service, the proposal for the *Consultant's share percentages* and the *share ranges* * any proposed Bespoke Specialist Rates in accordance with clause 21.9 * confirmation of who amongst the following is performing which part of the *service* under the Task:   + the Core Team   + Non-Core Team Employees and   + Subcontractors. * where more than one group of the parties identified above will perform the *service* in respect of a Task, forecasts of which party will perform which parts of the *service* * confirmation of the rates in the Rate Card that applies and where relevant the proposed additional rate which may apply to *service* performed by a Subcontractor pursuant to clause 19.7 * if part of the *service* is proposed to be performed by a Subcontractor, information relating to the Subcontract required under clause 23 and * a Task programme.   Save where expressly agreed in a Task Order, if the Core Team performs the *service* to which a Task relates the *Consultant* then such *service* is deemed to form part of the Core Team Cost and the *Consultant* is not entitled to payment in respect of the cost incurred by the Core Time in performing the Task. | |
|  | 19.2 |  | The *Consultant* shows on each Task programme submitted for acceptance   * the Task starting date and Task Completion Date * planned Task Completion * the order and timing of the operations which the *Consultant* plans to do to complete the Task * the dates when, in order to Provide the Service in accordance with the Task programme, the *Consultant* will need information from Others | |
|  | 19.3 |  | The *Consultant* submits a quotation for a Task within two weeks of being instructed to do so by the *Service Manager*. The *Consultant* submits details of its assessment with the quotation. The *Service Manager* replies within two weeks of the submission. The reply is:   * acceptance of the quotation and the issue of the Task Order, * an instruction to submit a revised quotation, * that the *Service Manager* will be making the assessment or * a notification that the Task will not be instructed.   The time periods specified in this clause may be made shorter or longer in respect of specific Tasks by agreement between the Parties. | |
|  | 19.4 |  | The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within two weeks of being instructed to do so.  The *Client* may require that additional Key Performance Indicators apply to the Task Order in accordance with clause X20.6. | |
|  | 19.5 |  | The *Service Manager* extends the time allowed for   * the *Consultant* to submit quotations for a Task or * the *Service Manager* to reply to a quotation   if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed. | |
|  | 19.6 |  | The *Service Manager* assesses the pricing for the Task if   * the *Consultant* has not submitted a quotation and details of its assessment within the time allowed or * the *Service Manager* decides that the *Consultant* has not assessed the Task correctly in a quotation and has not instructed the *Consultant* to submit a revised quotation.   The *Service Manager* notifies the *Consultant* of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the *Consultant's* submission of its quotation for the same Task. This period starts when the need for the *Service Manager's* assessment becomes apparent. | |
|  | 19.7 |  | The assessment of a Task is priced using the rates in the applicable Rate Card.  If a Task is to be performed by a Subcontractor the *Consultant* uses reasonable endeavours to assess the Subcontractor's costs using the rates in the Rate Cards. Where this cannot be agreed, the *Consultant* notifies the *Service Manager* and proposes additional rates against which the relevant Task should be assessed together with an explanation for the necessity of such rates. The *Service Manager* and the *Consultant* act reasonably to agree any additional rates which apply only to assessment of the relevant Task performed by the Subcontractor provided that the *Consultant* has reasonably demonstrated why the bespoke rates are required. | |
|  | 19.8 |  | When a Task Order is issued   * the relevant Lump Sum Service Prices, the Target Cost Service Prices or the Reimbursable Service Prices (as applicable) is included in the Prices * the work involved is added to the Scope and * the Task programme is included in the Accepted Programme.   The issue of a Task is not a compensation event. | |
|  | 19.9 |  | Notwithstanding any other provision of the contract, the *Consultant* acknowledges and agrees that the Client may, at any time by way of a written instruction to the Consultant, remove or omit all or part of the *service* at any time and for any reason as follows:   * immediately in respect of the *service* in connection with a Task that the Consultant has not commenced * by providing one months' notice in respect of the *service* in connection with a Task that the Consultant has commenced or * by providing three months' notice in respect of any Core Team Services provided by the Core Team that is not a Task.   The total of the Prices is reduced to reflect such removal or omission, calculated by reference to the *Client*'s determination of the value attributable to such omitted part(s) (acting reasonably) or by such other sum as otherwise agreed between the Parties  The *Client* has no liability whatsoever to the *Consultant* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), which shall not give rise to any entitlement for the *Consultant* to claim for Indirect Loss or for any other amount under the contract. The *Consultant* is not entitled to any adjustment to the Completion Date or a Task Completion Date arising out of or in connection with any instruction(s) issued by the *Client* pursuant to this clause 19.9,  Nothing in this clause 19.9 affects the entitlement of the *Consultant* to be paid for any services and/or works properly performed in accordance with the contract prior to the date of such reduction or omission. | |

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| **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 Good Industry Practice. |
| 20.3 |  | The Consultant is not liable for a Defect unless it failed to carry out the service using Good Industry Practice. |
| 20 20.5 |  | The Consultant prepares forecasts of the total Defined Cost and expenses for the whole of the service in consultation with the Service Manager and submits them to the Service Manager as part of the forecast of the Indicative Project Cost submitted in the Service Plan in accordance with article 3.2 of the Agreement. |
| 20.6 |  | These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all services performed by the Consultant both before and after the Contract Date. |
| 20.7 |  | If in the performance of its duties under the contract, the *Consultant* becomes aware that any person has specified, approved or used any Prohibited Materials, the *Consultant* immediately notifies the *Client* of the same. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the contract. |
| 20.8 |  | Throughout the duration of the Project the *Consultant* assesses whether the quality, programme or efficiency of the *service* and/or the Project as a whole could be improved. If the *Consultant* identifies any potential methods of achieving any such improvements it notifies the *Service Manager* and/or the *Client* and submits its proposals for how the proposed improvements could be implemented in the Project. The *Consultant* does not propose any potential improvement initiatives if they may jeopardise the health and safety of the Project or the completed Project. |
| 20.9 |  | Without prejudice to clause 20.1, the Consultant Provides the Service in accordance with the Export Controls and Security Schedule set out in Section [] of the Scope. |
| 20.10 |  | Without prejudice to clause 20.2, in carrying out *service* related to assurance exercises the *Consultant* has due regard to the relevant good industry, engineering and other practices, methods, equipment and procedures reasonably expected to be employed by the Contractor when undertaking engineering, design, procurement, construction, commissioning, operation and maintenance activities in the nuclear power industry in the United Kingdom (including, without limitation, those practices, methods, equipment and procedures set out in guidance published by the ONR from time to time) |
| People | 21 21.1 |  | The Consultant either provides each Core Team member, Non-Core Team Employee, or Subcontractor named to do the job stated in the Service Plan or relevant Task Order or provides a replacement person who has been accepted by the Service Manager, and in accordance with clause Z3 in respect of replacement Core Team members. If the *Consultant* is required to provide a replacement person, it does so as soon as reasonably practicable to avoid disruption to the provision of the *service*. |
| 21.2 |  | The *Consultant* Provides the Service in the most efficient manner possible and assesses throughout the duration of the Project the personnel and other resources that it may require to achieve this provided always that it Provides the Service in accordance with Good Industry Practice and the terms of the contract. |
| 21.3 |  | The Consultant ensures that it engages the required personnel and resources specified in the Schedule of Cost Components and that all personnel engaged to Provide the Service and in particular the Core Team, devotes such time, resource and expertise to the carrying out of the *service* and the *Consultant's* other obligations under the contract as is stated in the Schedule of Cost Components or if not specified, resource and expertise as is appropriate and commensurate with performance of the Consultant's obligations hereunder. The Consultant does not omit or change any such personnel or resource or reduce or increase their time or expertise commitment to the *service* or the contract without the *Service Manager's* prior written consent and in accordance with clause Z3 where applicable, save where the person leaves the employment of the *Consultant*, the *Service Manager* instruct the *Consultant* to do so, the person is unable to continue to act in connection with the contract or the person is removed for reasons which the *Service Manager* considers to be outside of the *Consultant's* reasonable control.  The Consultant confirms to the *Service Manager* on request:  • the persons full time allocated to the *service*;  • those allocated partially to the *service* and to other contracts and what element of time is allocated to the contract;  • how time allocation alters over key stages of the *service*; and  • numbers of Site based and off-Site personnel.  The Consultant warrants that all such disclosures are true, complete and made in good faith. |
| 21.4 |  | Subject to any Task Orders issued in accordance with clause 19 and provided that it has the necessary expertise, the Core Team performs all of the *service* and the *Consultant's* other obligations under the contact. |
| 21.5 |  | Subject to clause 21.6, if the *Client* is not satisfied for any reason with people who are employed directly or indirectly by the Consultant to undertake any part of the *service*, including but not limited to a member of the Core Team or a Subcontractor, it notifies the *Consultant* and provides feedback and recommendations to the *Consultant* to address any issues identified. The *Consultant* works with the relevant person to address the issues notified by the *Client* and/or provides any feedback to the *Client* in respect of the notified issues. If the Parties do not reach an agreement within a reasonable time, the matter is referred to *Senior Representatives* of the Parties to consider. Following the conclusion of the meeting of the *Senior Representatives* the *Client* is entitled to instruct the *Consultant* to stop the relevant person from working on the Project and performing the *service*. Any such instruction by the *Client* under this clause 21.5 is not a compensation event.If the *Client* instructs the *Consultant* to remove a Core Team member the *Consultant* provides a Core Team transfer plan in accordance with clause Z3. |
| 21.6 |  | Notwithstanding clause 21.5, if the people who are employed directly or indirectly by the Consultant to undertake any part of the *service*, including but not limited to a member of the Core Team or a Subcontractor, breach or are alleged to have breached the Supplier Code of Conduct then the *Client* is entitled to instruct the *Consultant* to stop the relevant person from working on the Project and performing the *service* immediately. Any such instruction by the *Client* under this clause 21.6 is not a compensation event unless and until the *Consultant* provides evidence to the reasonable satisfaction of the *Client* within 5 Business Days of the instruction that the allegations are unsubstantiated beyond all reasonable doubt and/or were made vexatiously. |
| 21.7 |  | If the *Client* instructs the *Consultant* to stop any employees or Subcontractors from working on the Project under clauses 21.5 or 21.6, the *Consultant* arranges as soon as reasonably practicable and in accordance with the terms of the contract for a replacement of any such persons that has an equivalent or a greater level of experience. |
| 21.8 |  | The *Consultant* provides details and information relating to any Non-Core Team Employees as may reasonably be requested by the *Service Manager*. |
| 21.9 |  | Where the *Consultant* considers, acting reasonably, that the Rate Card does not include a rate applicable in respect of *service* to be performed by a Specialist, it may include in the Service Plan or as part of a Task quotation under clause 19.1 a proposal for a Bespoke Specialist Rate. The *Consultant* provides such information and documentation as is necessary to detail why the existing rates in the Rate Card cannot apply to the *service*. The *Client* in its sole discretion may agree in writing that a Bespoke Specialist Rate applies in respect of the relevant *services* performed by such Specialist. If the *Client* does not provide such approval, the Specialist Rates apply. |
| Working with the **Client** and Others | 22 22.1 |  | The Consultant co-operates with Others, including in obtaining and providing information which they need in connection with the service. The *Consultant* co-operates with Others and co-ordinates its activities with them in accordance with the Scope. |
| 22.2 |  | Where necessary to Provide the Service, the Consultant holds or attends meetings with Others. The Consultant informs the Service Manager of these meetings beforehand and the Service Manager may attend them. |
| 22.3 |  | If the Service Manager decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the Client incurs additional cost either   * in carrying out work or * by paying an additional amount to Others in carrying out work   on the same project, the additional cost the Client has paid or will incur is paid by the Consultant. The Service Manager assesses the additional cost within four weeks of the date when the Condition stated for the Key Date is met. The Client’s right to recover the additional cost is its only right in these circumstances. |
| Subcontracting | 23 23.1 |  | If the Consultant subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. The contract applies as if a Subcontractor’s employees were the Consultant’s. |
| 23.2 |  | The *Consultant* acknowledges that it should only seek to subcontract any part of the *service* if it requires the expertise of a Subcontractor to Provide the Service in accordance with the terms of the contract. If the *Consultant* considers that any element of the *service* should be subcontracted, it notifies the *Service Manager* as soon as reasonably practicable.  Subject to clause 23.8, the Consultant submits the name of each proposed Subcontractor to the Service Manager for acceptance. The Consultant does not appoint a proposed Subcontractor until the Service Manager has   * accepted the Subcontractor * instructed a Task in relation to the *service* to be performed by the Subcontractor and, to the extent these conditions of contract require, * accepted the subcontract documents. |
| 23.3 |  | Subject to clause 23.8, the Consultant submits the proposed subcontract documents, except any pricing information, for each subcontract by inclusion in the Task Order quotation pursuant to clause 19 to the Service Manager for acceptance unless   * the proposed subcontract is an NEC contract which has not been amended other than in accordance with the additional conditions of contract or * the Service Manager has agreed that no submission is required. |
| 23 23.4 |  | Subject to clause 23.8, the Consultant submits the pricing information in the proposed subcontract documents for each subcontract to the Service Manager unless the Service Manager has agreed that no submission is required. The pricing information includes any proposed Bespoke Specialist Rate only where the Rate Card is not applicable to the proposed *service*. |
|  | 23.5 |  | A reason for not accepting a proposed Subcontract or Subcontractor is that:   * the *Service Manager* is not satisfied, acting reasonably, that the proposed Subcontractor is suitable and capable of performing the subcontracted scope in accordance with the requirements of the contract based on the information provided pursuant to paragraphs [] (as applicable) of Section [] of the Scope (Supply Chain and Subcontracting), * the requirements in paragraph [] of Section [] of the Scope have not been complied with, subject to any deviations approved by the *Client*, * the proposed form of Subcontract does not include the mandatory flow down provisions referred to in paragraph [] in Section [] in the Scope, subject to any deviations approved by the *Client*, * the *Consultant* has not provided all of the required information in relation to the proposed Subcontract and proposed Subcontractor referred to in paragraph [] in Section [] in the Scope (Supply Chain and Subcontracting), * the proposed Subcontract terms do not include provisions satisfactory to the *Service Manager* for open book costs determinations and reasonable breakage costs in the event of termination, * the *Service Manager* is not satisfied that there is sufficient security and adequate step in provisions in the proposed Subcontract terms, * the proposed Subcontractor is an Affiliate of the *Consultant*, and is not procured and contracted on arm’s length terms, * the Subcontractor owns any part of the Contractor, is part of the Contractor's group of companies, or has any other form of material interest in the Contractor, * if the Subcontractor provides services or works of any kind under a subcontract agreement or otherwise in respect of the TP Contract and the *Client* at its sole discretion determines that there is a risk of conflicts of interest, * the proposed terms of payment are not compliant with the Prompt Payment Code (established in 2008 and administered by the Office of the Small Business Commissioner), * the Subcontractor will not be paid reasonable rates for the works and services it provides, * the proposed Bespoke Specialist Rate is not reasonable or in-line with current industry practice; * it includes a requirement to achieve any key performance indicator targets included in the Subcontract, * it will not allow the *Consultant* to Provide the Service, * if the proposed Subcontractor has a design responsibility, the proposed Subcontract terms do not require the Subcontractor to maintain appropriate professional indemnity or product liability insurance, or * the proposed Subcontract terms do not require the relevant Subcontractor to provide a collateral warranty to the *Client* in the form set out in Part 3 of Schedule 6 to the Agreement. |
|  | 23.6 |  | The *Consultant* provides the *Client* with:   * an original copy of a collateral warranty in favour of the *Client*, duly executed by the *Consultant* and each Subcontractor in the form set out in Part 3 of Schedule 6 to the Agreement, within fifteen Business Days of the date of the Subcontract being entered into; and * a certified copy of the relevant Subcontract within fifteen Business Days of the Subcontractor entering into the Subcontract with the *Consultant.* |
|  | 23.7 |  | If the *Consultant* or any Affiliate of the *Consultant* has a controlling influence (whether by way of direct or indirect shareholding or contractual rights) over any proposed Subcontractor, the *Consultant* notifies the *Service Manager* and any appointment of such Subcontractor is subject to the *Client's* consent, which consent is not unreasonably withheld. |
|  | 23.8 |  | If a Subcontract is included in the approved Service Plan, the *Consultant* is entitled to subcontract the relevant *service* to the approved Subcontractor and the provisions of clauses 23.2 – 23.4 do not apply. |
|  | 23.9 |  | The *Consultant* includes in each Subcontract (and procures that each subcontract with a sub-subcontractor includes):   * payment terms that comply with the Procurement Act; and * notification obligations equivalent to those concerning Supplier Exclusion Notifications as set out in clause ‎Z17. |
|  | 23.10 |  | The *Client* may verify whether any Subcontractor is an Excluded Supplier or Excludable Supplier and the *Consultant* promptly provides any information requested by the *Client* with regard to such verification. The *Client* may require the *Consultant* to replace any Subcontractor (or procure the replacement of any sub-subcontractor) that is or becomes an Excluded Supplier or Excludable Supplier. |
|  | 23.11 |  | The *Consultant* promptly notifies the *Client* of any circumstances that may entitle the *Client* to require the *Consultant* to replace a Subcontractor (or procure the replacement of a sub-subcontractor), pursuant to clause 23.10. |
|  | 23.12 |  | The *Client* is not liable for any Losses and no compensation event arises in respect of any termination of a sub-subcontractor, pursuant to clause 23.10. |
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| Other responsibilities | 24 24.1 |  | The Consultant obtains approval from Others where necessary. |
| 24.2 |  | The Consultant obeys an instruction which is in accordance with the contract and is given by the Service Manager. |
| 24.3 |  | The Consultant acts in accordance with the health and safety requirements stated in the Scope. |
| 24.4 |  | 24.4.1 The Consultant performs all the duties of a "designer" as required by the CDM Regulations in relation to the *service*.  24.4.2 The Consultant hereby warrants that at the date hereof it has and for the duration of the *service* it shall continue to have the skills, knowledge, experience and organisational capability necessary to fulfil the role of designer (as defined in the CDM Regulations) in a manner that secures the health and safety of any person affected by the Project.  24.4.3 The *Consultant* warrants and undertakes to the *Client* as a condition of the contract that as at the Contract Date, none of the *Consultant*, the *Consultant's* Associated Persons or any Subcontractor is an Excluded Supplier or Excludable Supplier (including in each case by reference to their Connected Persons). |
| Assignment | 25 25.1 |  | Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The Client does not transfer a benefit or any rights if the party receiving the benefit or right does not intend to act in a spirit of mutual trust and co-operation. |
| 25.2 |  | The Consultant does not assign, charge, novate or otherwise transfer any right or obligation under the contract to any third party. A charge in favour of the Consultant's bankers of any monies due under the contract, or the subrogation to insurers of the Consultant's rights is not considered an assignment. |
| 25.3 |  | The *Client* is, upon notice in writing to the Consultant, entitled to assign, charge, novate or otherwise transfer the whole or any part of its rights and obligations under the contract to any third party, provided that at the time of such assignment, charge or transfer, such party is not a Restricted Entity and in the case of a transfer of the *Client's* obligations, such party has sufficient financial resources to perform the *Client's* obligations under the contract. |
| Disclosure | 26 26.1 |  | The Parties keep confidential all Confidential Information received by one Party from the other Party relating to the contract or the Project and use best endeavours to prevent their employees and agents from making disclosure to any person of such Confidential Information, provided always that disclosure of information is permitted in relation to:  • any disclosure of information that is reasonably required to or by any person engaged in the performance of either Party's obligations under the contract for the performance of those obligations (R1)  • any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 26 (R2)  • any disclosure required by any Statutory Requirements or applicable law or any regulated stock exchange or other competent regulatory authority (R3)  • any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party (R4)  • any provision of information to a Party's own professional advisers or insurance advisers (R5)  • any provision of information by the *Client* to any third party that is reasonably necessary for the operation, maintenance, reinstatement, refurbishment, repair, expansion, upgrade, sale, financing, re-financing and decommissioning of the Project or any part thereof (R6)  • any provision of information by the *Client* to any third party that is reasonably necessary for the performance of the *service*, if the *Client* terminates the *Consultant's* obligation to Provide the Service (R7) or  • any disclosure to enable a determination to be made under the dispute resolution clause W2 or in connection with a dispute between the *Client* and any of its other consultants or contractors appointed in relation to the Project (R8)  and provided further that, in the case of paragraphs R1, R5, R6 and R8 of this clause 26.1, the disclosing Party ensures that the recipient provides an undertaking of strict confidentiality in relation to the disclosed information on terms no less onerous than the provisions of this clause 26.1. |
| 26.2 |  | The Consultant does not publish, permit to be published, or disclose any particulars of the *service* or the Project in any trade or technical paper or elsewhere without the *Client’s* prior consent, which it may withhold in its absolute discretion. |
|  | 26.3 |  | If the *Consultant's* obligation to Provide the Service is terminated (for any reason) the Consultant returns to the *Client* as soon as reasonably possible all of the *Client's* Confidential Information then within its possession or control or destroys such Confidential Information using a secure and confidential method of destruction and provides to the *Client* sufficient evidence of such destruction, save that the Consultant retains one copy of the Confidential Information if required to do so by law. |
|  | 26.4 |  | Without prejudice to the provisions of clause 26, the Consultant discloses to the *Client* and the *Service Manager* all such confidential and other information as the *Service Manager* may reasonably require in order to verify the Consultant's compliance with the contract. |
|  | 26.5 |  | The provisions of this clause 26 survive termination of the contract or the Consultant's employment under the contract. |

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| **3. TIME** |

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| Starting, Completion and Key Dates | 30 30.1 |  | The Consultant does not start work until the starting date and thereafter proceeds regularly and diligently with the *service* and uses its reasonable endeavours to prevent and/or reduce any delay in the progress of the work so that Completion is on or before the Completion Date.  The *Consultant* does not start work included in a Task until the *Service Manager* has issued the Task Order and does the work so that the Task Completion is on or before the Task Completion Date. |
| 30.2 |  | The Consultant notifies the *Service Manager* when in its opinion the *service* will have been completed or a Condition satisfied in accordance with the contract.  The Consultant provides all information and evidence listed or identified in the Scope as being required to demonstrate that the *service* have been so completed or the Condition has been so satisfied. If the *Service Manager* is satisfied that the *service* have been so completed or that the Condition has been so satisfied, it decides the date of Completion or satisfaction. The *Service Manager* certifies Completion or satisfaction within one week of Completion or satisfaction, as the case may be. If the *Service Manager* is not so satisfied, it notifies the Consultant of its reasons for not accepting that the *service* have been completed or the condition satisfied and the Consultant notifies the *service Manager* when the necessary corrective action has been taken. |
| 30.3 |  | The Consultant does the work so that the Condition stated for each Key Date is met by the Key Date. |
| The programme | 31 31.1 |  | If a programme is not identified in the Contract Data, the Consultant submits a first programme to the Service Manager for acceptance within the period stated in the Contract Data. |
| 31.2 |  | The Consultant shows on each programme submitted for acceptance   * the starting date, access dates, Key Dates, Completion Date and the Task Completion Dates, * planned Completion, * the order and timing of the operations which the Consultant plans to do in order to Provide the Service, * the order and timing of the work of the Client and Others as last agreed with them by the Consultant in accordance with Section [] of the Scope, * the dates when the Consultant plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the Client and Others to do their work, * provisions for * float, * time risk allowances, * health and safety requirements and * the procedures set out in the contract, * the dates when, in order to Provide the Service in accordance with the programme, the Consultant will need * access to a person, place or thing if later than its access date, * information and things to be provided by the Client and * information and approval from Others, * for each operation, a statement of how the Consultant plans to do the work identifying the resources which will be used and * other information which the Scope requires the Consultant to show on a programme submitted for acceptance.   A programme issued for acceptance is in the form stated in the Scope. |
| 31.3 |  | Within two weeks of the Consultant submitting a programme for acceptance, the Service Manager notifies the Consultant of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that   * the Consultant’s plans which it shows are not practicable, * it does not show the information which the contract requires, |
|  |  |  | * it does not represent the Consultant’s plans realistically or * it does not comply with the Scope. |
| If the Service Manager does not notify acceptance or non-acceptance within the time allowed, the Consultant may notify the Service Manager of that failure. If the failure continues for a further one week after the Consultant’s notification, it is treated as acceptance by the Service Manager of the programme. |
|  | 31.4 |  | The Consultant provides information in the Monthly Report which shows how each activity on the Activity Schedule relates to the operations on each programme submitted for acceptance. |
| Revising the programme | 32 32.1 |  | The Consultant shows on each revised programme   * the actual progress achieved on each operation and its effect upon the timing of the remaining work, * how the Consultant plans to deal with any delays and to correct notified Defects and * any other changes which the Consultant proposes to make to the Accepted Programme. |
| 32.2 |  | The Consultant submits a revised programme to the Service Manager for acceptance   * within the period for reply after the Service Manager has instructed the Consultant to, * when the Consultant chooses to and, in any case, * as part of each Monthly Report. |
| Access to people, places and things | 33 33.1 |  | The Client provides access to a person, place or thing to the Consultant as stated in the Contract Data on or before the later of its access date and the date for access shown on the Accepted Programme.  If access and use of the Site is given to the *Consultant* it is subject to and in accordance with any Disclosed Adverse Rights and the provisions of any Site access protocol included within the Scope.  The *Client* does not guarantee uninterrupted or exclusive access to or use of the Site or any part of it and access is limited in accordance with the contract. |
| 33.2 |  | The Client provides information and things which the contract requires the Client to provide in accordance with the Accepted Programme. |
| Instructions to stop or not to start work | 34 34.1 |  | The Service Manager may instruct the Consultant to stop or not to start any work. The Service Manager subsequently gives an instruction to the Consultant (to which clause 60.1(4) applies) to   * re-start or start the work or * remove the work from the Scope. |
| Acceleration | 35 35.1 |  | The Consultant and the Service Manager may propose to the other an acceleration to achieve Completion before the Completion Date or Task Completion before a Task Completion Date. If the Service Manager and Consultant are prepared to consider the proposed change, the Service Manager instructs the Consultant to provide a quotation. The instruction states changes to the Key Dates to be included in the quotation. The Consultant provides a quotation within four weeks of the instruction to do so. The Service Manager replies to the quotation within four weeks. The reply is   * a notification that the quotation is accepted or * a notification that the quotation is not accepted and that the Completion Dates, Key Dates and/or Task Completion Dates are not changed. |
| 35.2 |  | A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates and Task Completion Dates. The Consultant submits details of the assessment with each quotation. |
| 35.3 |  | When a quotation for an acceleration is accepted, the Service Manager changes the Prices, the Completion Date and the Key Dates and Task Completion Dates as relevant accordingly and accepts the revised programme. |

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| **4. QUALITY MANAGEMENT** |

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| Quality management system | 40 40.1 |  | The Consultant operates a quality management system which complies with the requirements stated in the Scope. |
| 40.2 |  | Within the period stated in the Contract Data, the Consultant provides the Service Manager with a quality policy statement and a Quality Assurance Plan for acceptance. A reason for not accepting a quality policy statement or Quality Assurance Plan is that it does not allow the Consultant to Provide the Service.  If any changes are made to the Quality Assurance Plan, the Consultant provides the Service Manager with the changed Quality Assurance Plan for acceptance. |
| 40.3 |  | The Service Manager may instruct the Consultant to correct a failure to comply with the Quality Assurance Plan. This instruction is not a compensation event. |
|  | 40.4 |  | The *Consultant* provides access to its Quality Assurance Plan, quality policy statement and any other quality system documentation for review, inspection, and audit by the *Client,* the *Service Manager*, and authorised Others including statutory authorities and UK Regulators. |
|  | 40.5 |  | Any intervention in the performance of the *service* caused by an audit carried out pursuant to clause 40.4 does not relieve the *Consultant* of its obligations under the contract. |
| Correcting Defects | 41 41.1 |  | Until the defects date the Service Manager and the Consultant notifies the other as soon they becomes aware of a Defect. At Completion the Consultant notifies the Service Manager of the Defects which have not been corrected. The Client’s rights in respect of a Defect which the Service Manager has not found or notified by the defects date are not affected. |
| 41.2 |  | The Consultant corrects a Defect whether or not the Service Manager has notified it. The Consultant corrects Defects within a time which minimises the adverse effect on the Client or Others. If the Consultant does not correct a notified Defect within the time required by the contract, the Service Manager assesses the cost to the Client of having the Defect corrected by other people and the Consultant pays this amount. The Scope is treated as having been changed to accept the Defect. |
| Accepting Defects | 42 42.1 |  | The Consultant and the Service Manager may propose to the other that the Scope should be changed so that a Defect does not have to be corrected. |
| 42.2 |  | If the Consultant and the Service Manager are prepared to consider the change, the Consultant submits a quotation for reduced Prices or an earlier Completion Date and/or Task Completion Date the or both to the Service Manager for acceptance. If the quotation is accepted, the Service Manager changes the Scope, the Prices and the Completion Date and/or the Task Completion Date accordingly and accepts the revised programme. |

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| **5. PAYMENT** |

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| Assessing the amount due | 50 50.1 |  | The Service Manager assesses the amount due at each assessment date. The first assessment date is decided by the Service Manager to suit the procedures of the Parties and is not later than the assessment interval after the starting date. Later assessment dates occur at the end of each assessment interval until   * four weeks after the defects date or * the Service Manager issues a termination certificate. |
| 50.2 |  | The Consultant submits an application for payment to the Service Manager before each assessment date setting out the amount the Consultant considers is due at the assessment date. The Consultant’s application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.  In assessing the amount due, the Service Manager considers an application for payment submitted by the Consultant before the assessment date. |
| 50.3 |  | If the Consultant submits an application for payment before the assessment date, the amount due at the assessment date is   * the Price for Service Provided to Date, * plus, where payable in accordance with article 5 of the Agreement, the Long-Term Behaviour Incentive, * plus the amount of the expenses properly spent by the Consultant in Providing the Service, * plus other amounts to be paid to the Consultant, * less amounts to be paid by or retained from the Consultant, including without limitation any deduction of the At Risk Fee in accordance with article 4 of the Agreement. |
| 50.4 |  | If the Consultant does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of   * the amount the Service Manager assesses as due at the assessment date, assessed as though the Consultant had submitted an application before the assessment date, and * the amount due at the previous assessment date. |
| 50.5 |  | If no programme is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the Consultant has submitted a first programme to the Service Manager for acceptance showing the information which the contract requires.  If any revised programme is not submitted by the *Consultant* to the *Service Manager* for acceptance showing the information which the contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the *Consultant* until such revised programme has been submitted to the *Service Manager* for acceptance. |
| 50.6 |  | The Service Manager corrects any incorrectly assessed amount due in a later payment certificate. |
| 50 50.8 |  | Payments of Defined Cost made by the Consultant in a currency other than the currency of the contract are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the currency of the contract in order to calculate the At Risk Fee, and in respect of any Target Cost Service any *Consultant's* share, using the exchange rates. |
| 50.9 |  | The Consultant notifies the Service Manager when the Defined Cost for a part of the service has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The Service Manager reviews the records made available, and no later than thirteen weeks after the Consultant’s notification   * accepts that part of Defined Cost as correct, * notifies the Consultant that further records are needed or * notifies the Consultant of errors in its assessment.   The Consultant provides any further records requested or advises the correction of the errors in its assessment within four weeks of the Service Manager’s notification. The Service Manager reviews the records provided, and within four weeks   * accepts that part of Defined Cost as correct or * notifies the Consultant of the correct assessment of that part of Defined Cost.   If the Service Manager does not notify a decision on that part of Defined Cost within the time stated, the Consultant’s assessment is treated as correct. |
|  | 50.10 |  | If the *Consultant* fails to deliver any parent company guarantee required in accordance with the contract, the *Client* may retain any payment or further payment, as the case may be, which would otherwise be due to the *Consultant* under the contract until such time as any parent company guarantee has been so delivered.  If the *Consultant* fails to deliver any collateral warranty in accordance with the contract, the *Client* may retain any payment or further payment, as the case may be, which would otherwise be due to the *Consultant* under the contract, on account of sums paid or payable to the Subcontractor which has failed to deliver the collateral warranty, until such time as such collateral warranty has been so delivered. |
| Payment | 51 51.1 |  | The Service Manager certifies a payment within ten Business Days of the later of the relevant assessment date or receipt of the *Consultant's* application for payment submitted in accordance with clause 50.2. The Service Manager’s certificate includes details of how the amount due has been assessed. 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 change reduces the amount due. Other payments are made by the Client to the Consultant. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the Service Manager’s certificate. Payments are in the currency of the contract unless otherwise stated in the contract. Not later than [5] Business Days after receipt of the payment certificate the *Consultant* delivers to the *Client* (copied to the *Service Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached.  If any VAT invoice delivered by the *Consultant* under the contract is an electronic invoice, the *Client* accepts and processes the electronic invoice submitted by the *Consultant* where the invoice is undisputed and where it is in the Required Electronic Form. |
| 51.2 |  | Each certified payment is made on or before the final date for payment specified in clause Y2.2. |
|  |  |  | If a certified payment is late, or if a payment is late because the Service Manager has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. |
| 51.3 |  | If an amount due is corrected in a later certificate   * in relation to a mistake or a compensation event or * following a decision of the Adjudicator or the tribunal,   interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount. |
| 51.4 |  | Interest is calculated on a daily basis at the interest rate and is compounded annually. |
| 51.5 |  | Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract. |
|  | 51.6 |  | Where the *Consultant* is a Joint Venture, a payment made to any one party comprising the *Consultant* discharges the *Client’s* liability with respect to such payment to all parties comprising the *Consultant.* |
| Defined Cost | 52 52.1 |  | All the Consultant’s costs are treated as included in the Rate Cards. Defined Cost includes only amounts 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. |
| 52.3 |  | The Consultant keeps these records   * accounts of payments of Defined Cost and expenses, * proof that the payments have been made, * communications about and assessments of compensation events for Subcontractors and * other records as stated in the Scope. |
| 52.4 |  | The Consultant allows the Service Manager to inspect at any time within working hours the accounts and records which it is required to keep. |
| Final assessment | 53 53.1 |  | The Service Manager makes an assessment of the final amount due and certifies a final payment, if any is due, no later than   * four weeks after the later of the defects date and the date the last Defect is corrected or * twenty-six weeks after the Service Manager issues a termination certificate.   The Service Manager gives the Consultant details of how the amount due has been assessed. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the Service Manager’s certificate. The final payment is made by the later of   * one week after the paying Party receives an invoice from the other Party and * three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. |
| 53.2 |  | If the Service Manager does not make this assessment within the time allowed, the Consultant may issue to the Client an assessment of the final amount due, giving details of how the final amount due has been assessed. If the Client agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final payment is made by the later of   * one week after the paying Party receives an invoice from the other Party and * three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. |
| 53.3 |  | An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.   * refers a dispute about the assessment of the final amount due to the Senior Representatives or to the Adjudicator within four weeks of the assessment being issued, * refers any issues referred to but not agreed by the Senior Representatives to the Adjudicator within three weeks of the list of issues not agreed being produced or when it should have been produced and * refers to the tribunal its dissatisfaction with a decision of the Adjudicator as to the final assessment of the amount due within four weeks of the decision being made. |
|  | 53.4 |  | The assessment of the final amount due is changed to include   * any agreement the Parties reach and * a decision of the Adjudicator which has not been referred to the tribunal within four weeks of that decision.   A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract. |
| **The *Consultant's* share** | 54 54.1 |  | In respect of each Target Cost Service Task: |
|  | 54.1 |  | the *Service Manager* assess the *Consultant's* share of the difference between the total of the Target Cost Service Prices and the Price for Service Provided to Date for each Target Cost Service Task. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Service Provided to Date divided by the total of the Target Cost Service Prices, in each case in respect of the relevant Target Cost Service Task, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each *share range* and the corresponding *Consultant's* *share percentage*. |
|  | 54.2 |  | If the Price for Service Provided to Date for a Target Cost Service Task is less than the total of the Target Cost Service Prices for that Task, the *Consultant* is paid its share of the saving. If the Price for Service Provided to Date for a Target Cost Service Task is greater than the total of the Target Cost Service Prices for that Task, the *Consultant* pays its share of the excess. |
|  | 54.3 |  | The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Task Completion of the whole of the *service* under a Target Cost Service Task using forecasts of the Price for Service Provided to Date and the final total of the Target Cost Service Prices in each case in respect of the relevant Target Cost Service Task. This share is included in the amount due following Task Completion of the whole of the *service* under the relevant Task Order. |
|  | 54.4 |  | The *Service Manager* makes a final assessment of the *Consultant's* share using the final Price for Service Provided to Date and the final total of the Target Cost Service Prices in each case in respect of the relevant Target Cost Service Task. This share is included in the amount due at the assessment date following the *Service Manager's* assessment. |
| **The Activity Schedule** | 55 55.1 |  | Information in the Activity Schedule is not Scope. If the activities on the Activity Schedule do not relate to the Scope, the Consultant corrects the Activity Schedule. |
|  | 55.2 |  | If the Consultant   * changes a planned method of completing the service at its discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme or * corrects the Activity Schedule so that the activities on the Activity Schedule relate to the Scope   the Consultant submits a revision of the Activity Schedule to the Service Manager for acceptance. |
|  | 55.3 |  | A reason for not accepting a revision of the Activity Schedule is that   * it does not relate to the operations on the Accepted Programme, * any changed Lump Sum Service Prices are not reasonably distributed between the activities which are not completed or * the total of the Lump Sum Service Prices is changed. |
| **Set Off** | **56** 56.1 |  | In addition to any other rights of the *Client* whether at law or equity under the contract, whenever under the contract or any other contract between the *Client* and the Consultant any sum of money is recoverable from or payable by the Consultant the same may, subject to service of a pay less notice in accordance with clause Y2.3, be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the Consultant under the contract. |

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| **6. COMPENSATION EVENTS** |

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| Compensation events | 60 60.1 |  | The following events are compensation events.   1. The Service Manager gives an instruction changing the Scope except  * a change made as a result of a Defect or * a change to the Scope provided by the Consultant which is made * at the Consultant’s request or * in order to comply with the Scope provided by the Client.  1. The Client does not allow access to a person, place or thing in accordance with and to the extent required by clause 33.1 by the later of its access date and the date for access shown on the Accepted Programme. 2. The Client does not provide something which it is to provide by the date shown on the Accepted Programme. 3. The Service Manager gives an instruction under clause 34 to stop or not to start any work, or to change a Key Date. 4. The Client or Others do not work within the times shown on the Accepted Programme or the conditions stated in the Scope [[5]](#footnote-6). 5. The Service Manager does not reply to a communication from the Consultant within the period required by the contract. 6. The Service Manager changes a decision which the Service Manager had previously communicated to the Consultant. 7. The Service Manager withholds an acceptance (other than acceptance of a quotation for acceleration or of not correcting a Defect) for a reason not stated in the contract. 8. An event which is a Client’s liability stated in these conditions of contract unless and to the extent caused by a Force Majeure Event*.* 9. The Service Manager notifies the Consultant of a correction to an assumption which the Service Manager stated about a compensation event. 10. A breach of contract by the Client which is not one of the other compensation events in the contract or an act of prevention by the *Client* which does not arise as a consequence of the *Client's* exercise of its rights and/or the discharge of its obligations under and in accordance with the contract. 11. A Force Majeure Event. 12. The Consultant corrects a Defect for which it is not liable under the contract. 13. The Service Manager gives an instruction correcting information provided by the Client. 14. The Service Manager notifies the Consultant that a quotation for a proposed instruction is not accepted. 15. The *Consultant* receives a Task Order after the starting date stated in the Task Order. 16. Additional compensation events stated in Contract Data part one. |
| Notifying compensation events | 61 61.1 |  | For a compensation event which arises from the Service Manager giving an instruction or notification or changing an earlier decision the Service Manager notifies the Consultant of the compensation event at the time of that communication. |
| 61.2 |  | The Service Manager includes in the notification of a compensation event an instruction to the Consultant to submit quotations unless   * the event arises from a fault of the Consultant or * the event has no effect upon Defined Cost, Completion or meeting a Key Date. |
| 61.3 |  | The Consultant notifies the Service Manager of an event which has happened or which is expected to happen as a compensation event if   * the Consultant believes that the event is a compensation event and * the Service Manager has not notified the event to the Consultant.   If the Consultant does not notify a compensation event within eight weeks of becoming aware or the date on which it ought reasonably to have become so aware that the event has happened the Prices, the Completion Date, a Key Date or a Task Completion Date are not changed unless the event arises from the Service Manager giving an instruction or notification or changing an earlier decision. |
| 61.4 |  | The Service Manager replies to the Consultant’s notification of a compensation event within   * ten Business Days after the Consultant’s notification or * a longer period to which the Consultant has agreed.   If the event   * arises from a 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, * has no effect upon Defined Cost, Completion, Task Completion or meeting a Key Date or * is not one of the compensation events stated in the contract   the Service Manager notifies the Consultant that the Prices, the Completion Date, the Key Dates and the Task Completion Dates are not to be changed and states the reasons in the notification. Otherwise, the Service Manager notifies the Consultant that the event is a compensation event and includes in the notification an instruction to the Consultant to submit quotations.  If the Service Manager fails to reply to the Consultant’s notification of a compensation event within the time allowed, the Consultant may notify the Service Manager of that failure. If the failure continues for a further two weeks after the Consultant’s notification it is treated as acceptance by the Service Manager that the event is a compensation event and an instruction to submit quotations. |
| 61.5 |  | If the Service Manager decides that the Consultant did not give an early warning of the event which an experienced consultant could have given, the Service Manager states this in the instruction to the Consultant to submit quotations. |
| 61.6 |  | If the effects of a compensation event are too uncertain to be forecast reasonably, the Service Manager states assumptions about the compensation event in the instruction to the Consultant to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the Service Manager notifies a correction. |
| 61.7 |  | A compensation event is not notified by the Service Manager or the Consultant after the defects date. |
| Quotations for compensation events | 62 62.1 |  | After discussing with the Consultant different ways of dealing with the compensation event which are practicable, the Service Manager may instruct the Consultant to submit alternative quotations. The Consultant submits the required quotations to the Service Manager and may submit quotations for other methods of dealing with the compensation event which it considers practicable. |
|  | 62.2 |  | Quotations for a compensation event comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates or the Task Completion Dates as relevant assessed by the Consultant. The Consultant submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the Consultant includes the alterations to the Accepted Programme in the quotation. |
|  | 62.3 |  | The Consultant submits quotations within three weeks of being instructed to do so by the Service Manager. The Service Manager replies within two weeks of the submission. The reply is   * a notification of acceptance of the quotation, * an instruction to submit a revised quotation or   that the Service Manager will be making the assessment. |
|  | 62.4 |  | The Service Manager instructs the Consultant to submit a revised quotation only after explaining the reasons for doing so to the Consultant. The Consultant submits the revised quotation within three weeks of being instructed to do so. |
|  | 62.5 |  | The Service Manager extends the time allowed for   * the Consultant to submit quotations for a compensation event or * the Service Manager to reply to a quotation   if the Service Manager and the Consultant agree to the extension before the submission or reply is due. The Service Manager informs the Consultant of the extension that has been agreed. |
|  | 62.6 |  | If the Service Manager does not reply to a quotation within the time allowed, the Consultant may notify the Service Manager of that failure. If the Consultant submitted more than one quotation for the compensation event, the notification states which quotation the Consultant proposes is to be used. If the failure continues for a further two weeks after the Consultant’s notification it is treated as acceptance by the Service Manager of the quotation. |
| Assessing compensation events | 63 63.1 |  | The change to the Prices is assessed as the effect of the compensation event upon   * the actual Defined Cost of the work done by the dividing date and * the forecast Defined Cost of the work not done by the dividing date   For a compensation event that arises from the Service Manager giving an instruction or notification or changing an earlier decision, the dividing date is the date of that communication.  For other compensation events, the dividing date is the date of the notification of the compensation event.  Notwithstanding the provisions of clauses 60-66 and without prejudice to its entitlement to be paid its additional Defined Cost incurred as a result of the occurrence of a Force Majeure Event, the *Consultant* is not entitled to any change in the Prices as a result of the occurrence of a Force Majeure Event.  This shall not restrict the *Service Manager* from assessing a delay to the Completion Date, a Task Completion Date and any Key Dates in accordance with clause 63.5, as a result of the occurrence of a Force Majeure Event. |
|  | 63.2 |  | The Service Manager and the Consultant may agree rates or lump sums to assess the change to the Prices. |
|  | 63.3 |  | If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these conditions of contract. |
|  | 63.4 |  | If the effect of a compensation event is to reduce the total Defined Cost and the event is   * a change to the Scope or * a correction to an assumption stated by the Service Manager for assessing an earlier compensation event   the Prices are reduced. |
|  | 63.5 |  | A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.  A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.  A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Completion as shown on the Task programme current at the dividing date.  The assessment takes into account   * any delay caused by the compensation event already in the Accepted Programme and * events which have happened between the date of the Accepted Programme and the dividing date. |
|  | 63.6 |  | The rights of the Client and the Consultant to changes to the Prices, the Completion Date and the Key Dates or the Task Completion Dates are their only rights in respect of a compensation event. |
|  | 63.7 |  | If the Service Manager has stated in the instruction to submit quotations that the Consultant did not give an early warning of the event which an experienced consultant could have given, the compensation event is assessed as if the Consultant had given the early warning. |
|  | 63.8 |  | The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events. |
|  | 63.9 |  | The assessment of the effect of a compensation event is based upon the assumptions that the Consultant reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred. |
|  | 63.10 |  | Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in clause 60.1, then to the extent that the delays are concurrent, the *Consultant:*   * will be entitled to be paid its additional incurred Defined Cost as a result of such events, but will not be entitled to any At Risk Fee, and * will not be entitled to any adjustment to the Completion Date or any Key Date. |
|  | 63.11 |  | If a change to the Scope makes the description of the Condition for a Key Date incorrect, the Service Manager corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope. |
|  | 63 63.12 |  | For Tasks that relate to Lump Sum Service or Target Cost Service, assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule. |
| The *Service Manager’s* assessments | 64 64.1 |  | The Service Manager assesses a compensation event   * if the Consultant has not submitted the quotation and details of its assessment within the time allowed, * if the Service Manager decides that the Consultant has not assessed the compensation event correctly in the quotation and has not instructed the Consultant to submit a revised quotation, * if, when the Consultant submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which the contract requires it to submit or   if, when the Consultant submits quotations for the compensation event, the Service Manager has not accepted the Consultant’s latest programme for one of the reasons stated in the contract. |
|  | 64.2 |  | The Service Manager assesses the programme for the remaining work and uses it in the assessment of a compensation event if   * there is no Accepted Programme, * the Consultant has not submitted a programme or alterations to a programme for acceptance as required by the contract or   the Service Manager has not accepted the Consultant’s latest programme for one of the reasons stated in the contract. |
|  | 64.3 |  | The Service Manager notifies the Consultant of the assessment of a compensation event and gives details of the assessment within the period allowed for the Consultant’s submission of its quotation for the same compensation event. This period starts when the need for the Service Manager’s assessment becomes apparent. |
|  | 64.4 |  | If the Service Manager does not assess a compensation event within the time allowed, the Consultant may notify the Service Manager of that failure. If the Consultant submitted more than one quotation for the compensation event, the notification states which quotation the Consultant proposes is to be used. If the failure continues for a further two weeks after the Consultant’s notification it is treated as acceptance by the Service Manager of the quotation. |
|  | 64.5 |  | The Consultant notifies the *Service Manager* if it does not accept the *Service Manager’s* assessment and at the same time of its reasons for not accepting the *Service Manager’s* assessment. If the Consultant does not provide this notification within four weeks of notification of the *Service Manager’s* assessment, the Consultant is treated as having accepted the *Service Manager’s* assessment |
| Proposed instructions | 65 65.1 |  | The Service Manager may instruct the Consultant to submit a quotation for a proposed instruction. The Service Manager states in the instruction the date by which the proposed instruction may be given. The Consultant does not put a proposed instruction into effect. |
|  | 65.2 |  | The Consultant submits quotations for a proposed instruction within three weeks of being instructed to do so by the Service Manager.  The quotation is assessed as a compensation event. The Service Manager replies to the Consultant’s quotation by the date when the proposed instruction may be given.  The reply is   * an instruction to submit a revised quotation including the reasons for doing so, * the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or * a notification that the quotation is not accepted.   If the Service Manager does not reply to the quotation within the time allowed, the quotation is not accepted. |
|  | 65.3 |  | If the quotation is not accepted, the Service Manager may issue the instruction, notify the instruction as a compensation event and instruct the Consultant to submit a quotation. |
| Implementing compensation events | 66 66.1 |  | A compensation event is implemented when   * the Service Manager notifies acceptance of the Consultant’s quotation, * the Service Manager notifies the Consultant of an assessment made by the Service Manager or   a Consultant’s quotation is treated as having been accepted by the Service Manager. |
|  | 66.2 |  | When a compensation event is implemented the Prices, the Completion Date and the Key Dates or the Task Completion Dates are changed accordingly. |
|  | 66.3 |  | The assessment of an implemented compensation event is not revised except as stated in these conditions of contract. |

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| **7. RIGHTS TO MATERIAL** |

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| The Parties’ use of material | 70 70.1 |  | Not used. |
| 70.2 |  | The Consultant has the right to use 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 not use the material provided by it under the contract for other work unless stated otherwise in the Scope. |

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| **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 or * 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. * Without prejudice to clause 80.2, an occurrence involving nuclear matter and/or the emission of ionising radiations that arises out of or results from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear matter in each case originating from the Project and which causes delay or disruption to the *service*, save where and to the extent that such loss, delay, disruption or damage is attributable to any act or omission of the *Consultant* (or any Subcontractor or any lower tier subcontractor) committed with the intention of causing such loss, delay, disruption or damage or with reckless disregard for the consequences of its act. * Liability referred to in clause 80.2 and 80.3. | |
|  | 80.2 |  | Nothing in clause 80.1 or clause 81.1 affects the exclusive liability of the *Client* (to the extent that it is the licensee named in the Nuclear Site License) under sections 7-10 of the NIA for any injury to any person, damage to any property of any person other than the licensee and/or significant impairment of the environment. | |
|  | 80.3 |  | [The Parties also agree that the *Client* is liable to the *Consultant* for damage to the *Consultant*'s property (and that of its subcontractors and suppliers) whilst at the Site and which is caused by an occurrence involving nuclear matter and/or the emission of ionising radiations that arises out of or results from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear matter in each case originating from the Project, provided that:   * the *Client*'s liability is limited to the market value of the *Consultant*'s affected property; * the *Client*'s liability is dependent on the *Consultant* having given the *Client* valid yearly notice of such property and its value; * the *Client* is not liable to the extent that the value of such property has changed by 20% or more during any one year and the *Client* has not been notified thereof; and * the *Client* is not liable to the extent the occurrence is attributable to any act or omission of the *Consultant* or its subcontractors or employees, done with the intent to cause injury or damage or done with reckless disregard for the consequences of the act or omission (and whether or not such employees were acting in the normal course of their employment).] | |
| **Consultant’s** liabilities | 81 81.1 |  | The *Consultant's* liabilities, from the *starting date* until the *defects date*, are the liabilities not stated as being the *Client's* liabilities including (but not limited to) the following liabilities:   * Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the Consultant Providing the Service. * Costs incurred by the Client which arise from a failure by the Consultant to use Good Industry Practice in the provision of 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 to Others as a result of an event for which the Client is liable is paid by the Client. | |
| 82.3 |  | The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party’s responsibilities under the contract. | |
| Insurance cover | 83 83.1 |  | The Client provides the insurances which the Client is to provide as stated in the Contract Data. | |
| 83.2 |  | The Consultant provides the insurances stated in the Insurance Table except any insurance which the Client is to provide as stated in the Contract Data. The Consultant provides additional insurances as stated in the Contract Data. | |
| 83.3 |  | 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. | |
|  |  | **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 use Good Industry Practice | 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 |
| Insurance policies | 84 84.1 |  | On the Contract Date, on each renewal of the insurance policy until the defects date and otherwise upon reasonable request, the Consultant submits to the Service Manager for acceptance certificates which state that the insurance required by the contract is in force.  After the defects date and on each renewal of the insurance policy until the end of the periods stated in the Contract Data for which insurance is to be maintained, the Consultant submits to the Client for acceptance suitable evidence (including brokers' certificates) confirming that the insurance required by the contract is in force. Any such certificates are signed by the Consultant’s insurer or insurance broker.  The Service Manager or the Client accepts such evidence if it confirms the insurance complies with the contract and if the insurer has a long-term credit rating equal to or greater than A (as rated by Standard & Poor's) or A- (as rated by A.M. Best)). Acceptance of any such evidence provided by the *Consultant* does not change the responsibility of the *Consultant* to provide the insurances required under the contract. The Client’s acceptance of an insurance certificate provided by the Consultant does not change the responsibility of the Consultant to provide the insurances stated in the Contract Data. | |
| 84.2 |  | The Parties comply with the terms and conditions of the insurance policies to which they are a Party and the *Consultant* ensures that all Subcontractors comply with the terms and conditions of the insurance policies. | |
| If the **Consultant** does not insure | 85 85.1 |  | The Client may insure an event or liability which the contract requires the Consultant to insure if the Consultant does not submit the evidence required in accordance with clause 84.1. In such circumstances:   * The Prices are reduced by an amount equal to the cost of such insurance to the *Client* (including all reasonable expenses incurred by the *Client* in respect of taking out such insurance); and * the additional amount of such cost (over and above the cost that would have been payable for such insurance under the contract) is paid by the *Consultant* to the *Client.*   If the *Client* insures a risk which the contract requires the *Consultant* to insure, this is without prejudice to any of the *Client's* other rights, powers or remedies under the contract. | |
| Insurance by the **Client** | 86 86.1 |  | The Service Manager submits certificates for insurance provided by the Client to the Consultant for acceptance before the starting date and afterwards as the Consultant instructs. The Consultant accepts the certificates if the insurance complies with the contract and if the insurer’s commercial position is strong enough to carry the insured liabilities. | |
| 86.2 |  | The Consultant’s acceptance of an insurance certificate provided by the Client does not change the responsibility of the Client to provide the insurances stated in the Contract Data. | |
| 86.3 |  | The Consultant may insure an event or liability which the contract requires the Client to insure if the Client does not submit a required certificate. The cost of this insurance to the Consultant is paid by the Client. | |
| Limitation of liability | 87 87.1 |  | The Consultant’s liability to the Client for all matters in respect of which the *Consultant* is insured pursuant to the contract (or would be insured if it had complied with its obligations under the contract) arising under or in connection with the contract, other than the excluded matters, is limited to £10,000,000 in respect of each and every claim and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.  The excluded matters are amounts payable by the Consultant as stated in the contract for   * Consultant’s share in respect of any Target Cost Service, * an infringement by the Consultant of the rights of Others, * pursuant to clause 82.1, in respect of liability which the *Client* incurs to Others, * liability for death or bodily injury to its employees, for which the *Consultant* is responsible in accordance with clause 81.1, * loss of or damage to third party property and death of or bodily injury to a person other than an employee of the Consultant, * as a result of any fraud, fraudulent misrepresentation, corruption, breaches of clause 17 (Corrupt Acts) and/or wilful default (including abandonment of the *service),* * in the event of the Consultant’s failure to comply with Statutory Requirements relating to health and safety and the environment and * in respect of legal costs and interest awarded on any judgement, award or other determination against the *Consultant* in favour of the *Client* or any third party. | |
|  | 87.2 |  | The Consultant’s total liability to the Client for all matters arising under or in connection with the contract in respect of which the *Consultant's* liability is not limited pursuant to clause 87.1, other than the excluded matters set out in clause 87.1, is limited to:   * up to the date of the issue of the Stage 2 NTP, the greater of £5,000,000 in the aggregate or 30% of the Prices in respect of the *service* * after the date of issue of the Stage 2 NTP the greater of £5,000,000 in the aggregate or 30% of the Prices in respect of the *service* from that date until the date of issue of the Completion Certificate of the last Unit (in each case as defined in the TP Contract) and * from the date of issue of the Completion Certificate of the last Unit, the greater of £5,000,000 in the aggregate or 30% of the Prices in respect of the *service* from that date until the Completion Date,   and in each case applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract (the '**Aggregate Liability Cap**').  For the avoidance of doubt the *Consultant's* liability in respect of costs to the Client arising out of termination, as determined in accordance with clause 93.5, where the amount due on termination includes A2, is limited pursuant to the Aggregate Liability Cap. | |
|  | 87.3 |  | The Parties may agree an increase to the value of the Aggregate Liability Cap by written agreement at any time prior to the *Consultant's* total liability under clause 87.2 reaching an amount equivalent to 80% (eighty per cent) of the Aggregate Liability Cap. Where an agreement to increase the value of the Aggregate Liability Cap is reached between the parties under this clause 87.3, such agreement is recorded in writing and the increased value of the Aggregate Liability Cap is read and construed as the Aggregate Liability Cap for the purposes of the contract. | |
|  | 87.4 |  | Without prejudice to the generality of clause 87.3 above, if at any time the *Consultant's* total liability under clause 87.2 has reached or exceeded an equivalent to 80% (eighty per cent) of the Aggregate Liability Cap or any Aggregate Liability Cap agreed between the parties under clause 87.3 (but prior to the Aggregate Liability Cap being reached), either party may request the other for the value of the Aggregate Liability Cap to be increased. If such a request is made, the parties seek to agree an increase to the value of the Aggregate Liability Cap which is reasonable in the circumstances (each acting reasonably, and regarding the losses that the *Client* will suffer as a result of the *Consultant's* breach of the contract in determining what a reasonable increase to the value of the Aggregate Liability Cap would be to address such losses in the particular circumstances prevailing at the time of the request) prior to the Aggregate Liability Cap being reached. Where an agreement to increase the value of the Aggregate Liability Cap is reached between the parties under this clause 87.4, it is recorded in writing and the increased value of the Aggregate Liability Cap is read and construed as the Aggregate Liability Cap for the purposes of the contract. This process repeats each time the *Consultant's* total liability under clause 87.2 has reached or exceeded an equivalent to 80% (eighty per cent) of the Aggregate Liability Cap or any Aggregate Liability Cap agreed between the parties under clause 87.3 or this clause 87.4. | |
|  | 87.5 |  | Except in relation to   * any liability arising as a result of fraud, fraudulent misrepresentation, corruption, breaches of clause 17 (Corrupt Acts) and/or wilful default (including abandonment of the *service*), * the liability of either Party on any termination of the contract, and * the liability for claims and proceedings from Others and compensation and costs payable to Others, for which either Party is responsible in accordance with clause 80 or clause 81, and * liability for death or bodily injury to its employees, for which the *Consultant* is responsible in accordance with clause 81.1,   but otherwise notwithstanding any other provision of the contract, neither Party shall be responsible or held liable to the other Party under contract, tort (including but not limited to negligence), misrepresentation, in debt, by way of reimbursement or under strict liability or other theory of law for any Indirect Loss | |

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| **9. TERMINATION** |

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| Termination | 90 90.1 |  | If either Party wishes to terminate the Consultant’s obligation to Provide the Service it notifies the Service Manager and the other Party giving details of the reason for terminating. The Service Manager issues a termination certificate promptly if the reason complies with the contract. | | | |
| 90.2 |  | A Party may terminate for a reason identified in the Termination Table. The *Client* may additionally terminate in accordance with clause X11.1.  The procedures followed and the amounts due on termination are in accordance with clause X11.2 or the Termination Table, as the case may be. | | | |
|  |  | **TERMINATION TABLE** | | | |
|  |  | **TERMINATING PARTY** | **REASON** | **PROCEDURE** | **AMOUNT DUE** |
|  |  | The *Client* | R1-R16, R19, R20, R23, R27, R29 – R32 | P1 and P2 | A1 and A2 |
|  |  | The *Client* | R22 and R25 | P1 | A1 |
|  |  | The *Client* | R17, R18, R26, R28 and R33 | P1 and P2 | A1 |
|  |  | The *Consultant* | R1-R10, R21 or R24 | P1 | A1 and A3 |
|  |  | The *Consultant* | R22 and R25 | P1 | A1 |
|  |  | The *Consultant* | R26 and R33 | P1 and P2 | A1 |
| 90.3 |  | The procedures for termination are implemented immediately after the Service Manager has issued a termination certificate.  If the Client terminates for one of reasons R1-R16, R19, R20, R23, R27 or R29 – R32 and a certified payment has not been made at the date of the termination certificate, the Client need not make the certified payment unless these conditions of contract state otherwise. | | | |
| 90.4 |  | After a termination certificate has been issued, the Consultant does no further work necessary to Provide the Service. | | | |
| Reasons for termination | 91 |  |  | | | |
| 91.1 |  | Either Party may terminate if the other Party has done one of the following or its equivalent and the *Client* may terminate if the *Consultant* comprises a Joint Venture and any of the parties comprising the Joint Venture has done one of the following or its equivalent (including, in relation to the *Consultant*, any event analogous to the events listed below in any jurisdiction in which the *Consultant* is registered or domiciled).   * If the other Party is an individual and has * presented an application for bankruptcy (R1), * had a bankruptcy order made against it (R2), * had a receiver appointed over its assets (R3) or * made an arrangement with its creditors (R4). * If the other Party is a company or partnership and has * had a winding-up order made against it (R5), * had a provisional liquidator appointed to it (R6), * passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7), * had an administration order made against it or had and administrator appointed over it (R8), * had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or * had a court order made in relation to any court-supervised arrangement with its creditors (R10),   provided always that R1-R10 are deemed not to apply and the *Consultant* shall have no right to terminate in accordance with this clause 91.1, solely as a result of the *Client* having a relevant licensee nuclear company administration order made against it pursuant to the Special Statutory Administration Regime. | | | |
|  | 91.2 |  | The Client may terminate if the Service Manager has notified that the Consultant has not put one of the following defaults right within four weeks of the date when the Service Manager notified the Consultant of the default or, in the case of R11, such other reasonable period as the *Service Manager* may specify, given the nature of the breach and any rectification plan agreed by the Parties.   * Materially breached any of its obligations (R11). * Not provided a guarantee which the contract requires (R12). * Appointed a Subcontractor for substantial work before the Service Manager has accepted the Subcontractor (R13). | | | |
| 91.3 |  | The *Client* may terminate if:   * the Consultant undergoes a Change of Ownership in relation to which it does not obtain the *Client's* consent thereto (in accordance with clause Z6) or, if applicable, the Consultant alters the composition or constitution of the Joint Venture in breach of clause 12.10 (R14), * the Consultant breaches a Statutory Requirement relating to health and/or safety (R15), * the *Client'*s right to terminate has arisen under and in accordance with clause Z5.4 (R16), * the *Client*'s right to terminate has arisen under and in accordance with clause Z11.5 (R17), * the Client's right to terminate has arisen under and in accordance with clause Z14.4 (R18) * the Client's right to terminate has arisen under and in accordance with clause X20.9 (R19) or   The Client may terminate if the Service Manager has notified that the Consultant has substantially hindered the Client or Others and has not stopped the default within four weeks of the date when the Service Manager notified the Consultant of the default (R20). | | | |
| 91.4 |  | The Consultant may terminate if the Client has not paid an amount due under the contract within thirteen weeks of the date that the Consultant should have been paid, provided always that such amount exceeds £[●][[6]](#footnote-7) and the Consultant gives written notification to the *Client* of such intention to terminate at least four weeks prior to any such termination and the *Client* does not pay the amount due within that period (R21). | | | |
| 91.5 |  | Either Party may terminate if the Parties have been released under any Statutory Requirement from further performance of the whole of the contract (R22). | | | |
| 91.6 |  | If the Service Manager has instructed the Consultant to stop or not to start any substantial work or all work due to any reason other than a Force Majeure Event and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within three hundred and sixty days,   * the Client may terminate if the instruction was due to a default by the Consultant (R23), * the Consultant may terminate if the instruction was due to a default by the Client (R24) and * either Party may terminate if the instruction was due to any other reason (R25). | | | |
| 91.7 |  | The Client may terminate if a Force Majeure Event substantially prevents performance of the *service* for a continuous period of three hundred and sixty-five days or an aggregate period of seven hundred and thirty days (each a '**Client FM Termination Date**').  The *Consultant* may terminate if, prior to the issue of the Stage 2 NTP, a Force Majeure Event substantially prevents performance of the *service* for a continuous period of seven hundred and thirty days or an aggregate period of one thousand four hundred and sixty days. (R26). | | | |
| 91.8 |  | The Client may terminate if a member of the Consultant's senior management or a member of the Core Team does a Corrupt Act, unless it was done by a Subcontractor or supplier and the Consultant   * was not aware of the Corrupt Act or * informed the Service Manager of the Corrupt Act and took reasonable, prompt and appropriate action to stop it as soon as the Consultant became aware of it (R27). | | | |
|  | 91.10 |  | The *Client* may terminate in any of the following circumstances:   * the *Client* considers that the contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it (R28); * the *Consultant* has, since the award of the contract, become an Excluded Supplier or Excludable Supplier (including by reference to an Associated Person) (R29); * the *Consultant* has failed to comply with its obligations under clause Z18 (R29A); * section 72(3) of the Procurement Act applies (R29B); and * a supplier (other than an Associated Person) to which the *Consultant* is sub-contracting the performance of all or part of the contract is an Excluded or Excludable Supplier (R30). | | | |
|  | 91.11 |  | The *Client* may terminate if the *Consultant* is liable to pay damages to the *Client* and the quantum of such liability reaches the Aggregate Liability Cap (R31). | | | |
|  | 91.12 |  | The *Client* may terminate if the *Consultant* is in breach of clause 20.9 (R32). | | | |
|  | 91.13 |  | Either Partymay terminate if a court makes a Set Aside Order (R33). | | | |
|  | 91.14 |  | Each Party's rights to terminate the *Consultant's* appointment under the contract as set out or referred to in this clause 91 are its sole and exclusive rights to terminate the *Consultant's* appointment under the contract, whether in respect of the other Party's breach of contract or otherwise. | | | |
| Procedures on termination | 92 92.1 |  | On termination, the Client may complete the service and may use any material to which it has title. The Consultant gives to the Client information resulting from work carried out to date and all information, drawings, documents, models, reports, computer programmes, software, manuals and other items of any kind whatsoever relating to the *service* which are in the *Consultant's* control, custody or possession which it has a responsibility to provide under the contract immediately upon receipt of the *Client's* request to do (P1). | | | |
| 92.2 |  | On termination the Client may instruct the Consultant to assign the benefit of any subcontract or other contract related to performance of the contract to the Client (P2). | | | |
| Payment on termination | 93 |  |  | | | |
| 93.1 |  | The amount due on termination includes (A1)   * an amount due assessed as for normal payments excluding any At Risk Fee and any Long-Term Behaviour Incentive, and * any amounts retained by the Client. | | | |
| 93.2 |  | The amount due on termination also includes one or more of the following as set out in the Termination Table.   1. A deduction of the forecast of the cost to the Client arising out of the termination, as determined in accordance with clause 93.5. 2. a pro rata amount of any At Risk Fee to which the *Consultant* would have been entitled pursuant to article 4.3 of the agreement had the contract continued until the end of the relevant Assessment Period (as defined in the Incentive Schedule), assessed by reference to the *Service Manager's* assessment carried pursuant to clause X20.4 or (where applicable) the *Client*'s assessment under clause X20.8. Where the *Consultant* has already been paid At Risk Fee in excess of such pro rata amount, there is a deduction. | | | |
|  | 93.3 |  | If there is a termination, the *Service Manager* assesses the *Consultant's* share in respect of any Target Cost Service after certifying termination. The assessment uses as the Price for Service Provided to Date the total of the Defined Cost which the *Consultant* has paid and which it is committed to pay for work done before termination in connection with the relevant Target Cost Service Task, and uses as the total of the Target Cost Service Prices   * the lump sum price for each activity which has been completed and * a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed,   in each case in respect of the relevant Target Cost Service Task. | | | |
|  | 93.4 |  | The *Service Manager's* assessment of the *Consultant's* share is added to the amount due to the *Consultant* on termination if there has been a saving or deducted if there has been an excess. | | | |
|  | 93.5 |  | For the purposes of calculating the A2 amount due on termination:   * if the *Client* elects to complete the *service* and/or arrange for any other entities to do so, the Consultant is liable to the *Client* for:   + the additional costs incurred by the *Client* in procuring a replacement owner's engineer,   + damages for any associated delay to completion of the *service*, and   + all other direct costs thereby incurred by the *Client* save for the additional cost to the *Client* of having the same *service* completed by the replace owner's engineer,   and the *Client* withholds any further payment to the Consultant under the contract after termination pending ascertainment of the sums due to the *Client* pursuant to this clause and sets off any sums so ascertained against any such further payment. | | | |
|  | 93.8 |  | Each Party's rights to compensation pursuant to this clause 93 are (without prejudice to its rights in relation to any antecedent breach of contract by the other Party) its sole and exclusive rights to compensation in relation to termination of the *Consultant's* appointment under the contract in accordance with clause 91. | | | |

Resolving and Avoiding Disputes

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| **OPTION W2** |

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|  |  |  | Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies. |
| Resolving Disputes | W2 W2.1 |  | 1. If the Parties agree, a dispute arising under or in connection with the contract is referred to the Senior Representatives. If the dispute is not resolved by the Senior Representatives, it is referred to and decided by the Adjudicator. A Party may replace a Senior Representative after notifying the other Party of the name of the replacement. 2. The Party referring a dispute notifies the Senior Representatives, the other Party and the Service Manager of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties. 3. The Senior Representatives attend as many meetings and use any procedure they consider necessary to try to resolve the dispute in good faith over a period of up to three weeks once both Partis have submitted to the other their statement of case pursuant to clause W2.1(2). At the end of this period the Senior Representatives produce a list of the issues agreed and issues not agreed. The Service Manager and the Consultant put into effect the issues agreed. 4. No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the Adjudicator or the tribunal. |
| The **Adjudicator** | W2.2 |  | 1. A dispute arising under or in connection with the contract is referred to and decided by the Adjudicator. A Party may refer a dispute to the Adjudicator at any time whether or not the dispute has been referred to the Senior Representatives. 2. In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. 3. The Parties appoint the Adjudicator under the NEC Dispute Resolution Service Contract current at the starting date. 4. The Adjudicator acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator. 5. If the Adjudicator is not identified in the Contract Data or if the Adjudicator resigns or becomes unable to act  * the Parties may choose an adjudicator jointly or * a Party may ask the Adjudicator nominating body to choose an adjudicator.   The Adjudicator nominating body chooses an adjudicator within four days of the request. The chosen adjudicator becomes the Adjudicator.   1. A replacement Adjudicator has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The Adjudicator deals with an undecided dispute as if it had been referred on the date of appointment as replacement Adjudicator. 2. A Party does not refer a dispute to the Adjudicator that is the same or substantially the same as one that has already been decided by 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 | W2.3 |  | 1. Before a Party refers a dispute to the Adjudicator, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the Adjudicator to make. If the Adjudicator is named in the Contract Data, the Party sends a copy of the notice of adjudication to the Adjudicator when it is issued. Within three days of the receipt of the notice of adjudication, the Adjudicator informs the Parties that the Adjudicator  * is able to decide the dispute in accordance with the contract or * is unable to decide the dispute and has resigned.   If the Adjudicator does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the Adjudicator has resigned.   1. Within seven days of a Party giving a notice of adjudication it  * refers the dispute to the Adjudicator, * provides the Adjudicator with the information on which it relies, including any supporting documents and * provides a copy of the information and supporting documents it has provided to the Adjudicator to the other Party.  1. If a matter disputed by the Consultant under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the Consultant may, with the consent of the Subcontractor, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor. 2. If a matter disputed under or in connection with the contract raises the same or similar issues to a related dispute between the *Client* and one of the *Client*'s other contractors or consultants, the *Client* may refer the related dispute to the Adjudicator at the same time as the referral under the contract. The Adjudicator then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the *Client*'s other contractors or consultants. 3. The Adjudicator decides the procedure and timetable to be followed in the adjudication. In doing so the Adjudicator may  * take the initiative in ascertaining the facts and the law related to the dispute and * instruct a Party to take any other action within a stated time which is necessary to reach a decision.  1. If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make a decision based upon the information and evidence received. 2. A communication between a Party and the Adjudicator is communicated to the other Party at the same time. 3. 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. If the Adjudicator’s decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision. 4. The Adjudicator decides the dispute and informs the Parties and the Service Manager of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties.   The Adjudicator may in the decision   * review and revise any action or inaction of the Service Manager related to the dispute, * alter a matter which has been treated as accepted or correct and * allocate the Adjudicator’s fees and expenses between the Parties.  1. Unless and until the Adjudicator has informed the Parties of the decision, the Parties and the Service Manager proceed as if the matter disputed was not disputed. 2. If the Adjudicator does not inform the Parties of the decision within the time provided by the contract, the Parties and the Adjudicator may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned. 3. 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 is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the tribunal. 4. The Adjudicator may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission. |
| The **tribunal** | W2.6 |  | 1. A Party does not refer any dispute under or in connection with the contract to the tribunal unless the Parties have agreed in writing to refer any such dispute to the *Tribunal* without reference to the *Adjudicator* or it has first been decided by the Adjudicator in accordance with the contract. 2. If, after the Adjudicator makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which is disputed and state that it intends to refer the disputed matter to the tribunal. The dispute may not be referred to the tribunal unless this notification is given within four weeks of being informed of the Adjudicator’s decision. 3. The tribunal settles the dispute referred to it. The tribunal has the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Service Manager related to the dispute. A Party is not limited in tribunal proceedings to the information, evidence or arguments put to the Adjudicator. 4. If the tribunal is arbitration, the arbitration procedure, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data. 5. A Party does not call the Adjudicator as a witness in tribunal proceedings. |

Secondary Option Clauses

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| **OPTION X1: PRICE ADJUSTMENT FOR INFLATION** |

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| Defined Terms | X1 X1.1 |  | 1. The Base Date Index (B) is the latest available index before the base date. 2. The Latest Index (L) is the latest available index before the date of assessment of an amount due. 3. The Price Adjustment Factor (PAF) at each date of assessment of an amount due is the total of the products of each of the proportions stated in the Contract Data multiplied by (L – B)/B for the index linked to it. |
| Price Adjustment Factor | X1.2 |  | If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the service is used for calculating an amount for price adjustment after that date. |
| Price adjustment | X1.3 |  | In respect of the Lump Sum Services and the Reimbursable Services each amount due includes an amount for price adjustment which is the sum of   * the change in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the PAF and * the amount for price adjustment included in the previous amount due. |
| Price adjustment | X1.4 |  | In respect of the Target Cost Services each time the amount due is assessed, an amount for price adjustment is added to the total of the Target Cost Service Prices which is the change in the Price for the Service Provided to Date since the last assessment of the amount due multiplied by (PAF/(1+PAF)). |
| Compensation events | X1.5 |  | The Defined Cost for compensation events is assessed using   * the Defined Cost at base date levels for amounts calculated from rates stated in the Contract Data for people and * the Defined Cost current at the dividing date used in assessing the compensation event, adjusted to the base date by dividing by one plus the PAF for the last assessment of the amount due before that dividing date, for other amounts. |
| **Expenses** adjustment | X1.6 |  | If payment rates for any of the expenses are fixed at the Contract Date, each amount due includes an amount for expenses adjustment which is the sum of   * the change in fixed expenses since the last assessment of the amount due multiplied by the PAF and * the amount for expenses adjustment included in the previous amount due. |
| **Effective date** | X1.7 |  | This clause X1 only applies from the third anniversary of the Contract Date. |
| **Auditing** | X1.8 |  | The *Consultant* provides upon request the documentation and information that it uses in its payment applications to calculate the PAF and the price adjustments pursuant to this clause X1 for review, inspection, and audit by the *Client* andthe *Service Manager*. |

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| **OPTION X2: CHANGES IN THE LAW** |

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| Changes in the law | X2 X2.1 |  | Any of the following changes is a compensation event:   * any change in Statutory Requirements which specifically refers to the Project or to the construction, operation and/or maintenance of small modular nuclear reactor power plants; * any change to or revocation of the planning permission and/or environmental permit] for the Project, other than where such change or revocation arises as a result of the acts of omissions of the *Consultant* and/or its subcontractors; * any other change in Statutory Requirements which comes into effect in the United Kingdom after the first anniversary of the Contract Date,   unless, in each case, such change was reasonably foreseeable by an experienced, diligent and competent owner's engineer consultant at the Contract Date.  If the effect of any such change is to reduce the total Defined Cost, the Prices are reduced. |

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| **OPTION X4: ULTIMATE HOLDING COMPANY GUARANTEE** |

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| Ultimate holding company guarantee | X4 X4.1 |  | If a parent company owns any company comprising the *Consultant*, the *Consultant* gives to the *Client*, on or before the Contract Date, a guarantee of the *Consultant*'s performance under the contract executed by such parent company in the form set out in Part 1 of Schedule 6 to the Agreement and the *Client* is not liable to make any payment under the contract until the *Consultant* complies with this clause X4.1. |
| X4.2 |  | The *Consultant* ensures that any guarantee provided in relation to the contract remains in full force and effect from the date of its provision until the *end of liability date*. If the *Consultant* fails to do so the *Consultant* procures, within 20 Business Days, the issue of a replacement guarantee in the same form and issued by a guarantor with a long-term credit rating equal to or greater than that of the original guarantor at the Contract Date. |
|  | X4.3 |  | If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, the *Consultant* provides to the *Client* a legal opinion in the form set out in Part 2 of Schedule 6 to the Agreement, on the guarantor's execution of any such guarantee. |

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| **OPTION X9: TRANSFER OF RIGHTS** |

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| Transfer of rights | X9 X9.1 |  | The Client owns the Consultant’s rights over material prepared for the contract by the Consultant, including for the purposes of this clause X9 the Intellectual Property Rights over such material and any Contract Material,except as stated otherwise in the Scope. The Consultant obtains other rights for the Client as stated in the Scope and obtains from a Subcontractor equivalent rights for the Client over the material prepared by the Subcontractor. The Consultant provides to the Client the documents which transfer these rights to the Client. |
|  | X9.2 |  | To the extent that the *Consultant* does not have ownership of the material prepared for the contract by or on behalf of the Consultant and it is not possible to procure ownership for the Client, the *Consultant* procures from the owner of the material an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the material and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, operation, maintenance, sale, promotion, advertisement, expansion, upgrade, reinstatement, refurbishment, repair and decommissioning of the Project. The *Consultant* also agrees that the *Client* may grant sub-licences to other persons to use and to reproduce the material and the designs and content of them for any such purposes. |
|  | X9.3 |  | The *Consultant* is not liable for any use made of the materials for any purpose other than for which it was prepared and/or provided. |
|  | X9.4 |  | The *Consultant* indemnifies the *Client* from and against any and all Losses arising as a result of any infringement of any Intellectual Property Rights of any third parties caused by the use or reproduction of the material.  If a claim is made or proceedings are commenced against the *Client* to which the indemnity set out in this clause X9.4 applies, the *Client* promptly notifies the *Consultant* and the *Consultant*:   * immediately discusses with the *Client*, the action(s) that the *Consultant* intends to take in dealing with such claim and in conducting any such proceedings; * notifies the *Client* whether it intends to deal with such claim and conduct such proceedings at its own expense, in the *Client's* name; and * at all times keeps the *Client* fully informed as to its progress in dealing with such claim or conducting such proceedings.   If within twenty-one days of receipt of the *Client’s* notice the *Consultant* fails to notify the *Client* that it intends to deal with such claim or conduct such proceedings then the *Client* is free to deal with such claim or conduct such proceedings on its own behalf. Unless the *Consultant* has failed to notify the *Client* within the period stated above, or fails at any time to comply with the other requirements of this clause X9.4, the *Client* shall not make any admission prejudicial to such proceedings. |
|  | X9.5 |  | The *Client* provides a royalty-free, non-exclusive licence to copy and use the material and content of them as required for the provision of the *service*. The *Client* also agrees that the *Consultant* may grant sub-licences on the same terms to Subcontractors that have transferred ownership of the relevant material to the *Client*. |

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| **OPTION X11: TERMINATION BY THE *CLIENT*** |

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| Termination by the **Client** | X11 X11.1 |  | The Client may terminate the Consultant’s obligation to Provide the Service for a reason not identified in the Termination Table by providing to the Service Manager and the Consultant three months' notice. |
| X11.2 |  | If the Client terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and P2 and the amounts due on termination are A1. |
|  | X11.3 |  | Without prejudice to clauses X11.1 and X11.2, the *Client* may terminate the *Consultant's* obligation to Provide the Service within the period between FID (regardless of what the outcome of FID is) and the issue of the Stage 2 NTP. If the Client terminates pursuant to this clause X11.3 the termination procedure followed is P1 and P2 and the amounts due on termination are A1. |

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| **OPTION 19.4: KEY PERFORMANCE INDICATORS (NOT USED WITH OPTION X12)[[7]](#footnote-8)** |

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| Incentives | X20 X20.1 |  | A Key Performance Indicator is an aspect of performance by the Consultant for which a target is stated in the Incentive Schedule. The Incentive Schedule is the incentive schedule unless later changed in accordance with the contract. |
| X20.2 |  | From the starting date until the defects date, the Consultant reports to the Service Manager its performance against each of the Key Performance Indicators in the Monthly Report and includes the forecast measurement against each indicator. |
| X20.3 |  | If the Consultant’s forecast measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the Service Manager for acceptance a Performance Improvement Plan within ten Business Days of the date of the relevant Monthly Report.  The *Service Manager* either accepts the Performance Improvement Plan or notifies the *Consultant* of the reasons that it is not accepted. If the Performance Improvement Plan is not accepted, the *Consultant* revises it in accordance with the *Service Manager's* instructions and resubmits it for approval within five Business Days. This process is repeated until the Performance Improvement Plan is accepted by the *Service Manager*. Following its acceptance, the *Consultant* implements the Performance Improvement Plan in its performance of the *service*. |
| X20.4 |  | On the months that are 3, 6, 9 and 12 months after the commencement of a Financial year the *Service Manager* assesses the *Consultant's* performance against each of the Key Performance Indicators and, in accordance with the Incentive Schedule, assigns a Performance Level against each Key Performance Indicator set out in Part [] of the Incentive Schedule. In the event that either Party terminates pursuant to clause 91, the *Service Manager* makes such an assessment of the *Consultant's* performance against each of the Key performance Indicators in respect of the period between the previous assessment and the date of termination.  Subject to a submission by the *Consultant* in accordance with clause X20.8, the *Service Manager's* assessment is final and binding. |
| X20.5 |  | The Consultant is entitled to the amount stated in the Incentive Schedule if, pursuant to its assessment in accordance with clause X20.4, the *Service Manager* finds that the relevant target threshold stated for a Key Performance Indicator is achieved. Payment of the amount to which the *Consultant* is entitled is due in accordance with article 4 or article 5 in the Agreement as relevant. |
| X20.6 |  | Subject to clause X20.7, the Client may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule without the consent of the *Consultant* which is not to be unreasonably withheld or delayed.  The *Consultant* may submit proposals to update the Key Performance Indicators and/or the Incentive Schedule in the draft Service Plan that it submits for approval in accordance with article 3 of the Agreement, which may be approved at the sole discretion of the *Service Manager*. |
|  | X20.7 |  | The Parties acknowledge that the Key Performance Indicators and associated payments in the Incentive Schedule may need to be updated as the Project progresses and that it may be necessary to materially amend or replace entirely the Key Performance Indicators and associated payments in the Incentive Schedule on the occurrence of the following:   * the commencement of the construction works on Site under the TP Contract and * the Completion of the works under the TP Contract (as defined therein). |
|  | X20.8 |  | If the *Consultant* disagrees with the *Service Manager's* assessment of its performance against the Key Performance Indicators under clause X20.4 the *Consultant* may within two weeks of such assessment make submissions to the *Service Manager* and the *Client* in respect of adjustments that it considers should be made to the assessment and/or the Performance Levels awarded. The *Consultant* may not make any such submissions after the expiry of this period. The *Consultant* includes in its submission the Performance Levels it considers it achieved in the relevant period and provides reasonable supporting evidence. The *Service Manager* and the *Client* consider the submissions made by the *Consultant* and the *Client* may at its sole discretion reassess the *Consultant's* achievement against the relevant Key Performance Indicator and may pay to the *Consultant* such additional amounts as the *Consultant* is entitled to in accordance with Part [\*] of the Incentive Schedule.  Whether or not the *Client* reassesses the *Consultant's* achievement against the relevant Key Performance Indicator under this clause X20.8, its decision is final and binding. |
|  | X20.9 |  | [If the *Consultant* fails to implement a Performance Improvement Plan or adhere to its terms the *Client* may terminate the *Consultant's* obligation to Provide the Service in accordance with its right under Section [] of the Scope.] |

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| **OPTION X29: CLIMATE CHANGE** |

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| Defined terms | X29 X29.1 |  | 1. The Climate Change Requirements are the requirements relating to climate change stated in the Scope. 2. The Climate Change Plan is the climate change plan or is the latest climate change plan accepted by the Service Manager. The latest climate change plan accepted by the Service Manager supersedes previous Climate Change Plans. 3. The Climate Change Partners are the people or organisations who contribute to the achievement of the Climate Change Requirements and are identified in the Climate Change Requirements. 4. The Performance Table states the targets the Consultant is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the performance table unless later changed in accordance with the contract. |
| Collaboration | X29.2 |  | The Consultant collaborates with other Climate Change Partners as stated in the Climate Change Requirements. |
| Early warning | X29.3 |  | The Consultant and the Service Manager give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the achievement of the Climate Change Requirements. |
| Climate change plan | X29.4 |  | 1. If a climate change plan is not identified in the Contract Data, the Consultant submits a first climate change plan to the Service Manager for acceptance within the period stated in the Contract Data. 2. The Climate Change Plan shows how the Consultant plans to meet the Climate Change Requirements. 3. Within two weeks of the Consultant submitting a climate change plan for acceptance, the Service Manager notifies the Consultant of the acceptance of the climate change plan or the reasons for not accepting it. A reason for not accepting a climate change plan is that  * it does not comply with the Climate Change Requirements or * it will not allow the Consultant to Provide the Service.  1. The Consultant submits a revised climate change plan to the Service Manager for acceptance  * within the period for reply after the Service Manager has instructed it to and * when the Consultant chooses to. |
| Disclosure | X29.5 |  | The Parties may use, disclose and publicise information relating to climate change as stated in and for the purposes stated in the Climate Change Requirements. |
| Acceleration and accepting Defects | X29.6 |  | Quotations for acceleration and accepting Defects include any proposed changes to the Performance Table.  If the quotation is accepted the Service Manager changes the Performance Table accordingly. |
| Notifying compensation events | X29.7 |  | 1. For compensation events notified by the Service Manager that only affect the Performance Table, the Service Manager instructs the Consultant to submit quotations if the event does not arise from a fault of the Consultant, at the time of the notification of the compensation event. 2. If the Consultant does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Performance Table is not changed unless the event arises from the Service Manager giving an instruction or notification or changing an earlier decision. |
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|  |  |  | 1. If a compensation event notified by the Consultant only affects the Performance Table the Service Manager notifies the Consultant that the event is a compensation event and includes in the notification an instruction to the Consultant to submit quotations unless the event  * arises from a 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   in which case the Service Manager notifies the Consultant that the Performance Table is not to be changed and states the reasons in the notification. The notification is issued within one week of the Consultant’s notification of the compensation event. |
| Quotations for compensation events | X29.8 |  | Quotations for compensation events include proposed changes to the Performance Table assessed by the Consultant. |
| Assessing compensation events | X29.9 |  | 1. A change to the Performance Table is assessed as the effect of the compensation event upon the targets, amounts and dates stated in the Performance Table. 2. The rights the Client and the Consultant have in respect of a compensation event include the right to changes to the Performance Table. 3. A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Performance Table were for the interpretation most favourable to the Party which did not provide the Scope. |
| Implementing compensation events | X29.10 |  | When a compensation event is implemented the Performance Table is changed accordingly. |
| Consultant’s proposals | X29.11 |  | The Consultant may propose to the Service Manager that the Scope is changed in order to reduce the impact of the service or the results of the service on climate change. The Service Manager considers the change and if it is of interest instructs   * a change the Scope or * the Consultant to submit a quotation for a proposed change to the Scope. |
| Performance measurements | X29.12 |  | 1. From the starting date until Completion of the whole of the service, the Consultant reports to the Service Manager its performance against the targets in the Performance Table in the Monthly Report. Reports are provided at the intervals stated in the Performance Table. 2. If the Consultant’s performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the Service Manager for acceptance its proposals for improving performance.   A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.   1. At the dates stated in the Performance Table,  * if the relevant performance does not meet the target stated in the Performance Table, the Consultant pays the amount stated in the Performance Table, * if the relevant performance exceeds or meets the target stated in the Performance Table, the Consultant is paid the amount stated in the Performance Table.  1. Information in the Performance Table is not Scope. |
| Limitation of liability | X29.13 |  | An excluded matter is the amounts stated in the contract as payable by the Consultant in accordance with the Performance Table. |

Option Y

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| **OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996** |

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| The Housing Grants, Construction and Regeneration Act 1996 | Y(UK)2 |  |  |
| Defined terms | Y2.1 |  | In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. |
| Dates for payment | Y2.2 |  | The date on which a payment becomes due Is ten Business Days after receipt by the *Service Manager* of the *Consultant's* application for payment, submitted in accordance with the requirements of clause 50.1.  The date on which the final payment becomes due is the later of   * the date of receipt by the Party making payment of an invoice, issued in accordance with these conditions of contract and * if the Service Manager makes an assessment after the defects date or the date the last Defect is corrected, six weeks after the defects date or the date the last Defect is corrected, whichever is the later, * if the Service Manager does not make an assessment after the defects date or the date the last Defect is corrected, two weeks after the Consultant issues its assessment or * if the Service Manager has issued a termination certificate, fifteen weeks after the issue of the certificate.   The final date for payment is ten Business Days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data.  The Service Manager’s certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the Service Manager does not make an assessment after the defects date or the date the last Defect is corrected, the Consultant’s assessment is the notice of payment. |
| Notice of intention to pay less | Y2.3 |  | If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract. |
| Y2.4 |  | If the Client terminates for one of reasons R1-R16, R19, R20, R23, R27 or R29 – R32 and a certified payment has not been made at the date of the termination certificate, the Client makes the certified payment unless   * it has notified the Consultant in accordance with the contract that it intends to pay less than the notified sum or * the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the Consultant in accordance with the contract that it intends to pay less than the notified sum. |
| Suspension of performance | Y2.5 |  | If the Consultant exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event. |

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| **OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999** |

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| Third party rights | Y(UK)3 Y3.1 |  | Not used. |
| Y3.2 |  | Other than the Parties, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999. |
| Y3.3 |  | Not used. |

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| **OPTION Z: *ADDITIONAL CONDITIONS OF CONTRACT*** |

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| **Additional conditions of contract** | Z1.1 |  | The additional conditions of contract stated in the Contract Data are part of the contract. |

Z. ADDITIONAL CONDITIONS OF CONTRACT

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| **‎Z1** | **Project Agreements** |
| **‎Z2** | **Core Team** |
| **‎Z3** | **Core Team Transfer Plan** |
| **Z4** | **Cost Saving** |
| **‎Z5** | **Modern Slavery** |
| **‎Z6** | **Change of Ownership** |
| **‎Z7** | **Data Protection** |
| **‎Z8** | **Regulatory Interface** |
| **‎Z9** | **Documentation** |
| **‎Z10** | **Security Requirements** |
| **‎Z11** | **Financial Monitoring and Remediation** |
| **‎Z12** | **Freedom of Information** |
| **Z13** | **Monthly Report** |
| **Z14** | **Conflict of Interest** |
| **Z15** | **Employee Indemnity** |
| **‎Z16** | **Procurement Legislation Disclosure** |
| **‎Z17** | **Supplier Exclusion Notification** |
| **‎Z18** | **Supplier Exclusion Ground** |
| **‎Z19** | **Set Aside Order and Public Procurement Termination Event** |
| **Z20** | **Feedback** |

1. **Project Agreements[[8]](#footnote-9)**
   1. The *Consultant* acknowledges that, if it has been or is supplied with a copy of any of the Project Agreements which are detailed in the Scope, it has (and is deemed to have) full and actual knowledge of the terms of such Project Agreements and any amended or new Project Agreement referred to in clause ‎‎Z1.2, including the obligations, risks and liabilities of the *Client* under them. The *Consultant* acknowledges that such obligations, risks and liabilities are (and such obligations, risks and liabilities are deemed to be) within the contemplation of the *Consultant* and that if the *Consultant* is in breach of the contract such breach is likely to result in, among other things, a liability of the *Client* under the Project Agreements.
   2. If the terms of any of the Project Agreements are amended or replaced or any new Project Agreements (including any agreement, pursuant to the terms of which the *Client* raises external finance for or refinances the Project or it grants a UK Regulator certain regulatory controls in relation to the Project) are entered into after the Contract Date, the *Client* may provide the *Consultant* with copies of any such documents or amendments or replacements. Upon receipt of the same the *Consultant* is on notice as to such new or revised or replaced terms and the same constitutes an instruction to change the Scope to which the provisions of clause 60.1(1) apply. If the *Service Manager* subsequently withdraws such instruction the *Consultant* is deemed no longer to be on notice as to such revised terms.
   3. Notwithstanding any other provision of the contract, the Parties acknowledge that:
      1. where the consent or approval of the *Client* or the *Service Manager* is required under a provision of the contract and such provision provides that such consent or approval is not unreasonably withheld or delayed, the *Client* or the *Service Manager* (as the case may be) is deemed to have reasonably withheld or delayed such consent or approval in circumstances where the *Client's* counter-party to a Project Agreement (a **'PA** **Counter-Party**') has withheld or delayed a corresponding consent or approval under and in accordance with the Project Agreement, provided always that the *Client* or the *Service Manager* (as the case may be) uses its reasonable endeavours to obtain such consent or approval; and
      2. where under the contract the *Client* or the *Service Manager* is required to act reasonably, the *Client* or the *Service Manager* is deemed to have done so if a PA Counter-Party has the same obligation and has performed that obligation under and in accordance with the Project Agreement.
   4. The *Consultant* provides the *Client* with any information reasonably requested by the *Client* in order to comply with its obligations under the Project Agreements.
2. **Core team**
   1. The *Consultant* ensures that the Core Team are employed on a full-time basis to Provide the Service. The *Consultant* ensures that the Core Team members have sufficient expertise and capacity to Provide the Service.
   2. The *Consultant* acknowledges that in order to Provide the Service the Core Team may be required to work outside of normal business operating hours and that, subject to clause Z2.3 but notwithstanding any other provision of the contract, the Core Team Cost is the *Consultant's* full entitlement to payment in respect of the Core Team, inclusive of all costs, expenses, fees and overheads of every kind incurred by the *Consultant* in connection with the employment of the Core Team.
   3. If during the performance of the *service* the *Consultant* anticipates that in order to Provide the Service in accordance with the terms of the contract and the Accepted Programme the Core Team will be required to work on a day that is not a Business Day or where the *Service Manager* instructs the *Consultant* that the Core Team is required to work during such periods, the *Consultant* notifies the *Service Manager* and provides a detailed forecast of the number of hours of work that it anticipates each Core Team member will be required to carry out during such periods in respect of the relevant Task and in respect of which the *Consultant* will incur additional costs and/or expenses as a result of the Core Team Overtime. The *Consultant* is not entitled to additional payment in respect of Core Team Overtime unless and until the *Service Manager* at its sole discretion issues an instruction to that effect. The *Consultant's* entitlement to payment for Core Team Overtime is subject to the *Consultant* providing sufficient evidence to demonstrate the costs that it incurred in connection with the Core Team Overtime to the *Service Manager*.
   4. The Core Team must at all times comply with [].[[9]](#footnote-10)
   5. In accordance with clause 21.4 the Core Team is responsible for performing all of the *service* unless specified otherwise in the Service Plan or where a Task Order issued by the *Service Manager* specifies that other employees of the *Consultant* and/or a Subcontractor will perform the *service* in connection with the relevant Task.
   6. As a post-contract management tool, the *Consultant* participates in a mobilisation interview at the start of the mobilisation stage of the *service*. The purpose of the interview is to further ensure that skills, capabilities and commitment of the Core Team mobilised are appropriate and display collaborative and positive behaviours essential for the success of the Project. If the *Client* is not satisfied with any of the personnel put forward at that stage then the *Client* may instruct the *Consultant* to replace such Core Team personnel, and such instruction is not a compensation event. The Key Performance Indicator on staff quality captures the *Client* instruction to the *Consultant* to remove people and associated penalties.
3. **Core Team Transfer Plan**
   1. The *Consultant* complies with the provisions set out in the Scope regarding the appointment and replacement of Core Team members in accordance with the Core Team transfer plan. Where the *Consultant* proposes the replacement of any Core Team members the *Consultant*, at no cost to the *Client*, ensures that during the relevant handover period the proposed replacement Core Team member works alongside the existing Core Team member in order to ensure a seamless handover of responsibilities with no disruption in service delivery to the *Client*.
   2. The *Consultant* submits its Core Team transfer plan to the *Service Manager* for acceptance in accordance with the Scope (in the *Service Manager*'s discretion ). If the *Consultant* proposes a change to the Core Team, it includes in the Service Plan issued in accordance with article 3.1 of the Agreement or as an addendum to it an explanation of the proposed change and curricula vitae for each additional and/or replacement Core Team members. The curricula vitae provided by the *Consultant* details the name, relevant qualifications and experience of a proposed replacement person to the *Core Team.*
   3. A reason for not accepting a Core Team transfer plan is that:
      1. it does not contain the information required by the Scope; or
      2. a Core Team member named in the Core Team transfer plan does not have acceptable competency, qualifications or experience.
   4. Save where a Core Team member is removed for reasons which the *Service Manager* considers are outside the *Consultant*'s reasonable control, if a Core Team member:
      1. ceases to be employed to do the job stated in the Service Plan; and/or
      2. the *Consultant* fails to comply with an accepted Core Team transfer plan,

the salary and expense costs associated with the replacement Core Team member during the relevant handover period are treated as Disallowed Cost unless the *Service Manager* decides to reduce or waive this requirement.

* 1. The Parties acknowledge that when the Project enters the construction phase the members of the Core Team may need to be replaced. Notwithstanding clause 21.5 of the contract, within a reasonable time following the issue of the Stage 2 NTP or the Completion Certificate in respect of the last Unit (in each case as defined in the TP Contract), the *Client* may instruct that the *Consultant* replaces any member of the Core Team without delay to reflect any change in the nature of the *service* and/or different expertise needed to Provide the Service in accordance with the terms of the contract. The *Consultant* provides reasonable notice to the *Service Manager* if it anticipates any such replacements to the Core Team members being required and submits a Core Team transfer plan to the *Service Manager* for approval in accordance with the terms of this clause Z3.

1. **Cost Saving** 
   1. Throughout the duration of the Project the *Consultant* assesses whether the *Client* could achieve any Cost Savings including but not limited to in respect of the *service* or the work to be carried out by the Contractor or any other parties. If the *Consultant* identifies any such potential methods of achieving a Cost Saving it notifies the *Service Manager* and/or the *Client* and submits its proposals for how any such Cost Saving initiative could be implemented in the Project. The *Consultant* does not propose any potential Cost Savings if they may jeopardise the health and safety of the Project or the completed Project.
   2. The *Client* at its absolute discretion may utilise any of the *Consultant's* proposals submitted under clause Z4.1 and the *Consultant* provides its advice, recommendations or assurance services as may be required in respect of the Cost Saving initiatives.
2. **Modern Slavery** 
   1. In performing its obligations under the contract, the *Consultant*
      1. complies with the Anti-Slavery Policy,
      2. complies, and procures that its Subcontractors and sub-subcontractors of any tier comply, with the Modern Slavery Act 2015, and
      3. unless otherwise agreed in writing by the *Client* (at the *Client's* sole and absolute discretion), only procures, and ensures that its subcontractors of any tier and whose annual turnover is in excess of £36 million only procure, labour from a Certified Ethical Labour Provider.
   2. Where the *Consultant*, a Subcontractor or a sub-subcontractor of any tier is procuring labour from a Certified Ethical Labour Provider who prepares audit reports, such reports are made available to the *Client* (at no additional cost) and, where possible, through the relevant contract management platform.
   3. On each 12 month anniversary of the *starting date*, until the Defects Certificate has been issued, the *Consultant* submits a report to the *Client* which confirms that all labour used to Provide the Service has been procured from a Certified Ethical Labour Provider and includes such evidence as the *Client* may reasonably require to evidence compliance.
   4. A failure by the *Consultant* to:
      1. comply with its obligations under clause Z5.1 and/or Z5.2; and/or
      2. serve notice to terminate any Subcontract within 10 Business Days of becoming aware of any failure by the Subcontractor or any of its subcontractors to comply with clause Z11.1 and/or Z11.2,

constitutes a material breach of its obligations by the *Consultant* and entitles the *Client* to terminate the *Consultant*'s obligation to Provide the Service in whole or in part with immediate effect in accordance with clause 91.3.

* 1. The *Client* may refuse any labourer employed or engaged by the *Consultant*, a Subcontractor or sub-subcontractor of any tier entry onto any property that is owned, occupied or managed by the *Client* if that labourer has not been procured from a Certified Ethical Labour Provider or if the *Client* has reasonable grounds to suspect that such employee or agent has not been procured from a Certified Ethical Labour Provider. Any such refusal of entry does not constitute a compensation event and any cost incurred by the *Consultant* as a direct result of such refusal shall be Disallowed Cost.

1. **Change of Ownership**
   1. No Change of Ownership occurs before the *defects date* without the prior written consent of the *Client* (which is not unreasonably withheld or delayed).
   2. The *Client* provides written consent under this clause if:
      1. the Change of Ownership in respect of the relevant party is intra-group (unless the relevant party is an ultimate parent company); and
      2. the Change of Ownership in respect of the relevant party does not give rise to any deterioration in the financial stability of that party.
   3. The *Consultant* notifies the *Client* as soon as it becomes aware of any proposed or actual Change of Ownership. Such notice contains sufficient information to enable the *Client* to ascertain whether or not the proposed new owner is an Unsuitable Transferee. Promptly upon receipt of any such notice, the *Client* notifies the *Consultant* whether the Change of Ownership involves or will involve an Unsuitable Transferee.

If the notice confirms that the Change of Ownership does not or will not involve an Unsuitable Transferee, it also confirms the *Client's* consent to the Change of Ownership.

If the notice confirms that the Change of Ownership does or will involve an Unsuitable Transferee, the *Client* thereafter engages with the *Consultant* in detailed discussions to enable the *Consultant* to seek to address the *Client's* concerns.

If the *Client* considers that its concerns have been addressed to its reasonable satisfaction it notifies the *Consultant* of that fact and confirms its consent to the Change of Ownership.

Any failure by the *Consultant* to:

* + 1. serve notice of any proposed or actual Change of Ownership in accordance with this clause Z6.3; and
    2. address the Client's *concerns* to the reasonable satisfaction of the *Client,*

constitutes a material breach by the *Consultant* of its obligations under the contract and entitles the *Client* to terminate the contract the *Consultant's* appointment under the contract pursuant to clause 91.3.

This clause Z6.3 applies irrespective of whether: (i) any relevant shares are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or (ii) the relevant sale, disposal, transfer or other arrangements arise out of or in connection with any listing on a recognised investment exchange.

1. **Data Protection**

The *Consultant* complies with all of its obligations under the Data Protection Legislation and, if Processing Personal Data on behalf of the *Client*, only carries out such Processing to Provide the Service in accordance with the contract. With respect to the Parties’ rights and obligations under the contract, the Parties acknowledge that the *Client* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Consultant* is a Data Processor.

1. **Regulatory Interface**

***[TBC (- see the footnote to article [2.4]): if appropriate, this provision will outline any obligation of the Consultant to support the Client in its interactions with the all applicable regulators (including without limitation the Regulator (ONR)), with respect to the Project, including complying with any Regulatory Hold Point or other management arrangements implemented by the Client.]***

1. **Documentation[[10]](#footnote-11)**

***[TBC (- see the footnote to article [2.4]): if appropriate, this provision will outline any specific procedures and requirements relating to the provision, review, acceptance and retention of documentation relating to nuclear fuel and materials.]***

1. **Security Requirements**

***[TBC (- see the footnote to article [2.4]): if appropriate, this provision will outline any specific security procedures and requirements relating to the provision of nuclear fuel and materials and its associated documentation, including vetting or clearance requirements.]***

1. **Financial Monitoring and Remediation** 
   1. If at any time from the *starting date* until Completion of the whole of the *service*, the *Client* considers (acting reasonably) that a Financial Monitoring Event has occurred, the *Service Manager* may issue a written request to the *Consultant* for the *Consultant* to provide a Financial Remediation Plan and such request includes the details of such Financial Monitoring Event.
   2. The *Consultant* provides a Financial Remediation Plan to the *Service Manager* within 20 Business Days of a request from the *Service Manager* to do so or such longer period as stated in the request.
   3. The *Client* reviews the *Consultant*'s Financial Remediation Plan and the *Service Manager* issues a notice to the *Consultant* stating either:
      1. that the Financial Remediation Plan is acceptable to the *Client* (in its discretion, acting reasonably), in which case the *Consultant* proceeds to implement the Financial Remediation Plan; or
      2. that the Financial Remediation Plan is not acceptable to the *Client* (in its discretion, acting reasonably), including reasons why the Financial Remediation Plan is not acceptable because it does not specify how the Financial Monitoring Event will be remedied, in which case clause ‎Z11.4 applies.
   4. If the *Service Manager* issues a non-acceptance notice under clause ‎Z11.3(b):
      1. the *Consultant* updates the Financial Remediation Plan and re-submits it to the *Service Manager* within ten Business Days of the *Service Manager*'s non‑acceptance notice; and
      2. the *Client* reviews the *Consultant*'s re-submitted Financial Remediation Plan and, if it is acceptable to the *Client* (in its discretion, acting reasonably), the *Service Manager* issues a notice to the *Consultant* stating that the Financial Remediation Plan is acceptable and the *Consultant* proceeds to implement the Financial Remediation Plan.
   5. If:
      1. the *Consultant* fails to submit or re-submit any Financial Remediation Plan within the timescales included in this clause ‎‎Z11;
      2. the *Consultant*'s Financial Remediation Plan which has been re-submitted under clause ‎‎Z11.4(a) is not acceptable to the *Client* (in its discretion, acting reasonably) because it does not adequately specify how the Financial Monitoring Event will be remedied; or
      3. the *Consultant* fails to implement any element or obligation under a Financial Remediation Plan which has been accepted in accordance with clause ‎ Z11.6(a) or clause‎Z11.4(b),

then the *Client* may terminate the *Consultant*'s obligation to Provide the Service by notifying the *Service Manager* and the *Consultant* within 20 Business Days of the relevant circumstances occurring, in which case the *Consultant*'s obligation to Provide the Service automatically terminates and the relevant procedures and amounts set out in the Termination Table apply

1. **Freedom of Information**

The *Consultant* acknowledges that the *Client* is subject to the FOI Legislation and assists and co-operates with the *Client* to enable the *Client* to comply with its obligations under the FOI Legislation. This does not preclude the *Consultant* from objecting to a disclosure of Consultant Information subject to the *Consultant* acknowledging that the *Client* is solely responsible for determining whether Consultant Information is exempt information under the FOI Legislation and for determining what Consultant Information is disclosed in respect of an Information Request. The *Consultant* does not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the *Client*. The *Consultant* gives the *Client* copies of all Information Requests it receives in connection with the *service*, the Project or the *Client* within three Business Days of receipt thereof.

1. **Monthly Reporting**

The *Consultant* issues to the *Service Manager* a Monthly Report no later than [] each month.

1. **Conflict of Interest** 
   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 Providing the Service save to the extent fully disclosed to and approved in writing by the *Client*.
   2. The *Consultant* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract 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 Providing the Service.
   3. The *Consultant* includes equivalent provisions as set out in clauses Z14.1 and Z14.2 in Subcontracts.
   4. The *Consultant* works with the *Client* to do whatever is necessary to manage any such conflicts of interest to the *Client's* satisfaction (including the separation of staff working and/or data relating to the works from the matter in question or the termination of the employment of the relevant Subcontractor if necessary) and provided that, where the *Client* is not so satisfied (in its absolute discretion) the *Client* is entitled to terminate the contract).
2. **Employee Indemnity** 
   1. The *Consultant* and the *Client* agree that the Consultant Personnel shall remain employed or engaged by the *Consultant* or relevant sub-contractor at all times. The *Consultant* shall discharge and hereby undertakes to indemnify the *Client* in respect of any Losses arising directly or indirectly from or in connection with the employment and/or the termination of the employment or the engagement of any of the Consultant Personnel.
   2. The *Consultant* and the *Client* confirm their mutual expectation that, due to the nature of the *service* and their delivery, the termination or expiry of the *service* (or any part of them) will not trigger a transfer under TUPE of any Consultant Personnel. If the contract of employment or engagement of, or any liability regarding the employment or engagement of, any Consultant Personnel is found or alleged to have transferred to the *Client* and/or any new provider of the *service* pursuant to TUPE, the *Consultant* shall indemnify the *Client* and any new provider of the *service* against all Losses incurred (whether directly or through an indemnity in favour of the person suffering such Losses) arising in connection with:
      1. the employment or engagement, and/or termination of employment or engagement, of Consultant Personnel at any time up to and including the time of transfer or alleged transfer to the *Client* and/or any new provider of the *service*; and
      2. any liability transferred to the *Client* and/or any new provider of the *service* by virtue of the application or alleged application of TUPE, and/or arising from anything done or omitted to be done in respect of Consultant Personnel which is deemed to have been done by the *Client* and/or any new provider of the *service* or its or their personnel by virtue of the application or alleged application of TUPE; and
      3. the employment or engagement (or alleged employment or engagement), and/or termination of such employment or engagement, of any Consultant Personnel by the *Client* and/or any new provider of the *service* following the transfer or alleged transfer; and
      4. any failure by any person to comply with TUPE in respect of Consultant Personnel, including without limitation any failure to comply with regulations 13 or 14 of TUPE.
   3. The Contracts (Rights of Third Parties) Act 1999 applies to this clause Z15 to the extent that any replacement owner's engineer that provides the *service* has the right to enforce the indemnities set out herein
3. **Procurement Legislation Disclosure** 
   1. The *Consultant* acknowledges that the *Client*:
      1. is subject to the Procurement Legislation and agrees to assist and co-operate with the *Client* to enable the *Client* to comply with its Disclosure Obligations, and
      2. without prejudice to the *Client's* other rights, powers or remedies, may disclose information as the *Client* considers appropriate (in its absolute discretion) to comply with the Disclosure Obligations. The *Client* is responsible for determining whether any information is exempt from disclosure under the Procurement Legislation.
   2. Without limiting the generality of clause Z16.1, or any other obligation of the *Consultant* under the contract, the *Consultant* agrees and procures that its Subcontractors (and sub-subcontractors) agree to:
      1. provide the *Client* with such information that the *Client* requests within seven days of a request (or such longer period as the *Client* may reasonably specify), and in such form as the *Client* may reasonably specify, and
      2. make available its employees and agents as reasonably requested by the *Client*,

to comply with the *Client's* Disclosure Obligations under Procurement Legislation.

* 1. The *Client* may in its absolute discretion consult with the *Consultant* regarding any proposed information to be disclosed. The *Client* makes the final decision regarding disclosure, publication and any redaction of such information.

1. **Supplier Exclusion Notification** 
   1. The *Consultant* promptly notifies the *Client*:
      1. if any of the *Consultant*, the *Consultant's* Associated Persons or any Subcontractor is or is placed on the Debarment List, and
      2. if any of the *Consultant*, the *Consultant's* Associated Persons or any Subcontractor is or becomes an Excluded Supplier or Excludable Supplier (including in each case by reference to their Connected Persons)

and promptly provides any further information to the *Client* reasonably requires in this regard.

* 1. The *Consultant* notifies the *Client* as soon as reasonably practicable and in any event within fourteen days of any changes to the *Consultant's* Connected Persons together with information regarding any new Connected Persons.

1. **Supplier Exclusion Ground** 
   1. In the event that the *Client* considers that a Supplier Exclusion Ground applies, the *Client*:
      1. may notify the *Consultant* of its intention to terminate the contract and in any such notice:
         1. specifies which Supplier Exclusion Ground the *Client* considers applies and the reasons for the *Client* deciding to terminate on that basis,
         2. invites the *Consultant* to make representations to the *Client* about the existence of the Supplier Exclusion Ground and the *Client's* decision to terminate,
         3. specifies a reasonable period (determined at the sole discretion of the *Client*) within which the *Consultant* is to make such representations, and
         4. if applicable, specifies a reasonable period (determined at the sole discretion of the *Client*) within which the *Consultant* is to have, or procured that its Subcontractors (or sub-subcontractors) have, ceased subcontracting to the Excluded Supplier or Excludable Supplier and, if the *Client* considers necessary, appoint an alternative Subcontractor (or sub-subcontractor) who is approved by the *Client*, and
      2. on expiry of the period specified for the purposes of clause Z18(a)(iii) (and, where applicable, clause Z18(a)(iv)), then, if after considering the *Consultant's* representations (if any), the *Client* is satisfied that the termination ground applies, it may terminate the contract in accordance with clause 91.3.
2. **Set Aside Order and Public Procurement Termination Event** 
   1. In the event of a Public Procurement Termination Event, the *Client:* 
      1. may notify the *Consultant* of its intention to terminate the contract and in any such notice:
         1. provides the *Client's* reasons for considering that a Public Procurement Termination Event has occurred and the reasons for the *Client* deciding to terminate on that basis,
         2. invites the *Consultant* to make representations to the *Client* about the occurrence of the Public Procurement Termination Event and the *Client's* decision to terminate, and
         3. specifies a reasonable period (determined at the sole discretion of the *Client*) within which the *Consultant* is to make such representations, and
      2. on expiry of the period specified for the purposes of clause Z19.1(a)(iii), then if after considering the *Consultant's* representations (if any) the *Client* is satisfied that a Public Procurement Termination Event has occurred, may terminate the contract in accordance with clause Z19.2.
   2. In the event that a court makes a Set Aside Order or the circumstances set out in clause Z19.1(b) apply, the *Client* notifies the *Consultant* of the Set Aside Order or termination as a result of the Public Procurement Termination Event in accordance with clause 91.12 (such termination to take effect immediately or on such notice as the *Client* consider appropriate).
   3. The Set Aside Order or termination as a result of the Public Procurement Termination Event does not prejudice or affect any right, liability or remedy which has accrued or which accrues to either party prior to or after such Set Aside Order or termination.
   4. The provisions of this clause Z19 (and applicable definitions) survive any termination of the contract following a Set Aside Order or Public Procurement Termination Event.
3. **Feedback**

The Parties provide feedback to one another in accordance with the [360 Feedback Requirements set out in Section [] of the Scope].

Contract Data

[[11]](#footnote-12)

Contract Data

|  |  |  |
| --- | --- | --- |
| **PART ONE – DATA PROVIDED BY THE *CLIENT*** | | |
|  |  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. |

|  |  |  |
| --- | --- | --- |
| 1. **General** | | |
|  |  | The conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 (with amendments January 2023) |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | Main Option | E | Option for resolving and avoiding disputes | W2 |
|  |  |  |  | | |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Secondary Options | [X1, X2, X4, X9, X11, X20, X29 and Y(UK)2] |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *service* is | The services described in the Scope |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *Client* is |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Name | Great British Nuclear |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for communications | Attention: Matt Artimage.  Department for Energy Security and Net Zero, 3-8 Whitehall Place, London SW1A 2EG |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for electronic communications | cosec@greatbritishnuclear.uk |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *Service Manager* is |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Name | [] |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for electronic communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The Scope is in | Schedule [] to the Agreement |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *language of the contract* is | English |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *law of the contract* is the law of | England and Wales |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | The *period* for *reply* is | [] | except that |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | The period for reply for |  | is |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | The period for reply for |  | is |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | The *period for retention* is | [] | year(s) following Completion or earlier termination |

|  |  |  |
| --- | --- | --- |
|  |  | The following matters will be included in the Early Warning Register |
|  |  | [] |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Early warning meetings are to be held at intervals no longer than | | [] |
|  |  |  |  | |
|  |  |  | | |
|  |  |  | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 1. **The *Consultant's* main responsibilities** | | | | | |
| If the *Client* has identified work which is set to meet a stated *condition* by a *key date* | The *key dates* and *conditions* to be met are | | | |  |
|  | *condition* to be met | |  | | *key date* |
|  | (1) |  | | |  |
|  | (2) |  | | |  |
|  | (3) |  | | |  |
| If Option A is used | The *Consultant* prepares a forecast of the total *expenses* at intervals no longer than | | |  | |
| If Option C or E is used | The *Consultant* prepares forecasts of the total *Defined Cost* | | | For inclusion in the Monthly Report | |
|  |  | | |  | |
|  |  | |  | |  |

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Time** | | | |
|  | The *starting date* is | | Q4 2025 |
|  | The *Client* provides access to the following persons and things | | |
|  | Access | | Access date |
|  | (1) |  |  |
|  | (2) |  |  |
|  | (3) |  |  |
|  | The *Consultant* submits revised programmes at intervals no longer than | |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| If the *Client* has decided the completion date for the whole of the *service* | The *completion date* for the whole of the *service* is | |  | |
| If no programme is identified in part two of the Contract Data | The period after the Contract Date within which the Consultant is to submit a first programme for acceptance is | |  | |
|  |  |  | |  |

|  |  |  |
| --- | --- | --- |
| 1. **Quality Management** | | |
|  | is to submit a quality policy statement and Quality Assurance Plan is |  |
|  | The period between Completion of the whole of the *service* and the *defects date* is | 1 year |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. **Payment** | | | | | | | | |
|  | The *currency of the contract* is the | | | | | | Great British Pound | |
|  | The *assessment interval* is | | | | | | Monthly | |
| If the *Client* states any *expenses* | The *expenses* stated by the *Client* are | | | | | |  | |
|  | Item | | | | | | Amount | |
|  |  | | | | | |  | |
|  |  | | | | | |  | |
|  | The *interest rate* is | | | |  | | % per annum (not less than 2) above the rate of the bank | |
| If the period in which payments are made is not three weeks and Y(UK)2 is not used | The period within which payments are made is | | | | | |  | |
|  |  | | | | | |  | |
| If Option C or E is used and the Client states any locations | The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are | | | | | |  | |
| If Option C is used | The *Consultant’s* share percentages and the *share ranges* are | | | | | | as agreed in the relevant Task Order | |
|  |  | | | | | |  | |
|  |  | |  | | |  |  |  |
|  |  | |  |  |  |  |  |  |
|  |  | |  |  |  |  |  |  |
|  |  | |  |  |  |  |  |  |
| If Option C or E is used | The *exchange rates* are those published in | | | | | |  | |
|  | on |  | | | | | (date) | |

|  |  |  |
| --- | --- | --- |
| 1. **Compensation events** | | |
| If there are additional compensation events | These are additional compensation events |  |
|  |  | |

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Liabilities and insurance** | | | |
| If there are additional *Client’s* liabilities | These are additional *Client's* liabilities | |  |
|  | (1) |  |  |
|  | (2) |  |  |
|  | (3) |  |  |

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

|  |  |  |
| --- | --- | --- |
| **EVENT** | **MINIMUM AMOUNT OF COVER** | **PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE *SERVICE* OR TERMINATION** |
| The *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service* | |  | | --- | | £10,000,000 | | in respect of each claim, without limit to the number of claims | | 12 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 | |  | | --- | | [£10,000,000] | | in respect of each event, without limit to the number of events | |  |
| 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 | |  | | --- | |  | | in respect of each event, without limit to the number of events | |  |

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| --- | --- | --- |
| 1. **Resolving and avoiding disputes** | | |
|  | The *tribunal* is | Arbitration |
| If the *tribunal* is arbitration | The *arbitration procedure* is | The Chartered Institute of Arbitrators CIARB arbitration rules in force from time to time |
|  | The place where arbitration is to be held is | London, England |
|  | The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is | |
|  | The Technology and Construction Solicitors' Association (TeCSA) | |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *Senior Representatives* of the *Client* are |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Name (1) | [] |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for electronic communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Name (2) | [] |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for electronic communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *Adjudicator* is |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Name | [] |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address for electronic communications |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | The *Adjudicator nominating body* is |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **X1: Price adjustment for inflation (used only with Options A and C)** | | | | |
| If Option X1 is used | The proportions used to calculate the Price Adjustment Factor are | | | |
|  | 0. |  | linked to the index for |  |
|  | 0. |  |  |  |
|  | 0. |  |  |  |
|  | 0. |  |  |  |
|  | 0. |  |  |  |
|  | 0. |  |  |  |
|  | 0. |  | non-adjustable |  |
|  | 1.00 |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  | The *base date* for indices is | |  | |
|  | These indices are | |  | |

|  |  |  |
| --- | --- | --- |
| **X2: Changes in the law** | | |
| If Option X2 is used | The law of the project is | Not used. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | | | |
|  |  |  |  |
|  |  |  | |

**X20: Key Performance Indicators (not used with Option X12)**

|  |  |
| --- | --- |
| The *incentive schedule* for Key Performance Indicators is in |  |

If Option X20 is used

|  |  |  |
| --- | --- | --- |
| A report of performance against each Key Performance | | |
| Indicator is provided at intervals of |  | months |

**X29: Climate change**

|  |  |  |
| --- | --- | --- |
| If Option X29 is used | The *performance table* is in |  |

|  |  |  |
| --- | --- | --- |
| If no *climate change plan* is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first climate change plan for acceptance is |  |
|  |

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

If Option Y(UK)2 is used and the final date for payment is not seven days after the date on which payment becomes due

|  |  |  |
| --- | --- | --- |
| The period for payment is |  | days after the date on which payment becomes due |

**Z: *Additional conditions of contract***

If Option Z is used The *additional conditions of contract* are

|  |
| --- |
| The *additional conditions of contract*  clauses Z1-Z14 set out in Schedule 1 to the Agreement. |

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

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

**1 General**

The *Consultant* is

|  |  |
| --- | --- |
| Name |  |

|  |  |
| --- | --- |
| Address for communications |  |

|  |  |
| --- | --- |
| Address for electronic communications |  |

|  |  |  |
| --- | --- | --- |
| The *fee percentage* is | Not used | % |

The *key persons* are

|  |  |
| --- | --- |
| Name (1) |  |

|  |  |
| --- | --- |
| Job |  |

|  |  |
| --- | --- |
| Responsibilities |  |

|  |  |
| --- | --- |
| Qualifications |  |

|  |  |
| --- | --- |
| Experience |  |

|  |  |
| --- | --- |
| Name (2) |  |

|  |  |
| --- | --- |
| Job |  |

|  |  |
| --- | --- |
| Responsibilities |  |

|  |  |
| --- | --- |
| Qualifications |  |

|  |  |
| --- | --- |
| Experience |  |

The following matters will be included in the Early Warning Register

|  |
| --- |
|  |

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

|  |  |
| --- | --- |
| The Scope provided by the *Consultant* is in |  |

If the *Consultant* is to

provide Scope

**3 Time**

|  |  |
| --- | --- |
| The programme identified in the Contract Data is |  |

If a programme is to be

identified in the

Contract Data

|  |  |
| --- | --- |
| The *completion date* for the whole of the *service* is |  |

If the *Consultant* is to decide

the *completion date* for the

whole of the *service*

**5 Payment**

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

item amount

|  |  |  |
| --- | --- | --- |
|  |  |  |

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| --- | --- | --- |
|  |  |  |

|  |  |  |
| --- | --- | --- |
|  |  |  |

**Resolving and avoiding disputes**

The *Senior Representatives* of the *Consultant* are

|  |  |
| --- | --- |
| Name (1) |  |

|  |  |
| --- | --- |
| Address for communications |  |

|  |  |
| --- | --- |
| Address for electronic communications |  |

|  |  |
| --- | --- |
| Name (2) |  |

|  |  |
| --- | --- |
| Address for communications |  |

|  |  |
| --- | --- |
| Address for electronic communications |  |

If an *information execution plan* is to be identified in the Contract Data

**X29: Climate change**

If Option X29 is used

|  |  |
| --- | --- |
| The *climate change plan* identified in the Contract Data is | |
|  |  |

If a *climate change plan* is to be identified in the Contract Data

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | % |

Schedule of Cost Components

Schedule of Cost Components

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | An amount is included   * only if it does not form part of the expenses, * only in one cost component and * only if it is incurred in order to Provide the Service. |
| People | 1 |  | The cost component of people who are employed directly or indirectly by the Consultant to undertake any part of the *service* is determined by multiplying each of the applicable rates for the relevant roles which are set out in the table below by the total time spent on that part of the *service*. For the avoidance of doubt, the rates for roles which are set out in the table below shall apply in respect of all subcontracts and sub-subcontracts of any tier, unless different rates are proposed by the *Consultant* and approved by the *Service Manager* in accordance with clause 19.7:  [**Core Team and Specialist Rate Cards to be inserted here**] *[[12]](#footnote-13)* |
| 11 |  | The cost component shall only apply to roles:   * which are listed in the above Rate Card, * which are performed by people who are suitably qualified and experienced for the activities to which they are deployed, and * which are performed by people whose grade is correctly assigned in accordance with the guidance on the grading structure set out in Appendix 1 to this Schedule of Cost Components and on the basis of their knowledge and experience and the activities they will perform. |
|  | 12 |  | The rates in the table above are based on an eight hour working day (excluding breaks) and are inclusive of all direct salary costs (true cost), costs of employment and overheads of any nature whatsoever including, but not limited to, the following costs:   * any element of profit or fee * contract rates paid by the *Consultant* * wages, salaries and amounts paid by the *Consultant* for people paid according to the time worked on the contract * relocation * medical examinations * passports and visas * travel insurance * protective clothing * contributions, levies or taxes imposed by law * pensions and life assurance * death benefit * occupational accident benefits * medical aid and health insurance * vehicles * working in special circumstances * special allowances * absence due to sickness and holidays * severance * provision and use of water, gas, electricity, telephone and internet * project related training and development costs including safety training * Project related IT infrastructure (such as laptop computers, mobile phones, portable printers, scanners) provided for use on this Project. |
|  | 13 |  | The component of the reasonable cost of travel, subsidence and lodging in accordance with the *Client's* relevant policies as the same may be amended from time to time at the *Client's* discretion, for:   * Non-Core Team Employees and Subcontractors and * the Core Team members only where they are required to travel somewhere other than Warrington, England or the Site. |
|  | 14 |  | Payments related to Core Team Overtime assessed by reference to the rates in the table above or a pro-rata amount of any such rates in respect of Core Team members that provided Core Team Overtime for a period of less than 8 hours on a given day (but not fewer than 4 hours on any day), provided always that the Core Team Overtime has been approved in advance by the *Service Manager* in accordance with clause Z2.3 and the conditions set out in that clause are satisfied. |
|  | 15 |  | Without prejudice to the provisions of Option X1 (Price Adjustment for Inflation) or save as may be agreed by the Parties in the Service Plan, the rates in the table above shall not be subject to adjustment. |
| Subcontractors | 2 |  | The following components of the cost of Subcontractors. |
| 21 |  | Payments to Subcontractors for work which is subcontracted that is a Reimbursable Service and in respect of which specific rates have been agreed in accordance with clause 19.7, without taking into account any amounts paid to or retained from the Subcontractor by the Consultant, which would result in the Client paying or retaining the amount twice. |
| Deductions | 3 |  | Without prejudice to the provisions of Option X1 (Price Adjustment for Inflation) or save as may be agreed by the Parties in the Service Plan, the rates in the table above shall not be subject to adjustment. |
| Insurance | 4 |  | The following are deducted from cost   * payments to the *Consultant* in respect of the Core Team Cost which would result in the Client paying the amount twice * the cost of events for which the contract requires the Consultant to insure and * other costs paid to the Consultant by insurers. |

**APPENDIX 1**

**GUIDANCE ON RATE CARD GRADING STRUCTURE**

**Grade Definitions**

**[to be inserted]**

**CONTRACT DATA PART ONE**

**APPENDIX 1**

**Incentive Schedule**

**Definitions**

|  |  |
| --- | --- |
| Assessment Periods | The period for which a performance review occurs, being the quarterly periods between the months that are 3, 6, 9 and 12 months after the commencement of a Financial year. |
| At Risk Fee Apportionment | The proportion of the Consultant's At Risk Fee amount applicable to an individual KPI as set out in Table 1. |
| Contract Year | Means each annual period from the Contract Date. |
| KPI | Any Key Performance Indicator applicable to the provision of the deliverables or applicable part of the service under the contract. |
| KPI Events | Any event, act or omission in respect of a KPI which impacts upon the Performance Level for that KPI. |
| KPI Failure | A failure to meet the Target Performance Measure in respect of a KPI or a group of KPIs, and which includes Minor KPI Failures, Serious KPI Failures, Severe KPI Failures and any failure by the Consultant to meet a KPI Service Threshold. |
| KPI Service Threshold | The minimum level of service that the Consultant is required to provide in respect of a KPI. |
| Material KPI Failure | Means: (a) a Severe KPI Failure; or (b) a failure by the Consultant to meet a KPI Service Threshold. |
| Measurement Period | In relation to a Key Performance Indicator, the period over which the Consultant's performance is measured as set out in Table 1 in the Annex. |
| Minor KPI Failure | As set out in Table 1 in the Annex. |
| Serious KPI Failure | As set out in Table 1 in the Annex. |
| Service Credit | A Service Credit is the percentage (%) of At Risk Fee that is permanently retained by the Client in respect of any KPI Failure by the Contractor. |
| Severe KPI Failure | As set out in Table 1 in the Annex. |
| Performance Level | Means the relevant level of performance against each KPI which constitutes the KPI Service Threshold and/or a Minor KPI Failure, Serious KPI Failure, Severe KPI Failure or Target Performance Measure as set out in Table 1 in the Annex. |
| Performance Score | Means the numerical score for Performance Level achieved against each KPI as set out in Table 2 and Table 1 in the Annex. |
| Target Performance Measure | The acceptable level of performance for a Key Performance Indicator which is required by the Client, as set out against the relevant Key Performance Indicator in Table 1 in the Annex. |

* 1. : Performance Indicators and Service Credits

1. Introduction
   1. The objective of the performance management regime is to encourage the *Consultant* to meet the Target Performance Measure by measuring performance against a range of key performance indicators (each a **"Key Performance Indicator"** or **"KPI"**).
   2. The KPIs have been selected to reflect areas of the service which are essential to deliver the contract at an acceptable level for the *Client*, and to avoid exposing the *Client* to significant financial or reputational risk.
   3. Performance Levels and Service Credits have been set for each KPI, to reflect the relative impact the failure to meet the Target Performance Measure of the KPI will have on the delivery of the contract.
   4. The *Consultant* acknowledges that any KPI Failure entitles the *Client* to the rights set out in Part A of this Appendix 1 including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Losses that may be suffered by the *Client* as a result of the *Consultant's* failure to meet any KPI Target Performance Measure.
2. Key Performance Indicators
   1. Table 1 in the Annex sets out the Performance Levels for each of the KPIs.
   2. The At Risk Fee Apportionment to be applied to each KPI is set out in Table 1 below. The Service Manager and the *Client* may vary the At Risk Fee Apportionment for each KPI following agreement with the *Consultant*.

Table 1: KPI At Risk Fee Apportionment

|  |  |  |
| --- | --- | --- |
| **Category** | **KPI/Key Performance Indicator** | **At Risk Fee Apportionment (%)** |
| Management | Monthly Reporting | 5.00% |
| Cost Performance | 10.00% |
| Social Value | 5.00% |
| Performance | Deliverable Quality | 20.00% |
| Deliverable Timeliness | 15.00% |
| Service Plan Submission | 7.50% |
| Behaviour | Timely Engagement | 10.00% |
| Staff Quality | 12.50% |
| Availability of Core Team | 15.00% |

* 1. The *Consultant* monitors its performance against each KPI monthly and the actual performance achieved in the current Measurement Period per Contract Year against each KPI. These details are included in the Monthly Report in accordance with Part B (Performance Monitoring).
  2. Service Credits accrue for any KPI Failure over the applicable Assessment Period. Service Credits are calculated in accordance with Paragraph 3 of this Appendix 1.
  3. If the *Consultant* is unlikely to achieve the Target Performance Measure for a KPI, the *Consultant* immediately notifies the *Client* in writing and the *Client*, in its absolute discretion and without limiting any other of its rights, may:
     1. require the *Consultant* to immediately take all preventative and/or remedial action that is reasonable to mitigate the impact on the *Client* and to rectify or prevent a KPI Failure from taking place or recurring;
     2. instruct the *Consultant* to submit a Performance Improvement Plan and comply with the provisions of clause X20.3;

1. Performance Levels and Service Credits
   1. If the level of performance of the *Consultant* during an Assessment Period is below the Target Performance Measure in respect of a KPI as set out in Table 1 in the Annex, Service Credits accrue to the *Consultant* in respect of that KPI as set out in paragraphs 3.2 and 3.3 below.
   2. The Service Credit deductions depend on the extent to which the *Consultant* has failed to meet the Target Performance Measure for each KPI.
      1. Each KPI has individually defined Performance Levels, which are set out in Table 1 in the Annex. At the end of each Assessment Period, for each KPI, a Performance Score is determined pursuant to the Service Manager's assessment under clause X20.4 or (where applicable) the *Client*'s assessment under clause X20.8 of the *Consultant*'s Performance Level against each KPI in the Assessment Period in accordance with Table 2 below. Service Credits are accrued in respect of the Performance Scores set out below in Table 2 and subject to the At Risk Fee Apportionments for each KPI set out in Table 1. This is applicable to all the KPIs:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Table 2. Service Credits (At Risk Fee retained) and Performance Score per Assessment Period per KPI** | | | | | | |
| **Performance Levels** | **Target Performance** | **Minor KPI Failure** | **Serious KPI Failure** | **Severe KPI Failure** | **KPI Service Threshold** | **Any score below the KPI Service Threshold** |
| **Performance Score** | 5 | 4 | 3 | 2 | 1 | 0 |
| **Service Credit per Assessment Period per KPI** | 0% | 10% | 30% | 60% | 100% | 100% |

* 1. The *Service Manager* and/or the *Client* considers the reporting on the KPIs provided in the Monthly Reports in making the assessments under clauses X20.4 and X20.8.
  2. The KPI Service Threshold (detailed in Table 1 in the Annex) represents the absolute minimum Performance Level that the *Consultant* is required to provide in respect of each KPI. If the *Consultant* during an Assessment Period achieves the Target Performance Measure in respect of a KPI as set out in Table 1 in the Annex, no Service Credits accrue in respect of that KPI.
  3. In the event that the *Consultant* breaches the KPI Service Threshold for any of the KPIs the following applies:
     1. the *Consultant* proposes a meeting with the *Client* immediately to address the situation;
     2. the *Consultant* prepares a Performance Improvement Plan;
     3. The *Consultant* provides any additional information requested by the *Client* or the *Service Manager* in the Monthly Reports in respect of the KPIs;
     4. the applicable Service Credits are deducted from amounts due to the *Consultant* in accordance with article 4; and
     5. if:
        1. the *Consultant* does not show progression or improvement based on an agreed Performance Improvement Plan; and
        2. Material KPI Failures have occurred for 3 consecutive Assessment Periods in respect of the periods in which the relevant KPI is measured,

deduct 100% of the Long-Term Behaviour Incentive which the *Consultant* would otherwise be entitled to at the end of the relevant period under article 5.2.

* 1. Service Credits are calculated at the end of each Assessment Period and applied to next invoice.
  2. For the KPIs in respect of which the Measurement Period is monthly, the Performance Score is awarded in consideration of the *Consultant*'s performance in respect of that KPI across the relevant Assessment Period.
  3. Service Credits are shown as an amount retained from the amount due from the *Client* to the *Consultant* in accordance with clause 50.3 in respect of the application for payment following the relevant Assessment Period.
  4. Service Credits are a reduction of the amounts payable in respect of the service and do not include VAT. The *Consultant* off sets the value of any Service Credits against the appropriate invoice.
  5. Any unearned At Risk Fee for a KPI will not roll forward into the next performance window.

1. Long-Term Behaviour Incentive
   1. To incentivise consistent excellent performance and behaviours in the long-term, the *Consultant* may be entitled to a part of the Long-Term Behaviour Incentive. The *Consultant*'s entitlement to the Long-Term Behaviour Incentive is determined by an aggregate of its Performance Scores across each 3 year period commencing from the Contract Date (or such other period as the *Client* may instruct under article 5.2 of the contract), calculated in accordance with paragraph 4.2 below.
   2. An arithmetic mean average of the Performance Scores for the KPIs listed in Table 2 of the Annex over the relevant period is calculated to produce 3-Year Average Performance Scores for each KPI (the 3-Year Performance Scores). An arithmetic mean average of the 3 - Year Performance Scores of the relevant KPIs (equal weights) is used to calculate an overall aggregate average Performance Score in the relevant period (the Overall Aggregate Score).
   3. The *Consultant* is entitled to payment of the portion of the Long-Term Behaviour Incentive set out in Table 3 below as determined by the Overall Aggregate Score for the relevant period.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 3 - Aggregate Score and Long-Term Behaviour Incentive Release** | | | | |
| **Overall Aggregate Score** | 5 to 4.9 | Less than 4.9, but more than or equal to 4.5 | Less than 4.5 and more than or equal to 4 | Less than 4 |
| **% of Long-Term Behaviour Incentive to be released** | 100% | 80% | 50% | 0% |

* 1. From the Contract Date until the issue of the Stage 2 NTP, the Long-Term Behaviour Incentive is an amount equivalent to 3% of, on an annual basis,:
     1. the Price for Service Provided to Date; and
     2. the aggregate amount of Defined Cost in respect of which the Prices are adjusted in accordance with clause 63.1 as a result of a compensation event.
  2. After the issue of the Stage 2 NTP, the Parties may mutually agree in writing fixed nominal sums which will comprise the Long-Term Behaviour Incentive.
  3. The *Consultant* is not entitled to any portion of the Long-Term Behaviour Incentive if for any KPI listed in Table 2 of the Annex:
     1. the 3-Year Performance Score in the period is below 1; or,
     2. there are Material KPI Failures for 3 consecutive Assessment Periods.
  4. In case of termination for breach, no Long-Term Behaviour Incentive payment would be made for that period and periods after.
  5. : Performance Monitoring

1. Performance Monitoring and Performance Review
   1. The Monthly Report includes a KPI report which summarises the performance by the *Consultant* against each of the Key Performance Indicators as more particularly described in paragraph 5.2 below (the **"KPI Report"**).
   2. The KPI Report is in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:
      1. for each KPI, performance progress on a month-by-month basis, the actual performance achieved over the Measurement Period per Contract Year, and performance achieved over the previous three (3) Measurement Periods;
      2. a summary of all KPI Events that occurred;
      3. which KPI Events remain outstanding and progress in resolving them;
      4. for any KPI Events which may result in a Material KPI Failure occurring during the Assessment Period, the cause of the relevant KPI Event and the actions being taken to reduce the likelihood of recurrence;
      5. the status of any outstanding Performance Improvement Plan processes, including: (i) whether or not a Performance Improvement Plan has been agreed; and (ii) where a Performance Improvement Plan has been agreed, a summary of the *Consultant*'s progress in implementing that Performance Improvement Plan;
      6. the indicative Performance Levels that the *Consultant* considers should be assigned for each KPI in the Measurement Period;
      7. the conduct and performance of any agreed periodic tests that have occurred;
      8. relevant particulars of any aspects of the *Consultant*'s performance which fail to meet the requirements of the contract;
      9. such other details as the *Client* may reasonably require from time to time and information in respect of previous Measurement Periods; and
      10. a rolling total of the number of KPI Events that have occurred over the past four (4) Measurement Periods.
   3. The *Consultant* is required to report on performance against each of the KPIs from the Contract Date, except in respect of the KPI on Social Value which is monitored after six (6) months from Contract Date and the KPI on Service Plan Submission which is measured annually from and including the date of the first Service Plan issued after the Contract Date.
   4. The *Consultant*, the *Client*, and the Service Manager attend meetings quarterly (unless otherwise agreed) to review the KPI Reports (the Contract Management Meetings). The Contract Management Meetings (unless otherwise agreed):
      1. take place within five (5) Business Days of the KPI Report being issued by the *Consultant*; and
      2. take place at such location and time (within normal business hours) as the *Client* reasonably requires (unless otherwise agreed in advance).
   5. During the Contract Management Meetings the *Client* is entitled to raise any additional questions and/or request any further information from the *Consultant* regarding any KPI Failures.
2. Performance Improvement Plan
   1. If there is a KPI Failure, the *Client* may, without limiting its other rights, request that the *Consultant* provide a Performance Improvement Plan.
   2. When the *Client* receives a requested Performance Improvement Plan it can either:
      1. reject the Performance Improvement Plan or revised Performance Improvement Plan, giving reasons; or
      2. accept the Performance Improvement Plan or revised Performance Improvement Plan (without limiting its rights) and the *Consultant* must immediately start work on the actions in the Performance Improvement Plan at its own cost, unless agreed otherwise by the the *Client*.
   3. Where the Performance Improvement Plan or revised Performance Improvement Plan is rejected, the *Client*:
      1. must give reasonable grounds for its decision; and
      2. may request that the *Consultant* provides a revised Performance Improvement Plan within five (5) Business Days.
   4. If the *Client* rejects any Performance Improvement Plan and the *Consultant* fails to provide a suitable revised Performance Improvement Plan in accordance with paragraph 6.3 above it constitutes a material breach for the purposes of the contract and the *Client* may exercise its right to terminate under Clause 91.2.

Annex 1 Table 1

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **KPI/Key Performance Indicator** | **Overall At Risk Fee apportionment (%)** | **Start Date** | **Metric Definition** | **Measurement Period** | **Target Performance Measure** | **Minor KPI Failure** | **Serious KPI Failure** | **Severe KPI Failure** | **KPI Service threshold** |
| 1. **Monthly Reporting** | 5% | Contract Start Date | No of Business Days over for a complete and accurate monthly report as defined in contract summitted and accepted against the monthly reporting timeline | Monthly | 0-1 | 1- 2 | 3- 4 | 5- 7 | 8 |
| 1. **OE Monthly Costs** | 10% | Contract Start Date | % variance = actual OE expenditure in a Measurement Period against forecasts of the Prices for the Measurement Period. | Monthly | <5% | greater than or equal to 5 and less than 10% | greater than or equal to 10 and less than 15% | greater than or equal to 15 and less than 20% | 20% |
| 1. **Social Value** | 5% | 6 months after the mobilisation | Positive % variance in social value target achieved and commitment/target set | Quarterly | [KPIs for social value will be based on the principle of going beyond the core contracted commitment and will be tailored to the winning bidder’s proposals.] | | | | |
| 1. **Deliverable Quality** | 20% | Contract Start Date | % = No. of deliverables provided and meet the *Client*'s expectations (accepted by the *Client*, with no significant changes) by the submission deadline against the Total no. of deliverables agreed to be submitted in the Measurement Period. | Quarterly | 100% | greater than or equal to 90 and less than 99% | greater than or equal to 85 and less than 90% | greater than or equal to 80 and less than 85% | 80% |
| 1. **Deliverable Timeliness** | 15% | Contract Start Date | Number of deliverables delivered on or before agreed deadline in the Measurement Period against the Total number of deliverables to be submitted in Service Plan or Task Orders in the Measurement Period. | Monthly | 100% | greater than or equal to 90 and less than 99% | greater than or equal to 85 and less than 90% | greater than or equal to 80 and less than 85% | 80% |
| 1. **Service Plan Submission** | 7.50% | Contract Start Date | Number of Business Days over the timeline agreed to submit a complete Service Plan as per Service Plan Process | Yearly | 0-1 | 1- 2 | 3- 4 | 5- 7 | 8 |
| 1. **Timely Engagement** | 10% | Contract Start Date | Number of logged requests responded (acknowledge and submit proposal/task sheet) in the Measurement Period by the *Consultant* within the required period for reply set out in the schedule to this Table against the total number of requests logged in the Measurement Period.  Note:   * + 1. Response Time varies as per priority in Annex Table 1a – Prioritisation is decided by the *Client* based on effort to deliver and impact of request.     2. This is to capture Ad-Hoc Requests. | Monthly | 100% | greater than or equal to 90 and less than 99% | greater than or equal to 85 and less than 90% | greater than or equal to 80 and less than 85% | 80% |
| 1. **Staff Quality** | 12.50% | Contract Start Date | Number of requests by the *Client* to the *Consultant* to remove any of the *Consultant*'s personnel from the Project in a quarter (due to non-satisfactory performance after exhausting escalation process as per the contract)  Provided always that:   * + 1. The *Consultant* must comply with the provisions of clause Z3 in the contract.     2. Removal of a resource must not be based on any discriminatory reason and evidence on poor performance shall be provided. | Quarterly | 0 | 0 | 0 | 1 | 2 |
| 1. **Availability of Core Team** | 15% | Contract Start Date | Availability of Core Team staff (Actual FTE / Baseline FTE).  Note:   * + 1. Attrition due to reasons not under control of OE (illness, compassionate ground) not included.     2. Changes to the Core Team made pursuant to clause Z3.5 are not included within this KPI.. | Monthly | 100% | greater than or equal to 90 and less than 99% | greater than or equal to 85 and less than 90% | greater than or equal to 80 and less than 85% | 80% |

Table 1A. Timeline for the Contractor Response - Priority Based (KPI 7 – Timely Engagement)

|  |  |  |
| --- | --- | --- |
| **Priority** | **Response Definition** | **Time target** |
| High | Acknowledgement and availability for discussion with the Client on scope and timeline and submission of proposed timeline to respond to request | 2 Business Days |
| Medium | Acknowledgement and submission of proposed timeline to respond to request | 4 Business Days |
| Low | Acknowledgement and submission of proposed timeline to respond to request | 8 Business Days |

Table 2: Long-Term Behaviour Incentive KPIs

|  |  |  |
| --- | --- | --- |
| **KPI** | **Weighting for Aggregate Score** | **Considered in Long-Term Behaviour incentive** |
| 1. OE Monthly Costs | 14.286 (equal to 1/7) % | Yes |
| 1. Social Value | 14.286 (equal to 1/7) % | Yes |
| 1. Deliverable Quality | 14.286 (equal to 1/7) % | Yes |
| 1. Deliverable Timeliness | 14.286 (equal to 1/7) % | Yes |
| 1. Timely Engagement | 14.286 (equal to 1/7) % | Yes |
| 1. Staff Quality | 14.286 (equal to 1/7) % | Yes |
| 1. Availability of Core Team | 14.286 (equal to 1/7) % | Yes |

**CONTRACT DATA PART ONE**

**APPENDIX 2**

**Financial Monitoring Schedule[[13]](#footnote-14)**

**1. Definitions**

1.1. In this Appendix 2 the following definitions apply:

"**Credit Rating Threshold**" means the minimum credit rating level for the *Consultant* as set out in Annex 1

“**Financial Monitoring Event**” means the occurrence or one or more of the events listed in this Appendix 2

"**Financial Monitoring Service Continuity Plan**" means a plan setting out how the *Consultant* will ensure the continued performance in accordance with this contract in the event that a Financial Monitoring Event occurs;

"**Rating Agency**" means the rating agency means Dun & Bradstreet.

**2. Credit rating and duty to notify**

2.1. The *Consultant* warrants and represents to the *Client* for the benefit of the *Client* that as at the Contract Date the long-term credit ratings issued for the *Consultant* by the Rating Agency.

2.2. The *Consultant* promptly notifies (or procures that its auditors promptly notify) the *Client* and the *Service Manager* if there is any significant downgrade in the credit rating issued by any Rating Agency for the *Consultant* (and in any event within seven days from the occurrence of the downgrade).

2.3. If there is any downgrade credit rating issued by any Rating Agency for the *Consultant*, the *Consultant* ensures that the *Consultant’s* auditors thereafter provide the *Client* or the *Service Manager* within 14 days of a written request by the *Client* or the *Service Manager* with written calculations of the quick ratio for the *Consultant* at such date as may be requested by the *Client* or the *Service Manager.* For these purposes the “quick ratio” on any date means:

Where

A. is the value at the relevant date of all cash in hand and at the bank of the *Consultant*

B. is the value of all marketable securities held by the *Consultant* determined using closing prices on the working day preceding the relevant date

C. is the value at the relevant date of all account receivables of the *Consultant* and

D. is the value at the relevant date of the current liabilities of the *Consultant*.

2.4. The *Consultant*:

* regularly monitors the credit ratings of the *Consultant* with the Rating Agencies and
* promptly notifies (or shall procure that its auditors promptly notify) the *Client* and the *Service Manager* following the occurrence of a Financial Monitoring Event or any fact, circumstance or matter which could cause a Financial Monitoring Event and in any event, shall ensure that such notification is made within 14 days of the date on which the *Consultant* first becomes aware of the Financial Monitoring Event or the fact, circumstance or matter which could cause a Financial Monitoring Event.

2.5. For the purposes of determining whether a Financial Monitoring Event has occurred pursuant to the provisions of paragraph, the credit rating of the *Consultant* shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the *Consultant* at or below the applicable Credit Rating Threshold.

**3. Consequences of a financial monitoring event**

3.1. In the event of:

3.1.1. the credit rating of the *Consultant* dropping below the applicable Credit Rating Threshold;

3.1.2. the *Consultant* issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the *Consultant*;

3.1.4. the *Consultant* committing a material breach of covenant to its lenders;

3.1.5. a Subcontractor notifying the *Client* that the *Consultant* has not satisfied any sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

3.1.6. any of the following:

* commencement of any litigation against the *Consultant* with respect to financial indebtedness or obligations under this contract;
* non-payment by the *Consultant* of any financial indebtedness; any financial indebtedness of the *Consultant* becoming due as a result of an event of default
* the cancellation or suspension of any financial indebtedness in respect of the *Consultant* in each case which the *Client* or the *Service Manager* reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the *Consultant* in accordance with this contract

then, immediately upon notification of the Financial Monitoring Event (or if the *Client* or the *Service Manager* becomes aware of the Financial Monitoring Event without notification and brings the event

to the attention of the *Consultant*), the *Consultant* shall have the obligations and the *Client* shall have the rights and remedies as set out in paragraphs 3.2 – 3.6.

3.2. The *Consultant*:

3.2.1 at the request of the *Client* meets the *Client* and the *Service Manager* as soon as reasonably practicable (and in any event within three working days of the initial notification (or awareness) of the Financial Monitoring Event or such other period as the *Client* or the *Service Manager* may permit and notify to the *Consultant* in writing) to review the effect of the Financial Monitoring Event on its continued performance in accordance with this contract and

3.2.2. where the *Client* or the *Service Manager* reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the Financial Monitoring Event could impact on the *Consultant’s* continued performance in accordance with this Contract:

* submits to the *Client* and the *Service Manager* for approval, a draft Financial Monitoring Service Continuity Plan as soon as reasonably practicable (and in any event, within 14 days from the initial notification (or awareness) of the Financial Monitoring Event or such other period as the *Client* or the *Service Manager* may permit and notify to the *Consultant* in writing)
* provides such financial information relating to the *Consultant* as the *Client* or the *Service Manager* may reasonably require.

3.3. The *Client* and the *Service Manager* do not withhold approval of a draft Financial Monitoring Service Continuity Plan unreasonably. If the *Client* and/or the *Service Manager* do not approve the draft Financial Monitoring Service Continuity Plan, the *Client* and/or the *Service Manager* inform the Consultant of the reasons and the *Consultant* takes those reasons into account in the preparation of a further draft Financial Monitoring Service Continuity Plan, which the *Consultant*  resubmits to the *Client* and the *Service Manager* within seven days of the rejection of the first or subsequent (as the case may be) drafts. This process is repeated until the Financial Monitoring Service Continuity Plan is approved by the *Client* and/or the *Service Manager* or referred to the dispute resolution procedure.

3.4. If the *Client* and/or the *Service Manager* consider that the draft Financial Monitoring Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Monitoring Event, the *Client* and/or the *Service Manager* may either agree a further time period for the development and agreement of the Financial Monitoring Service Continuity Plan or escalate any issues with the draft Financial Monitoring Service Continuity Plan using the dispute resolution procedure.

3.5. Following approval of the Financial Monitoring Service Continuity Plan by the *Client* or the *Service Manager*, the *Consultant*

* reviews on a regular basis (which shall not be less than monthly) the Financial Monitoring Service Continuity Plan and assesses whether it remains adequate and up to date to ensure the continued performance in accordance with this Contract
* where the Financial Monitoring Service Continuity Plan is not adequate or up to date in, submits an updated Financial Monitoring Service Continuity Plan to the *Client* and the *Service Manager* for approval, and the provisions of shall apply to the review and approval process for the updated Financial Monitoring Service Continuity Plan and
* complies with the Financial Monitoring Service Continuity Plan (including any updated Financial Monitoring Service Continuity Plan).

3.6. Where the *Consultant* reasonably believes that the relevant Financial Monitoring Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the Consultant notifies the *Client* and the *Service Manager* and subject to the agreement of the *Client* and/or the *Service Manager*, the Consultant is relieved of its obligations under paragraph 3.

**4. Termination rights**

4.1. The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R11) if

* the *Consultant* fails to notify the *Client* and the *Service Manager* of a Financial Monitoring Event in accordance with paragraph 2.2;
* the *Client* and the *Service Manager* fail to agree a Financial Monitoring Service Continuity Plan (or any updated Financial Monitoring Service Continuity Plan) in accordance with paragraph 3 and/or
* the *Consultant* fails to comply with the terms of the Financial Monitoring Service Continuity Plan (or any updated Financial Monitoring Service Continuity Plan) in accordance with paragraph 3.

**5. Primacy of credit ratings**

5.1. Without prejudice to the *Consultant’s* obligations and the *Client’s* rights and remedies under paragraph 3, if, following the occurrence of a Financial Monitoring Event pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

* the *Consultant* is relieved automatically of its obligations under paragraph 3 and
* the *Client* is not entitled to require the Consultant to provide financial information in accordance with paragraph 2.3.

**ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

*Consultant* Credit current rating (long term) [ ]

Credit Rating Threshold [ ]



Scope

**Clients Owners Engineer (OE) Consultant) Interim Statement of Requirements[[14]](#footnote-15)**

**Introduction**

**Context**

Great British Nuclear (GBN) intends to contract an Owner’s Engineer (OE) as part of GBN’s Small Modular Reactor (SMR) programme. The OE will provide essential independent assurance to GBN’s Intelligent Customer and Intelligent Client capability, supporting the deployment of first-of-a-kind (FOAK) nuclear technology in the UK and facilitating GBN’s goal to reach a Final Investment Decision (FID) for up to two SMR projects.

GBN is intending to establish an independent project development company (the ‘DevCo’) to be solely responsible for the successful delivery of an SMR Project (and hold all necessary licences and consents to do so). DevCo (hereafter referred to as the “Client”) will work alongside a contracted Delivery Partner (DP) for delivery support, procurement, integration, and delivery assurance, and an Owner’s Engineer organisation (hereafter referred to as the “Consultant”). The OE will provide subject matter expertise in technical and programmatic assurance within the Client’s Lines of assurance model at level 2 and specification, oversight, audit, review and advice of specific task deliverables.

Prior to the Client being established the SMR Project and associated site activities will be managed by a GBN client team, established within GBN, supported by the supply chain as necessary. The combination of GBN client capability and supply chain support will form an Integrated Project Team (IPT).

To maintain pace with the target of achieving up to two FIDs, it is necessary to develop this initial foundation capability within GBN ahead of the Client; this capability is designed to enable the SMR project(s) to mobilise and successfully deliver the activities required to progress the SMR project(s) to concept design.

A Client/Consultant Owners Engineer framework seeks to enable the Client’s ability to access expert supply chain resources as well as allowing increased flexibility and efficiency in accessing the full range of technical services the supply chain has to offer; the role of the Consultant OE within the Client is specified in the Target Operating Model (TOM).

The following specification of requirements identifies the role & responsibilities of the Consultant function, and the required capabilities and delivery approach.

This GBN OE interim Statement of Requirements (SoR) has been produced to support the Procurement Specific Questionnaire (PSQ) stage such that potential bidders can understand whether they would wish to participate. Further definition of GBN’s OE expectations will be provided in the final Statement of Requirements, which will form part of the subsequent GBN OE final Invitation To Tender (ITT).

**Project Delivery**

A TOM has been established to support SMR Project delivery within GBN (Figure 1), which GBN will confirm in the Final Statement of Requirements. This near-term delivery model consists of an IPT providing Intelligent Customer/Intelligent Client, Assurance, Delivery Management and Integration functions, with project delivery activities carried out by the SMR Technology Partner (TP) and a range of other delivery suppliers. Additional governance and assurance are provided by the wider GBN organisation (external to the SMR IPT).

It is anticipated that the Consultant contract would be awarded prior to the award of the TP contract, to allow for a period for integration and development of ways of working. This means that the ‘Consultant’ awarded the Consultant contract would be part of a newly established IPT.

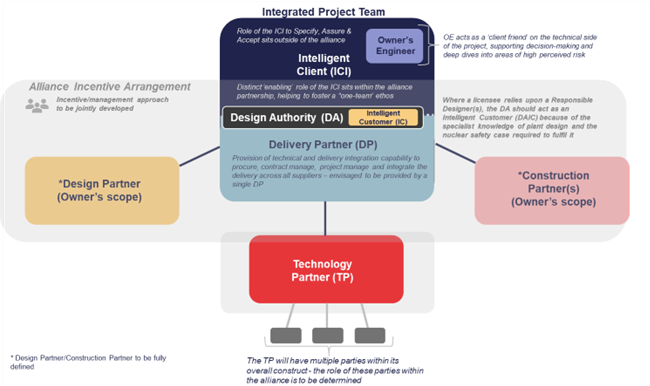


Figure 1: SMR Project Target Operating Model

**Client Strategic Consultant requirements**

The Consultants key specification, oversight, audit, review and advice role is to support the Client whilst ensuring that:

1. The Consultant will not make or approve any alterations to or omissions from the approved design or specification of any work, materials and/or goods, or the quality or quantity thereof, comprised in the Project without first obtaining the Client's prior written approval.
2. The Clients Responsible Designers [e.g. SMR Technology Partner] and other contractor deliverables are robust through effective technical review, project management, commercial support, review, representing the Client, where delegated, and deemed appropriate by the Client, supporting negotiations, audit, procurement activities and independent evaluation.
3. The Client has established a Design Authority (DA) strategy that will delegate DA roles and responsibilities to competent organisations through a design delegation system. This will ensure that Design Intent is maintained through a ‘Manage the Design Lifecycle’ process; it is anticipated that the Owner's Engineer will embed with the Client and hold a number of delegated DA roles throughout the design and construction phases of the project.

To underpin this role, the Client requires a Consultant who is committed and aligned to not only the success of the delivery phase of the programme, but to the long term safe, secure and reliable SMR Nuclear Power Plant operations at the Clients chosen site(s).

Example elements could include:

1. As the Intelligent Customer and Intelligent Client for the SMR design, The Client, will need to develop and maintain the capability to assess and accept the SMR design using assessment criteria produced in line with UK regulatory expectations and relevant codes and standards.  It is anticipated that this formal approval of the design reference will be performed with the Consultant providing specification, oversight, audit, review and advice as appropriate to the Client.
2. Initial Production of the functional specification and responsibility for setting the associated project master schedule demand requirements providing the Consultant with a clear basis for assessment and on-going maturity.
3. Development/appointment of a Principal Designer and Principal Consultant under Construction, Design and Management (CDM) regulations with the Consultant assisting with competency assessment and supporting other Client duties such as preparing the Client Brief, reviewing the Principal Designer’s Health and Safety Plan and the Principal Consultant’s Construction Phase Plan.
4. Formal Approval of Consultants terms of engagement and scope to be developed in a collaborative manner with the Consultant, whilst The Client retains the organisational Controlling Mind.
5. Management of regulatory interfaces and interaction with extended ‘technical support contractor’ input from the Consultant.
6. Internal Stakeholder management to facilitate smooth delivery of the Consultant capability.

**Client to Consultant Integrated Governance and Alignment of Goals**

The Client and Consultant will consider the following:

1. Alignment between the Client/Consultants vision, focus areas and respective organisations.
2. How executive oversight, governance and sponsorship of the relationship will be considered and managed.
3. How the overall health of the Project quality, programme or efficiency of the service and/or the Project will be reviewed and could be improved.
4. How management overview and direction for the development of the relationship will be performed, focussing on optimising outcomes and driving value, security of skills and efficiency of delivery.
5. How delivery risks, for the work set out in the service plan/task specifications, are identified, controlled and mitigated.
6. How the impact/interface with wider Client and Consultant strategic arrangements and business goals (risks and opportunities) will be reviewed and managed.
7. How strategic and management information, operational performance data and governance issues plus any relevant themes, will be utilised.
8. Review and agree the Service Plan (including review of the extant incentive proposals and outcomes).

GBN is developing a Project Delivery Plan (PDP) to briefly describe / signpost to material which covers how the Client intends to deliver the SMR Project(s). The flow down (or cascade) of these PDP requirements between the Client and Consultant, including the associated communication between parties required to understand these requirements, will be captured in an OE project execution document. This document will be authored by the Consultant for Client review, comment and approval. This document will be produced to a format and content agreed with the Client, recording the organisational objectives, whilst clearly articulating the control of interfaces between all parties. These include but are not limited to:

1. Collaboration – a long-term enduring partnership with client and supply chain delivered through relevant good practice, e.g. ISO44001 processes to be considered.
2. Joint management, with clarity of Roles, Responsibilities, Authorities, and Accountabilities (R2A2), to ensure well governed delivery from the Consultant to the Client IPT and incentivised through the right Key Performance Indicators (KPI).
3. Robust and efficient mobilisation of a team of experienced cross-discipline managers and delivery leads focused on reducing the risks for IPT start-up activities deployed from the Consultant.
4. Joint organisation planning: the Client and the Consultant will review monthly (skills, numbers and organisation design) to update forecasts.
5. Provision of suitably qualified and competent Consultant professionals to meet project requirements (e.g. schedule) with potential access to flexible Consultant resources through an extended supply chain to meet the challenges of scarce skills ready to receive the potentially significant volume of technical deliverables.
6. Ensuring the Consultant drives their support in recognition of a clear Delegation of Responsibility by the Client Controlling Mind.
7. Ensuring the Client Intelligent Customer and Intelligent Client have the ability to seek Consultant support through a graded approach technically delivered through a blended competence approach to drive increased delivery value.
8. The Consultant will provide support to the delivery of Client scope, representing the Client, where delegated, and deemed appropriate by the Client.
9. Interfaces and Relationships will be formalised through a project execution document to ensure that the correct lines of communication and touch points are known and utilised.
10. The Consultant will assign a core team (including a primary single point of contact) who will be accountable for performance, and a further resource to support programming and project controls, along with other key function leads as required as strategic relationship partners to offload challenging problems.
11. Delivery of cross project co-ordinated support on key UK Context challenge areas such as Equipment Qualification and Construction Design Management (CDM) 2015 delivery.
12. The Consultant will work within robust management processes, as reviewed and agreed with the Client, to undertake document review and approval and ensure UK regulatory confidence in the Client/Consultant delivery model.

The Consultant and its supply chain will assess the feasibility of providing a balance of co-location with The Client, TP, other Responsible Designers, DP and any other key suppliers with reach back to extended resource base, including extended light water reactor systems engineering, whilst ensuring conflicts of interest are managed.

**Scope of Requirements**

The Consultant acts as a ‘client friend’ to the Client Intelligent Customer and Intelligent Client, providing specification, oversight, audit, review and advice supporting for decisions relating to design, scope, budget, risk, delivery, and contract compliance.  It also plays the role of subject matter experts to deliver independent technical and delivery lines of assurance on major design and build contracts.

This Statement of Requirements identifies the Clients requirements and objectives, which may be modified, updated or replaced from time to time by the Client. The SoR is for the provision of a fully Independent Owners Engineering agreement to provide suitably qualified and competent capability and capacity across a broad range of nuclear and non-nuclear technical and programme areas providing specification, oversight, audit, review and advice, including:​

1. Support with independent assurance for project deliverables, e.g. reports, in-person attendance at key reviews/workshops, and assurance of supply chain processes/ delivery, etc.
2. Support with assurance of change controls, from a technical feasibility perspective and the associated schedule and cost impact of the proposed technical change.
3. Support with assuring information it is providing to be used in delivery of the project, and
4. Support with specification, oversight, audit, review and advisory capability to support the Client with delivering the project – e.g. support to the Client with deliverables. This may include provision of resource to augment the Clients team and delivery of technical tasks by having access to industry suitably qualified and competent professionals, including light water reactor technology subject matter expertise.
5. During the Concept Design phase of the project, ahead of the appointment of a Delivery Partner, the Client will hold responsibility for Technical Integration of the design (both Technology Partner (TP) and Foundation Engineering (FEng) design work). The Consultant will support the Client in discharging this responsibility by advising on the exchange of required design data, inputs and outputs between TP and FEng scope. This support will be provided either as embedded personnel or on a tasking basis.

The Consultant will support decision making relating to scope, budget, risk, delivery and contract compliance, whilst providing subject matter expertise to provide independent specification, oversight, audit, review and advice. The Consultants role includes, but is not limited to the following:

1. Providing assurance and support (e.g. specification, oversight, audit, review and advice) for the SMR regulatory assessment, legal, licensing, permitting and planning/consenting, project delivery requirements
2. Being the Clients Intelligent Customer/Intelligent Client’s independent expertise provider, jointly with the Consultant, developed in a collaborative manner whilst the Client retains the Controlling Mind
3. Support requirements elicitation, specification, acceptance and Verification & Validation (V&V)
4. Develop training programmes for Client and Consultant personnel. Learning from Experience: inputting relevant good practice know-how, data, and technology from this and other relevant high hazard projects. Jointly developing a “living repository” that will be maintained in order to support future GBN activities.

**Example Outline Scope of Owner’s Engineer Tasks**

***Design Assurance:***

Review of the Clients Task Information Delivery Plan (TIDP) and Master Information Delivery Plan (MIDP) and identification of deliverables to be submitted for review / assurance on behalf of the Intelligent Customer/Intelligent Client.

Review of project deliverables on behalf of the Intelligent Customer/Intelligent Client, including but not limited to:

Assurance of changes/deviations to design submissions and audit reports.

Assurance of compliance with the Client’s Requirements and Consultant’s Proposal.

Assurance of compliance with planning/consenting conditions.

Assurance of compliance with additional requirements, as applicable.

Attendance at key design and safety reviews / milestones, including:

Royal Institute of British Architects adapted Life Cycle Management (LCM) approach, including Project gated reviews

Constructability reviews

Licensee hold point reviews

Hazard and Operability (HAZOP) reviews

Control of Major Accident Hazards (COMAH) reviews

Construction Design and Management (CDM 2015) reviews.

Support to the management of Project requirements, including technical advice on any changes to these requirements throughout delivery.

Review and technical support to the production of contracts / technical specifications / performance requirements for Owner’s Scope work packages.

***Construction and Commissioning Assurance***

Assurance on construction and commissioning activities to ensure compliance with all relevant requirements.

Review of Inspection and Test Plans (ITPs) (or equivalent) covering manufacturing, assembly, construction activities and identification of key witness and hold points.

Attendance at manufacturing and assembly witness and hold points, e.g. Factory Inspection Testing/Factory Acceptance Testing.

Attendance at site to monitor and review construction and commissioning progress, including attendance at key activities and milestones during construction and commissioning (including work package handovers).

Review of key construction and commissioning documentation (records, certificates, quality assurance documentation etc.).

Review of relevant takeover documentation and assurance that this documentation meets all client, end user, and external stakeholder requirements.

***Delivery Assurance***

Assurance of delivery compliance with Project requirements, including schedule, quality arrangements, regulatory expectations, etc.

Review and support to the production of contracts / specifications / performance requirements for Owner’s Scope packages.

Review of weekly/monthly progress reporting from the Clients contract partners.

Assurance of integrated project estimates of time, cost, and risk.

Review and support with the Intelligent Customer/Intelligent Client’s strategic risk identification and mitigation planning.

***Additional Resource Support***

Provision of ad-hoc technical and delivery support resources for unplanned emergent work as needed by the Client to support / supplement the programme delivery teams at various times during the delivery of the project. This may include:

Client’s HSSEQ representatives.

Provision of specialist technical expertise to supplement the Intelligent Customer/Intelligent Client’s own internal engineering teams, as necessary.

Support to permitting and consenting applications (including grid connection application) and assisting (if required) with public consultations and attending meetings / town halls on behalf of GBN.

Assist (if required) with the facilitation and moderation of discussions with the public and third parties aimed at resolving issues of a technical nature.

Stakeholder engagement support, including but not limited to review and assurance of presentation material or supporting information.

Review and assure any Consultant proposals on behalf of the Intelligent Customer/Intelligent Client, including any suggestions for improvements to technical requirements to help GBN assess whether they should be integrated or not.

Cost and time estimation support.

Assistance in the preparation of any technical documentation required for the Intelligent Customer/Intelligent Client to demonstrate their position if requested by external stakeholders.

**Consultant OE Capability Requirements**

**Consultant Organisational Capability**

The IPT organisation is still developing, but the Client, in conjunction with the Consultant and other contract partners is expected to establish a sound organisational capability. This requires the following Consultant capability in support of the Client, including but not limited to:

1. Previous experience and current nuclear industry new build knowledge or equivalent high hazard industry experience.
2. Experience working within the UK nuclear regulatory framework.
3. Expertise in provision of technical assurance advice, along with specification, oversight, audit and review for nuclear and/or major infrastructure programmes.
4. Previous experience in conducting lines of assurance level 2 activities embedded within a client organisation will be advantageous.

**Consultant Personnel Capability**

1. The Consultants personnel will require the capabilities outlined in Annex A.
2. The Consultant must be able to implement both a dedicated Consultant function to provide consistent interpretation and approach to assurance activities, whilst also demonstrating sufficient flexible reach-back that will add expertise in a wide range of areas as required.
3. The Consultant should identify how they will provide a dedicated Consultant function to the project (i.e. an embedded Core Team) that is able to:
   1. Manage the service plan of Consultant activities (including collaboration with the Intelligent Customer/Intelligent Client on identification of ‘drumbeat’ activities and response to short notice and unplanned emergent activities).
   2. In collaboration with the Client, estimate the scope for task sheets required to conduct Consultant activities.
   3. Maintain the Consultant capability/resource database, including personnel training/experience/competence and managing conflicts of interest.
   4. Provide ad-hoc technical and delivery support resources for unplanned emergent work as needed by the Client.

The Consultant should identify the size of this Core Team and propose named individuals for these roles.  These individuals should be experienced in providing specification, oversight, audit, review and advice for major infrastructure project delivery with excellent leadership skills and are confident working across multiple disciplines, including engagement with legal, finance and commercial workstreams.

The Consultants Core Team will co-ordinate and oversee requirements for tasks and Subject Matter Experts (SMEs) from within the Consultant’s organisation or subcontracts.  Whilst the Core Team is expected to provide a consistent level of support to GBN throughout the length of the contract, the use of reach-back capability from SMEs will flex in line with the activities being undertaken at different stages.

**General Arrangements**

1. To sentence the service plan, the Client shall issue Task Orders to the Consultant. For the avoidance of doubt, the Client is not obliged by virtue of entering into this Agreement to instruct the Consultant to perform any Services under this Agreement other than those specified in an approved task order.
2. The Client shall establish and implement a common task specification system in conjunction with the Consultant for all phases of the agreement scope of activities. This is expected to include, but is not limited to the following:
   1. Specification of a scope of services to be performed and the pricing basis for those services
   2. Identification of key roles to be performed by the Consultant's personnel in respect of such services
   3. the required Deliverables and any associated Information to be relied upon, e.g. Documents for Review, Risk assessment, and Responsibilities together with any nuclear safety implications in respect of the relevant scope of services.
3. Following completion of each task, the Client’s responsible engineer or nominee and the Consultants task lead will perform a post job debrief process (to be jointly agreed). As part of this process, the Consultant will produce a task performance assessment scoring and the Client will produce its associated scoring, using the same metrics. These assessments will review performance during the task against relevant criteria, including but not limited to safety, delivery, quality, reporting, etc.

**Health and Safety**

1. The Consultant shall, in respect of all occupational health and safety matters associated with the Services, at all times comply with:
   1. all Applicable Requirements (to be confirmed in the Contract or updated SoR) and
   2. the requirements of ISO 45001 Occupational Health and Safety Management System expectations or equivalent issued by a mutually recognised body.
2. Guidance can be found here:
   1. https://ssip.org.uk/
   2. https://www.bsigroup.com/en-GB/Occupational-Health-and-Safety-ISO-45001/

**Environmental**

1. The Consultant shall, in respect of all environmental matters associated with the Services, at all times comply with:
   1. all Applicable Requirements (to be confirmed in the Contract or updated SoR) and
   2. the requirements of ISO 14001 Environmental Management Systems or equivalent issued by a mutually recognised body.
2. Guidance can be found here:
   1. https://learn.supplychainschool.co.uk/local/tlactionplans/resource\_intro.php?id=1082&modtype=resource

**Quality Management Systems**

1. The Consultant shall apply a quality management system consistent with ISO 9001, and other applicable Client requirements (to be confirmed in the Contract or updated SoR).
2. The Consultant warrants and undertakes to the Client that the Deliverables, and any other deliverables required as part of the Services, shall:
   1. conform in all material respects with ISO 9001 standards or be in such other form as the Client may from time to time reasonably specify; and
   2. be in a concise and logical format so as to be understandable to lay readers and (where appropriate) contain clear recommendations, and
   3. the Client reserves the right to audit the Consultant against the Quality Management System and in the event that any audit by the Client demonstrates, in the Client's opinion, that the standard of any Deliverable, or any other deliverable required as part of the Services, is below the ISO 9001 standards the Consultant shall promptly rectify such deficiencies at its sole expense.

**Quality Plans**

1. Where required by the Client’s Quality Assurance Plan, the Consultant shall provide Quality Plans that take due account of the guidance provided in ISO 10005 Quality Management - Guidelines for quality plans. The level of quality control or quality assurance required through these Quality Plans shall take into consideration the quality grade of the associated item, deliverable, or activity.
2. Where activities are subcontracted, the Consultant shall ensure that the sub-consultant or subcontractor provides a Quality Plan which shall link to activities on the Consultant’s Quality Plan, in order to ensure adequate control of quality activities throughout the supply chain.
3. The Consultant shall produce Quality Plans that identify all quality related activities that will be performed within the scope of that Quality Plan. This shall include all functions and features of the deliverable or item that require verification, and the methods by which this will be performed.

**Information Security**

1. The Consultant shall manage the confidentiality, integrity, and availability of project information in accordance with the standards and requirements of the Client, including the management of information marked as Sensitive Nuclear Information (SNI) as defined in the Anti-Terrorism, Crime and Security Act 2001, The Energy Act (TEA) 2013 and nuclear security act under The Nuclear Industries Security Regulation (NISR) (2003).
2. The Consultant shall ensure and shall require that its subconsultant or subcontractors ensure that appropriate security measures are put in place for the control, creation, marking, transmission, storage of, and access to, SNI which is within the Consultant's or its ‘subconsultant or subcontractors' control or possession, such measures to be agreed with the Client, and to include:
   1. SNI shall only be stored by the Consultant or its subconsultant or subcontractor at such locations as may be required by or agreed with ONR and/or the Client;
   2. the Consultant shall and shall require that its subconsultant or subcontractors shall mark SNI in accordance with the Government's classification scheme, as interpreted by the Client in accordance with the Client's information marking and handling procedure;
   3. the Consultant shall comply with the requirements of any security aspects letter issued by the Client to the Consultant and the Client's security policy for subconsultant or subcontractors; and
   4. access to SNI shall be on a strict "need to know basis" and only by those with appropriate security clearances (in accordance with the instructions of the Client).
3. The Consultant will comply with any policies procedures and instructions issued by the Client in respect of Controlled Information.

**Export Control Information and Other Compliance Requirements**

1. The Consultant shall apply Export Control Information (ECI) management arrangements in compliance with the Client and UK (and US if applicable) Government requirements:
   1. https://www.gov.uk/guidance/uk-strategic-export-controls
   2. https://www.energy.gov/nnsa/10-cfr-part-810#:~:text=The%20regulation%20has%20been%20modernized,transfers%20to%20foreign%20nationals%20working
2. Controlled Information definition: any information which is or may be subject to export controls or similar restrictions imposed on design, technology or products by any country or organisation, including the UK.
3. Each party must not and shall require that its subconsultant or subcontractors shall not import, export, re-export or transfer, directly or indirectly, any Controlled Information contrary to the controls or restrictions to which such Controlled Information is subject nor undertake or fail to perform any act which would cause a breach of such controls or restrictions and will ensure that appropriate measures for marking and handling Controlled Information are established and maintained.
4. The Consultant shall be responsible for the procurement and maintenance of all necessary export and import licenses required by it for the performance of the Services and shall take all necessary measures to satisfy export and import controls concerning Controlled Information. The Client shall provide all reasonable support to the Consultant in connection with the Consultant's obligations under this Clause.
5. The Consultant will demonstrate and justify how these ECI arrangements are flowed down and evidenced through a formal mechanism to demonstrate compliance of all ECI arrangements in the Consultant and throughout its supply chain.
6. the Client reserves the right to audit the Consultant against the ECI System and in the event that any audit by the Client demonstrates, in the Client's opinion, that the standard of any Deliverable, or any other deliverable required as part of the Services, is below the Client or Government requirements, including marking, handling and storing, the Consultant shall promptly rectify such deficiencies at its sole expense and support the Client
7. Sanctions: Each party shall comply, and the Consultant shall require that its subconsultant or subcontractors comply, with all applicable Laws, Government Approvals and similar restrictions in force from time to time relating to sanctions, including those of the United Kingdom, the United Nations, and the United States where applicable.
8. Re-export of Information: Each party represents and warrants that it shall not use any Services or any work product relating thereto or any items manufactured or developed as a result of the Services or work product (each of the foregoing referred to as the "Covered Materials") for the purposes of disturbing international peace and security, including (i) the design, development, production, stockpiling, or any use of weapons of mass destruction such as nuclear, chemical or biological weapons or missiles, (ii) the other military activities, or (iii) any use supporting these activities.
9. Both parties also represent and warrant that they shall not sell, export, dispose of, license, rent, transfer, disclose, or otherwise provide any of the Covered Materials to any third party whether directly or indirectly with knowledge or reason to know that such third party or any other party will engage in the activities described in Section 13h above
10. Both parties shall obtain these same representations and warranties from any third party to whom it sells, exports, disposes of, licenses, rents, transfers, discloses or otherwise provides any of the Covered Materials.

**Planning**

1. Service Plan requirements, including:
   1. Long term training and development
   2. Overall capability of the Consultant to meet the Clients scheduled and emergent (ad-hoc) tasks
   3. Client roles and responsibilities for intelligent customer/intelligent client technical review of the Consultants deliverables

**Verification of Work**

1. The ONR Safety Assessment Principles describe Verification as “The process of confirming, e.g. by use of objective evidence, that an activity was carried out as intended, specified or stated.”
2. The Consultants verification plan shall detail the scope and extent of the verification required per task (based on the QA grade for the work), in accordance with the Client agreed verification procedure.

**Continuous Improvement**

The Consultant, as part of continuous improvement, will:

1. Develop a plan, in support of the service plan, linked to the agreed KPI’s for continual improvement, to be endorsed by the Client.
2. Utilise the task performance assessment scoring, as agreed with the Client, to provide lessons learned and associated areas/topics for improvement.

**Performance Review**

The Consultant's Representative shall meet on a nominal monthly basis (or at such other intervals as agreed with the Client, acting reasonably, may notify to the Consultant) and be accessible to the Client’s representatives to discuss the progress of the Services.

**Documents Review**

1. The Consultant shall provide to the Task Order Project Manager the Documents for Review at the times stipulated in the relevant Task Order(s). If no times are stipulated, such Documents for Review shall be provided in sufficient time for the Client to review and comment upon them and for the Consultant to be able to act upon such comments in accordance with the Programme.
2. Where the Consultant proposes to depart from any of the Documents for Review previously submitted for the Client's review, it shall submit an explanation setting out details of such departure for the Client's review.
3. The Client is not bound to review or comment on any Documents for Review submitted for its review. The Client shall make any comments on Documents for Review properly referred to it in accordance within a reasonable time having regard to the requirements of the Programme.
4. No examination or lack of examination nor any comments, approval or disapproval by the Client in relation to any Document for Review shall relieve the Consultant of any of its obligations, risks or liabilities under the contract.

Bidders should note that this GBN OE interim Statement of Requirements has been produced to support the Procurement Specific Questionnaire stage of the Competition to provide sufficient detail to allow potential bidders to understand whether they would wish to participate. GBN may further refine its requirements and expectations prior to the Invitation to Tender (ITT) stage of the competition, including, but not limited to the following areas: audits, obligations of the Client, the Consultant's demonstration of personnel competency, copyright, competition, suspension of services, sub-contracting, confidentiality and publicity and the management of individual employees conflicts of interest insofar as they may be working across multiple projects and multiple employers. These will be set out in final form in the final Statement of Requirements, which will be issued as part of the Invitation to Tender (ITT).

**Terms and Acronyms**

|  |  |
| --- | --- |
| **Acronym/Term** | **Meaning** |
| Controlling Mind | The licensee retains primary responsibility for safety. The Safety Management Prospectus should confirm the licensee as the ‘body corporate’ and ‘controlling mind’. It should be clear that there will not be undue interference from parent body organisations and their owners, and that adequate financial resources will be made available to allow the licensee organisation to meet its statutory obligations. |
| CDM | Construction, Design and Management |
| COMAH | Control of Major Accident Hazards |
| ECI | Export Control Information |
| FEng | Foundation Engineering |
| FID | Final Investment Decision |
| FOAK | First Of A Kind |
| GBN | Great British Nuclear |
| HAZOP | Hazard and Operability |
| IPT | Integrated Project Team |
| ITPs | Inspection and Test Plans |
| ITT | Invitation To Tender |
| KPI | Key Performance Indicator |
| LCM | Life Cycle Management |
| MIDP | Master Information Delivery Plan |
| NISR | Nuclear Industries Security Regulation |
| OE | Owner's Engineer |
| ONR | Office for Nuclear Regulations |
| PDP | Project Delivery Plan |
| PSA | Probabilistic Safety Analysis |
| PSQ | Procurement Specific Questionnaire |
| SAA | Severe Accident Analysis |
| SMR | Small Modular Reactor |
| SNI | Sensitive Nuclear Information |
| SoR | Statement of Requirements |
| TEA | The Energy Act |
| TIDP | Task Information Delivery Plan |
| TOM | Target Operating Model |
| TP | Technology Partner |

**Annex A – Roles, Responsibilities, Accountabilities and Authorities**

1. The Consultant shall ensure that all personnel and any sub-contractors or sub-consultants appointed by the Consultant in accordance with this Agreement (at whatever level in the supply chain) are and shall remain for the duration of their involvement in the Project:
   1. registered and accredited in accordance with the Applicable Requirements;
   2. suitably qualified and competent for the role they are to perform;
   3. and familiar with any nuclear safety implications of their work

and shall, every six months or, if earlier, on such occasion when there is a change in the Consultant's personnel providing the Services, provide the Client with an up to date suitably qualified and competent professional record (expected to include role descriptions, accreditation, maintenance & storage of records, periodic review requirements, resource resilience assessment, skills development [gaps-risks and associated mentoring/supervision requirements], etc.).

1. The Consultant shall appoint the person(s) named as such in the Core team as the Consultant's Representative to direct and control the day-to-day performance by the Consultant of the Services. Such person(s), or any replacement approved from time to time by the Client, shall have full authority to act on behalf of the Consultant for all purposes in connection with this Agreement and (unless the Client agrees otherwise) shall represent the Consultant at each and every meeting in relation to the Project.
2. The Consultant shall ensure that, so long as the Project remains uncompleted, the Consultant's Representative and each Key Personnel member shall:
   1. devote to the Project an amount of their time and attention that is deemed sufficient by the Client (acting reasonably);
   2. not be assigned to any other project on a continuing basis without the prior written consent of the Client; and
   3. at all times be accessible to the Client, the Agreement Manager, the Commercial Lead and the relevant Task Order leads (as appropriate) and available to attend meetings relating to the Project.

Nothing in this Clause Annex A, Section 3 shall prevent the Consultant's Representative carrying out their normal duties as an employee of the Consultant in respect of the Consultant's business, provided that the requirements of the Client in respect of the Project shall always be given priority over any other activities of the Consultant's Representative.

1. Technical Capabilities

The following technical skills and services will be required to deliver Consultant activities, including support to the Client regulatory licensing and consenting tasks:

1. Core Design Authority
2. Safety Case
3. BAT Case
4. Chemistry
5. Civil Engineering
6. Commissioning
7. Control & Instrumentation
8. Construction, incl. CDM
9. Conventional Waste
10. Criticality
11. Cyber Security (incl. Security by design)
12. Decommissioning
13. Electrical Engineering
14. Environmental Protection
15. Engineering Management
16. Equipment Qualification
17. Emergency Planning & Response
18. External Hazards
19. Fault Studies
20. Fuel & Core Design
21. Human Factors
22. Internal Hazards
23. Leadership and Management for Safety, Supply Chain and Quality
24. Mechanical Engineering
25. Protective Security (incl. Security by design)
26. Probabilistic Safety Analysis (PSA)
27. Radiological Protection
28. Radioactive Waste Management
29. Reactor Core Physics
30. Requirements Management
31. Safeguards (incl. Safeguards by design)
32. Safety Case Analysis and Techniques (incl. Safety by design)
33. Severe Accident Analysis (SAA)
34. Structural Integrity
35. System Engineering
36. Training and Operations
37. Programme Delivery Capabilities

The following programme skills and services will be required to deliver OE activities:

1. Planning and Scheduling
2. Cost Estimating and Cost Management
3. Risk Management
4. Scope Management
5. Change Management
6. NEC Contracts

Activity Schedule

Performance Security

**Part 1: Parent Company Guarantee**

|  |  |  |
| --- | --- | --- |
|  |  | |
|  | | |
| Guarantee | | |
| [***Name of Party***]  [**Guarantor**]  [***Name of Party***]  [**Client**] | | |
| [Optional description] | |  |
| 20[] | | |

THIS DEED is made on 20[]

BETWEEN:

1. [] (No. ) whose registered office is at [] (the Guarantor); and
2. [] (No. ) whose registered office is at [] (the Client).

RECITALS

1. By an agreement made between the Client and [] (the Consultant) on [] (the Contract), as amended or varied from time to time, the Consultant has agreed to design and execute certain works in accordance with the terms of the Contract (the Works), as more particularly specified and defined in the Contract.
2. The Consultant is a wholly owned subsidiary of the Guarantor.
3. The Guarantor has agreed with the Client, at the request of the Consultant, to guarantee the due and proper performance of the Consultant's obligations under the Contract upon the terms and conditions of this Guarantee.

the parties agree as follows:

1. Definitions and interpretation
   1. In this Guarantee:
2. **Dissolution** means the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administration, administrative or other receivership, winding‑up or dissolution of any person, and any equivalent or analogous proceedings by whatever name known and in whatever jurisdiction, and any step taken (including, without limitation, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.
3. **Obligations** means all the duties, obligations, liabilities and debts of the Consultant and all warranties, covenants and undertakings given by the Consultant and all sums due from the Consultant (whether of a financial nature or not) under and pursuant to the Contract.
4. **Parties** means the parties to this Guarantee and **Party** shall mean either of them.
   1. Unless otherwise defined or the context otherwise requires, words and expressions used in this Guarantee shall have the meanings given to them in the Contract.
   2. All references to the Contract shall be deemed to include any amendment, variation or supplemental agreement thereto.
   3. Any reference to a Clause shall mean a clause of this Guarantee unless otherwise stated.
   4. Clause headings are included for ease of reference and shall not constitute a part of this Guarantee, nor affect its interpretation.
   5. In the event of any conflict between the Contract and this Guarantee, the latter will prevail.
5. Guarantee and indemnity
   1. If the Consultant fails to perform and satisfy any of the Obligations or if any of the Obligations become invalid or unenforceable for any reason the Guarantor will be liable for and shall indemnify the Client against all losses damages, costs and/or expenses which the Client may incur as a consequence of such failure, invalidity or unenforceability, provided that:
      1. save for any costs and expenses incurred by the Client in connection with the enforcement or preservation of its rights under this Guarantee or any interest payable by the Guarantor, but otherwise notwithstanding anything to the contrary in this Guarantee, the liability of the Guarantor to the Client under or in connection with this Guarantee shall be no greater and of no longer duration than it would have been under the Contract (in the absence of any such invalidity or unenforceability) if the Guarantor had been named as the Consultant therein; and
      2. save in relation to any such invalidity or unenforceability, the Guarantor shall be entitled to rely upon the same defences, limitations and exclusions as the Consultant is entitled to raise under the Contract.
   2. The obligations of the Guarantor under this Guarantee shall be those of a primary and independent obligor so that, as between the Guarantor and the Client, no liability under this Guarantee shall be treated as discharged or in any way affected by:
      1. any legal limitations, disability or incapacity relating to the Consultant or any other person whether or not known to the Client; or
      2. any invalidity in, irregularity affecting or unenforceability of the obligations of the Consultant or any other person under the Contract; or
      3. any liquidation, administration, merger, amalgamation, reorganisation or dissolution of the Consultant; or
      4. any other event or circumstance whatsoever other than the due, proper and punctual performance and observance of all the Obligations which are to be performed or observed under or arising out of and in accordance with the Contract or which would be so to be performed or observed but for any such event or circumstance as is previously mentioned in this clause.
   3. The Guarantor:
      1. acknowledges and agrees that no variation of or alteration to the terms of the Contract or to the extent, nature or method of performance of the services therein referred to, and no allowance of time, waiver, forbearance, forgiveness, concession, indulgence compromise or other dealing under or in connection with the Contract or any right or remedy or security arising thereunder, and no other act, omission or default which (but for this provision) might have operated to release, exonerate or discharge the Guarantor or otherwise reduce, extinguish or adversely affect any liability of the Guarantor under the terms of this Guarantee shall in any way release, exonerate or discharge the Guarantor from any liability under the terms of this Guarantee or otherwise reduce, extinguish or adversely affect any such liability (save to the extent that it reduces, alters or affects the liability of the Consultant which is guaranteed), and the Guarantor hereby waives any requirement for notice to it of any such event;
      2. confirms that it has full power and capacity to enter into this Guarantee and agrees that this Guarantee shall:
         1. not be revocable by the Guarantor until the Obligations have been performed and all actual or contingent liabilities arising therefrom have expired;
         2. be a continuing guarantee and shall be additional to and not in substitution for any rights or remedies that the Client may have against the Consultant under or arising out of the Contract or at law;
         3. be additional to any other guarantee or security from time to time held by the Client; and
         4. not be affected by any release or waiver of any such guarantee or security; and
         5. remain in full force and effect notwithstanding the winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Consultant or if the Consultant is unable to pay its debts (as defined by Sections 123(1) and 268(1) of the Insolvency Act 1986, as amended); and
      3. agrees that the obligations of the Guarantor under this Guarantee and the Consultant under or arising out of the Contract are independent and several obligations, and accordingly that the Client shall not be obliged, before enforcing any of its rights or remedies under this Guarantee, to commence proceedings or take any other action against the Consultant or enforce any other guarantee or security from time to time held by the Client in respect of the Obligations, provided that any sums which are so recovered by the Client shall be treated as applied to reduction of the Consultant's liabilities and therefore in reduction of the Guarantor's liability under this Guarantee.
   4. Where any discharge (whether in respect of the Obligations of the Consultant or any security for those Obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or other similar event, without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.
6. Preservation of rights
   1. The obligations of the Guarantor under this Guarantee are in addition to and independent of any other security which the Client may at any time hold in respect of the Obligations.
   2. This Guarantee is irrevocable and unconditional and neither the obligations of the Guarantor under this Guarantee nor the rights, powers and remedies conferred upon the Client by this Guarantee shall be discharged, impaired or otherwise affected by:
      1. any suspension or variation to or amendment of the Contract or any suspension or variation to or amendment of any work and/or services required to be performed under the Contract (including, without limitation, any extension of time for performance and adjustment to the amount payable to the Consultant);
      2. the termination of the Contract or of the employment of the Consultant under the Contract for any reason whatsoever;
      3. any waiver or forbearance of any right of action or remedy the Client may have against the Consultant, or neglect by the Client in enforcing any right of action or remedy afforded under the Contract;
      4. any bond, security or guarantee (other than this Guarantee) held or obtained by the Client in respect of the obligations of the Consultant under the Contract or any release or waiver thereof;
      5. any provision of the Contract, or any of the obligations of the Consultant under the Contract, being or becoming illegal, invalid, void, voidable, unenforceable or ineffective in any respect;
      6. any act or omission of the Consultant pursuant to any other arrangement with the Guarantor, any change in the relationship between the Guarantor and the Consultant or dispute or disagreement between them under or in relation to the Contract or otherwise;
      7. any breach of the Contract by the Consultant or the Client or other default of the Consultant or the Client;
      8. the Dissolution of the Consultant or any other person;
      9. any change in the status, function, constitution, control or ownership of the Consultant, the Guarantor or the Client;
      10. any failure of supervision or detection or prevention of any default of the Consultant under or in connection with the Contract;
      11. any compromise of any dispute with the Consultant arising out of or in connection with the Contract; or
      12. any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers and remedies conferred upon the Client by this Guarantee or by law.
   3. The Client shall not be obliged before enforcing any of its rights or remedies conferred upon it by this Guarantee or by law to take any step or action, including (without limitation):
      1. to grant any time or indulgence to the Consultant;
      2. to take any action in any court or arbitral proceedings or to obtain any judgment or award against the Consultant;
      3. to make any claim against or any demand of the Consultant;
      4. to enforce any other security held by it in respect of the obligations of the Consultant under the Contract; or
      5. to pursue or exhaust any other right or remedy against the Consultant or any other person or entity.
   4. In the event that the Client brings proceedings against the Consultant, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or arbitrators or the courts in such proceedings.
7. No competition
   1. The Guarantor must not (so long as the Consultant has any actual or contingent obligations pursuant to the Contract) by reason of performance by it of its obligations under this Guarantee or on any other ground:
      1. claim or recover by the institution of proceedings or the threat of proceedings or otherwise (whether on the basis of an indemnity or otherwise) any sum from the Consultant or claim any set-off or counterclaim against the Consultant; or
      2. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Client under the Contract or otherwise; or
      3. claim or prove in a liquidation or other insolvency proceeding of the Consultant in competition with the Client in respect of any payment by the Guarantor under this Guarantee or otherwise be entitled in competition with the Client to claim or have the benefit of any security which the Client has or may hold for any monies or liabilities due or incurred by the Consultant to the Client.

If the Guarantor receives any sums from the Consultant in respect of any payment by the Guarantor under this Guarantee, the Guarantor must hold such monies in trust for the Client so long as any sums are payable (contingently or otherwise) under this Guarantee.

* 1. The Guarantor undertakes to the Client that it has not taken and will not take any security from the Consultant in respect of the Guarantor's obligations under this Guarantee and any security taken and all monies received by the Guarantor in breach of this provision will be held in trust for the Client as security for the obligations of the Guarantor.
  2. Until all the Consultant's Obligations have been irrevocably satisfied in full, the Client may place and keep any money received or recovered from the Guarantor in relation to the Consultant's Obligations in a suspense account.

1. Payment
   1. All sums payable by the Guarantor under this Guarantee shall be paid free and clear of all deductions or withholdings for or on account of any present or future taxes, duties and/or other charges, other than those required by law. If, at any time, any applicable law requires the Guarantor to make any deduction or withholding from a sum payable hereunder that would not be applicable if such payment was done by the Consultant, the Guarantor will gross up the payment so that the net sum received by the Client will equal the full amount that the Client would have received if the payment had been made without the deduction or withholding.
2. Waiver of relevant rights

For the benefit of the Client and the Consultant, the Guarantor waives any right or remedy that it has or may have to subrogation, indemnification or payment on any other basis by the Consultant and any other remedy against the Consultant (each a Relevant Right) by reason of or in connection with the performance of the Guarantor's obligations under this Guarantee in circumstances where the Consultant promotes, enters into, or implements a voluntary arrangement (under Part 26 of the Companies Act 2006). Damages shall not be an adequate remedy for the Client or the Consultant in respect of a breach of this clause and the parties shall consent to any application brought by the Client or the Consultant for injunctive relief to prevent any such Relevant Right being enforced.

1. Assignment

The Client may assign the benefit of, and its rights under, this Guarantee to any person providing finance in connection with the Works or the completed Works or the site of the Works or any person to whom the Contract is assigned, without having to obtain the consent of the Guarantor.

1. Third party rights

Except for the Consultant's rights under Clause ‎6, a person who is not a party to this Guarantee has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

1. Partial invalidity

If any provision of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

1. Governing law

This guarantee and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Guarantee or its formation (including any non‑contractual disputes or claims), shall be governed by and construed in accordance with English law.

1. Jurisdiction

The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Guarantee or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause shall affect the ability of the Client to enforce any judgment against the Guarantor in any jurisdiction.

1. Notices
   1. All demands and notices to be given under this Guarantee must be in writing and sent by hand or courier or prepaid first-class post or recorded delivery to the address of the relevant party set out in Clause 12.2 or such other address as that party may by notice in writing nominate for the purpose of service and:
      1. any demands or notices sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second business day (which expression means a day (excluding Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business) after posting; and
      2. any demands or notices sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed.
   2. Unless notified otherwise, all demands and notices shall be addressed to the parties as follows:

|  |  |
| --- | --- |
| [***The Guarantor***] |  |
| Address: | [] |
| Attention: | [] |
|  |  |
| [***The Client***] |  |
| Address: | [] |
| Attention: | [] |

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written.

[***Drafting note: execution blocks to be inserted***]

**Part 2: Legal Opinion**

**Form of Legal Opinion**

[***TO BE TYPED ON THE HEADED NOTEPAPER OF THE PARENT COMPANY GUARANTOR'S LAWYERS***]

[Client]

Dear Sirs,

**[NAME OF PARENT COMPANY] (Company Registration: [NUMBER]) (the Parent Company) Incorporated in [COUNTRY OF INCORPORATION] (the State)**[[15]](#footnote-16)

1. **Introduction**
   1. Our opinion is being sought on the guarantee by the Parent Company of the subsidiary's obligations in a contract (contract number [NUMBER]) (the **Agreement**) intended to be entered into between [SUPPLIER NAME](registered number [NUMBER]) (the **Supplier**) and [Client] in relation to [CONTRACT].
   2. We are lawyers to the Parent Company and we are qualified to give this opinion.
2. **Documents examined and investigations made**
   1. For the purposes of this opinion we have examined the following:
      1. [a photocopy of] the duly executed parent company guarantee between the Parent Company and the Clientwhich contains the guarantee obligations to be given to you by the Parent Company (the **Parent Company Guarantee**);
      2. the up to date copies of the [certificate of incorporation of the Parent Company – local law equivalent] and the [memorandum and articles of association of the Parent Company – local law equivalent] which have been certified by the [company secretary] of the Parent Company to be true and up to date copies of the Parent Company's constitutional documents;
      3. a [certified] copy of the minutes of the meeting of the Parent Company's [board of directors] held on [DATE] at which a resolution was passed authorising the execution of the Parent Company Guarantee by the Parent Company;
      4. evidence that any and all necessary authorisations and approvals and consents of the appropriate authorities in the State have been obtained and are in full force and effect to:
         1. authorise the execution of the Parent Company Guarantee by or on behalf of the Parent Company;
         2. authorise the performance by the Parent Company of its obligations under the Parent Company Guarantee; and
         3. permit the payment and remittance by the Parent Company in pounds sterling of all payments to be made in the manner provided for in the Parent Company Guarantee; and
      5. such laws, regulations, records and documents which are necessary for the purpose of expressing this opinion.
3. **Scope of this Opinion**
   1. This opinion is confined to the laws of the State and we express no opinion on any matter so far as it may be affected by the law of a country other than the State.
   2. In this opinion:
      1. references to the law of the State include any law which has been passed in the State but which is not yet in force, any regulations or generally applicable requirements made or imposed by any State Authority and any treaty or international convention which the State has signed; and
      2. references to any "State Authority" are references to any governmental, official or judicial authority or body in the State and references to a "State Court" are to any court having judicial authority in State.
   3. [References to]:
      1. the laws of the State in this opinion are to the laws of the state of [STATE] and all and any federal laws of the United States of America which are applicable in the state of [STATE] in relation to the opinions expressed in this Opinion.
      2. State Authorities and State Courts include those federal authorities and courts having authority or jurisdiction in the state of [STATE].][[16]](#footnote-17)
   4. For the purposes of this opinion, we have assumed that the Parent Company Guarantee is, as regards the Parent Company and each of the other parties, valid, binding and enforceable in accordance with its terms under English law.
   5. This opinion may be relied upon by you and your successors in title and assignees as Clientin respect of the Agreement.
4. **Opinion Given**
   1. Subject to the assumptions and qualifications set out in this opinion, we give the opinions set out in this clause 4.
   2. The Parent Company is a validly existing [body corporate] duly incorporated with limited liability and has legal personality under the laws of the State.
   3. At the date of this opinion, no steps have been taken or threatened to wind up the Parent Company, to terminate its existence or to appoint a receiver, manager, administrator, liquidator, custodian, trustee or similar official in respect of it or otherwise to place its business or any of its assets outside the control of its directors.
   4. The Parent Company has full corporate power to execute the Parent Company Guarantee and to comply with its obligations in the Parent Company Guarantee.
   5. The resolutions of the directors of the Parent Company passed at the meetings referred to in clause ‎2.1(c):
      1. are valid under the Parent Company's constitutional documents and the laws of the State;
      2. are sufficient corporate authorisation for the Parent Company to execute the Parent Company Guarantee and to enable the Parent Company to comply with its obligations in the Parent Company Guarantee; and
      3. do not need to be filed, recorded or registered with any State Authority;
   6. All other necessary action, including the approval and consents of shareholders or debenture holders has been taken to authorise the execution of the Parent Company Guarantee and to enable the Parent Company to comply with its obligations in the Parent Company Guarantee.
   7. The Parent Company Guarantee is in a proper form to be enforced under the laws of the State.
   8. The Parent Company Guarantee has been executed on behalf of the Parent Company [affixing its common seal in the presence of] [by] a duly authorised officer or officers of the Parent Company and such execution has been attested in a manner which fulfils all relevant requirements of the laws of the State.
   9. The Parent Company Guarantee constitutes legal, valid and binding obligations of the Parent Company enforceable in accordance with its terms.
   10. There has been obtained and is in full force and effect every consent, approval or authorisation by any State Authority which is either necessary or advisable in connection with:
       1. the execution by the Parent Company of the Parent Company Guarantee;
       2. the validity or enforceability of the Parent Company Guarantee; or
       3. the effectiveness or priority of any obligation of the Parent Company under the Parent Company Guarantee.
   11. No provision in the Parent Company Guarantee will contravene the Parent Company's constitutional documents or State laws.
   12. None of the following steps is either necessary or advisable to ensure that the Parent Company Guarantee is valid or admissible in evidence and none of those steps will be necessary in connection with any proceedings or other steps to enforce the Parent Company Guarantee:
       1. the execution of the Parent Company Guarantee as a notarial act or in any other form;
       2. the registration, filing or recording of any Parent Company Guarantee or any form relating to the Parent Company Guarantee with any State Authority;
       3. the payment of any stamp, registration fee or other documentary tax to any State Authority in relation to the Parent Company Guarantee.
   13. If the Parent Company becomes bankrupt or subject to any other insolvency procedure or to the protection of insolvency laws the obligations of the Parent Company under the Parent Company Guarantee will remain valid, binding and enforceable.
   14. It will not be necessary to obtain any leave from a State Court or other State Authority before enforcing the Parent Company Guarantee and this position will not change if the Parent Company becomes bankrupt or subject to any other insolvency procedure or to the protection of insolvency laws.
   15. The Parent Company is entitled to make all payments under the Parent Company Guarantee without any deduction or withholding in respect of any taxes in the State.
   16. The choice of English law to govern the Parent Company Guarantee is valid and binding under the laws of the State and the courts of the State would apply English law in interpreting or determining the validity of the Parent Company Guarantee and the performance of the Parent Company's obligations under the Parent Company Guarantee.
   17. The submission by the Parent Company to the jurisdiction of the English courts in the Parent Company Guarantee is valid and binding under the laws of the State.
   18. The courts of the State would recognise the validity of any proceedings in the English courts which are commenced by the service of process on the process agent appointed in or pursuant to the Parent Company Guarantee.
   19. A judgment or order of an English court in respect of any claim under the Parent Company Guarantee would be recognised and enforced by the courts of the State without any re-trial or re-examination of that matter.
   20. Neither the Parent Company nor any of its assets is entitled to any immunity from service of process, suit, judgment, execution or attachment (including prejudgment attachment) in respect of any obligation under, or security interest created by, the Parent Company Guarantee.
   21. The courts of the State will give judgment in Sterling.
   22. It is not necessary in order for you to exercise or enforce any of your rights under the Parent Company Guarantee that you should be licensed, registered or otherwise authorised to carry on business in the State.
   23. You will not be deemed to be resident, or to carry on any business, in the State or be subject to any tax in the State as a result of executing or enforcing the Parent Company Guarantee.
   24. The Parent Company is not engaged in any proceedings, legal or otherwise, before any State court or other State Authority which could materially or adversely affect the financial condition, business or operations of the Parent Company or impair the Parent Company's ability to comply with its obligations in the Parent Company Guarantee.
5. **Assumptions**
   1. Our opinion is subject to the following assumptions and qualifications:
      1. we have assumed the genuineness of signatures, and that copies of documents examined by us are true and complete copies of the originals;
      2. we have assumed that the Parent Company Guarantee will be or has been delivered by or on behalf of each of the parties to it;
      3. claims may become time barred or may become subject to defences of set-off or counterclaim notwithstanding any provision to the contrary in the Parent Company Guarantee; and
      4. the failure to exercise a right of action for more than a certain period may operate as a bar to the exercise of such right or may constitute a waiver of such right.

Yours faithfully

[**EXECUTION BY PARTNER OR EQUIVALENT SIGNATORY**]

**Part 3: Sub-Contractor Collateral Warranty**

THIS DEEDis made on 20[]

Between:

1. [***insert name of the Client***] whose registered office is at [] (the Client), which expression shall include its successors in title or assigns;
2. [***insert name of Sub-Contractor***] whose registered office is at [] (the Sub-Contractor);
3. [***insert name of Consultant***] whose registered office is at [] (the Consultant).

Recitals

1. The Client has engaged the Consultant to provide professional owner's engineer services in relation to the design, engineering, manufacture, supply, installation, construction, completion and commissioning of a small modular nuclear reactor power plant and the ancillary facilities upon which it is dependent at [] (the Project).
2. The Sub-Contractor has been engaged by the Consultant under an appointment (the Sub-Contract) dated [***insert date***] to perform certain services (the Sub-Contract Services) in connection with the Project.
3. Under the Sub-Contract the Sub-Contractor has agreed to give the Client the warranties and rights set out in this deed.
4. The Consultant is a party to this deed to acknowledge the rights of the Sub-Contractor and the Client should the Client take over the Consultant's position under the Sub-Contract.

THE PARTIES AGREE AS follows:

1. The Sub-Contractor warrants that it has complied and will continue to comply with the Sub-Contract. In the event of any breach of this warranty:
   * 1. the Sub-Contractor shall be entitled in any action or proceedings by the Client to rely on any term in the Sub-Contract and to raise the equivalent rights in defence of liability (except for any rights of set-off or counterclaim) as it would have if the Client had been named as a joint client with the Consultant under the Sub-Contract and it owed its duties to the Client separately; and
     2. the obligations of the Sub-Contractor under or pursuant to clause ‎1 shall not be released or diminished by the appointment of any person by the Client to carry out any independent enquiry into any relevant matter.
2. The Sub-Contractor further warrants that it has exercised and will continue to exercise in the performance of the Sub-Contract Services that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced owner's engineer, engineer or other appropriate consultant (engaged in the same type of undertaking as that of the Sub-Contractor). In the event of breach of this warranty the provisions of clause ‎1 shall apply.
3. The Client has no authority to issue any direction or instruction to the Sub-Contractor in relation to the Sub-Contract unless and until the Client has given notice under clause ‎5 or clause ‎9.
4. The Client has no liability to the Sub-Contractor in respect of amounts due under the Sub-Contract unless and until the Client has given notice under clause ‎5 or clause ‎9.
5. The Sub-Contractor agrees that it shall, if so required by notice in writing given by the Client and subject to clause ‎10, accept the instructions of the Client or its appointee to the exclusion of the Consultant in respect of the Sub-Contract Services upon the terms and conditions of the Sub-Contract. The Sub-Contractor shall assume that the Client may give a notice under this clause and shall not enquire whether the Client may give that notice. The Consultant acknowledges that acceptance of the instructions of the Client to the exclusion of the Consultant shall not constitute any breach of the Sub-Contractor's obligations to the Consultant under the Sub-Contract.
6. The Sub-Contractor shall not exercise any right of termination of its employment under the Sub-Contract without having first:
   * 1. copied to the Client any written notices required by the Sub-Contract to be sent to the Consultant prior to the Sub-Contractor being entitled to give notice under the Sub-Contract that its employment under the Sub-Contract is terminated; and
     2. given to the Client written notice that it has the right under the Sub-Contract forthwith to notify the Consultant that its employment under the Sub-Contract is terminated.
7. The Sub-Contractor shall not treat the Sub-Contract as having been repudiated by the Consultant without having first given to the Client written notice that it intends so to inform the Consultant.
8. The Sub-Contractor shall not:
   * 1. issue any notification to the Consultant to which clause ‎6(b) refers, or
     2. inform the Consultant that it is treating the Sub-Contract as having been repudiated by the Consultant as referred to in clause ‎7

before the lapse of 14 days from receipt by the Client of the written notice by the Sub‑Contractor which the Sub-Contractor is required to give under clause ‎6(b) and clause ‎7.

1. The Client may, not later than the expiry of the 14 days referred to in clause ‎8, require the Sub-Contractor by notice in writing and subject to clause ‎10 to accept the instructions of the Client or its appointee to the exclusion of the Consultant in respect of the Sub-Contract Services upon the terms and conditions of the Sub-Contract. The Consultant acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Client under this clause ‎9 and that acceptance by the Sub-Contractor of the instructions of the Client to the exclusion of the Consultant shall not constitute any breach of the Sub-Contractor's obligations to the Consultant under the Sub-Contract. Provided that, subject to clause ‎10, nothing in this clause ‎9 shall relieve the Sub-Contractor of any liability it may have to the Consultant for any breach by the Sub-Contractor of the Sub-Contract or where the Sub-Contractor has wrongfully served notice under the Sub-Contract that it is entitled to terminate its employment under the Sub-Contract or has wrongfully treated the Sub-Contract as having been repudiated by the Consultant.
2. It shall be a condition of any notice given by the Client under clause ‎5 or clause ‎9 that the Client or its appointee accepts liability for payment of the sums due and payable to the Sub-Contractor under the Sub-Contract and for performance of the Consultant's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Client under clause ‎5 or clause ‎9, the Sub-Contract shall continue in full force and effect as if no right of termination of the Sub-Contractor's employment under the Sub-Contract, nor any right of the Sub-Contractor to treat the Sub-Contract as having been repudiated by the Consultant had arisen and the Sub-Contractor shall be liable to the Client and its appointee under the Sub-Contract in lieu of its liability to the Consultant. If any notice given by the Client under clause ‎5 or clause ‎9 requires the Sub-Contractor to accept the instructions of the Client's appointee, the Client shall be liable to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Client's appointee.
3. If the employment of the Sub-Contractor under the Sub-Contract is terminated before service of any notice under clause ‎5 or clause ‎9, then if required to do so by notice served by the Client not later than 10 weeks after the date of such termination, the Sub-Contractor shall enter into a new contract with the Client or its appointee for the carrying out and completion of the Sub-Contract Services on the same terms as the Sub-Contract but with such revisions as the Client shall reasonably require to reflect the altered circumstances. Forthwith upon the execution of such new contract, the Client or its appointee shall pay to the Sub-Contractor an amount equal to the sum which, immediately before termination of the Sub-Contractor’s employment, was owing to the Sub-Contractor by the Consultant under the Sub-Contract in respect of the Sub-Contract Services completed but in respect of which payment was not made.
4. To the extent that the intellectual property rights in any and all Material have not already vested in the Client or the Consultant, the Sub-Contractor grants to the Client an irrevocable, royalty-free, non-exclusive licence to copy and use all existing and future plans, drawings, specifications, schedules, reports, models, calculations, correspondence and other documents (including any computer software developed by the Sub-Contractor and used to generate them and any designs contained in them) (the Material) prepared or provided by or for the Sub-Contractor for or in connection with the Project and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Client to copy and use the Material for the extension of the Project but shall not include a licence to reproduce the designs contained in them for any extension of the Project. The Client shall be permitted to assign the licence and/or grant sub-licences without the consent of the Sub-Contractor.
5. Where the Sub-Contract requires the Sub-Contractor to take out and maintain professional indemnity insurance, the Sub-Contractor shall, upon request, provide to the Client evidence that the insurance required is being maintained. If the insurance is no longer generally available at commercially reasonable rates, the Sub-Contractor shall notify the Client immediately and co-operate with the Client and the Consultant in seeking means by which the Sub-Contractor can be protected against professional liability claims arising out the Sub-Contract Services.
6. Any notice to be given by one party to another pursuant to this deed shall be duly given if delivered by hand or sent by prepaid first-class post or by Recorded Signed for or Special Delivery post (or the equivalent forms of post current at the date of the notice) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
7. Notwithstanding the rights contained in this deed the Sub-Contractor shall have no liability to the Client for delay under the Sub-Contract unless and until the Client serves notice pursuant to clause ‎5 or clause ‎9. For the avoidance of doubt, the Sub-Contractor shall not be required to pay liquidated damages in respect of the period of delay where the same has been paid to or deducted by the Consultant.
8. The Sub-Contractor hereby warrants to the Client that:
   * 1. except as provided under deeds of warranty required pursuant to the Sub-Contract, it shall not without the prior written approval of the Client, at any time for any reason disclose to any person or publish or make any statement concerning the Sub-Contract, this deed or the Project to which the Sub-Contract Services relate.
     2. it shall treat all information obtained under, arising from or in connection with the Sub-Contract, this deed and the Project as confidential, and that other than for the purpose of providing the Sub-Contract Services, it shall not disclose any information or documents concerning the Sub-Contract to any other person; and
     3. it shall not, without the prior written consent of the Client, disclose any information obtained by it concerning the Client or the Project to any other person. The Client may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Client.
9. Clause 16 does not apply to the disclosure of any information:
   * 1. which is already in the public domain at the time of its disclosure other than by breach of these provisions;
     2. disclosed by the Sub-Contractor to its professional advisers provided that such recipients agree in writing to be bound by the terms of these confidentiality provision; and
     3. which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
10. This deed shall be governed and construed in accordance with the laws of England and the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and the Client that arises out of or in connection with this deed.

**IN WITNESS** whereof this deed has been executed on the date first above written.

1. Note to Tenderers: GBN is continuing to develop the procurement approach which will be taken in relation to the matters listed in these Z clauses. Whatever *Consultant* obligations in these areas are retained under the contract will, in the context of a nuclear project, necessarily be more stringent/prescriptive than for a project of any other kind. [↑](#footnote-ref-2)
2. Note to Tenderers: The forecasting period will be aligned to the UK Government financial year (with a suitable buffer if necessary) and will be confirmed prior to contract signature. [↑](#footnote-ref-3)
3. Ashurst Note: Definitions to be aligned with final financial monitoring schedule. [↑](#footnote-ref-4)
4. Note to Tenderers: The list of project agreements included within the Scope (if any) will be updated prior to signing. [↑](#footnote-ref-5)
5. Note to Tenderers: the *Consultant* will only be entitled to include, within the Accepted Programme, periods of time for the work of Others which have been determined in accordance with the provisions of paragraph [] in Section [] of the Scope. [↑](#footnote-ref-6)
6. Note to Tenderers: An appropriate payment default threshold amount shall be set once the forecast payment schedule has been ascertained. [↑](#footnote-ref-7)
7. Ashurst note: to be reviewed once the Incentive Schedule is available. [↑](#footnote-ref-8)
8. Note to Tenderers: The list of Project Agreements and copies thereof will be provided prior to contract award. [↑](#footnote-ref-9)
9. Ashurst Note: To refer to the section in the Scope setting out any employee specific policies and the Core Team's duties. [↑](#footnote-ref-10)
10. Ashurst Note: Z9 is to cover TP documentation and technical documentation. [↑](#footnote-ref-11)
11. Contract Data to be updated in subsequent draft. [↑](#footnote-ref-12)
12. Note to Tenderers: The successful Tenderer’s rate cards submitted at Final Tender, will form part of Schedule 3 (Cost of Components). [↑](#footnote-ref-13)
13. Ashurst Note: Financial Monitoring Schedule to be agreed. [↑](#footnote-ref-14)
14. Ashurst Note: Draft scope to be updated as necessary. [↑](#footnote-ref-15)
15. Drafting Note: If dealing with a company incorporated in the United States of America, this should be drafted as "Incorporated in the state of [ ] in the United States of America". [↑](#footnote-ref-16)
16. Drafting Note: This is required where the guarantor is a company incorporated in the United States of America [↑](#footnote-ref-17)