**volume 0**

**Deed of agreement and Conditions of Contract**

**TRAFFIC SIGNALS and ancillary equipment maintenance term service contract**

**DN386575**

**Commercial and Procurement Team**

Somerset County Council

County Hall

Taunton

TA1 4DY

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Dated 2021

# DEED OF AGREEMENT

Traffic Signals and Ancillary Equipment Maintenance

Term Service Contract

Between

1. **SOMERSET COUNTY COUNCIL**

And

1. [*CONTRACTOR]*

**THIS DEED** is made the day of 2021

**BETWEEN**

1. Somerset County Council, whose address is County Hall, The Crescent, Taunton, Somerset, TA1 4DY (the “***Employer***”); and
2. [ ] (the “***Contractor”***);

together referred to as the “**Parties**” and individually as a “**Party**”

**BACKGROUND**

1. The *Employer* has agreed to enter into this contract for the provision of : Traffic Signals and Ancillary Equipment Maintenance services as more particularly set out in the *conditions of contract*.

**NOW IT IS HEREBY AGREED THAT**

1. The *Contractor* Provides the Service in accordance with the *conditions of contract*
2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract*.
3. The documents forming part of this contract are:
   1. the conditions of contract of the NEC3 Term Services Contract April 2013; the Service Information;
   2. the Method of Measurement and Price List;
   3. the Contract Data part one contained in this Volume 0;
   4. the Contract Data part two contained in this Volume 0;
   5. the documents identified in the Contract Data;
4. The conditions of contract and other documents which are incorporated into and form part of this contract contain all the terms which the Employer and the Contractor have agreed in relation to the subject matter of this contract, and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
5. If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:
   1. this Deed of Agreement in this Volume 0;
   2. the conditions of contract
   3. the Service Information excluding the Quality Submission
   4. the Contract Data part 1
   5. the Contract Data part 2
   6. the Method of Measurement and Price List
   7. the documents identified in the Contract Data
   8. the Quality Submission

**THIS AGREEMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

|  |  |  |
| --- | --- | --- |
| Executed as a deed by [NAME OF COMPANY] | |  |
|  |  | | |
| acting by [ ]  ………………………………………… | (print name of Director)  signature of Director | | |
| in the presence of  [ ] | (print name of Witness) | | |
| ………………………………………… | signature of Witness | | |
| ………………………………………  ………………………………………  ……………………………………… | Address of Witness | | |
| The Common Seal of  **SOMERSET COUNTY COUNCIL**  was affixed in the presence of: |  | | |
| ……………………………………….... | signature | | |
|  | **Authorised Signatory** | | |

# Contract Data Part One –

# Data provided by the *Employer*

**The Data which will apply to all work under the Term Service Contract is:**

* The *conditions of contract* are the core clauses and the clauses for main Option **A**, dispute resolution Option **W2** and secondary Options**, X4, X13 X17, X18, X19, X20, Y(UK)2, Y(UK)3, Z** of the **NEC3 Term Service Contract April 2013.**
* **The *service* is** to maintain, repair, replace, improve, modify, test and extend the *Employer’s* stock of traffic signals and ancillary equipment in accordance with the requirements of this contract including, without limitation, Routine Services and Non-Routine Services as defined within this contract which include for the avoidance of doubt Emergency Services.
* **The *Employer* is;**

Name: Somerset County Council

Address: County Hall, The Crescent, Taunton, Somerset, TA1 4DY.

* **The *Service Manager* is**

Name: Bev Norman

Address: Somerset County Council, County Hall, The Crescent, Taunton, Somerset, TA1 4DY.

* The *Adjudicator* is chosen jointly by the Parties when a dispute arises
* The Affected Property is **the *Employer’s* highway network and any other area identified in a Task Order or Service Instruction within the confines of the Somerset County Council Boundary or as amended from time to time by the *Service Manager.***
* The Service Information is in **Volume 2 Preamble General Specification, Volume 2 Works information Appendices, Volume 3 Service Information and Volume 4 Method of Measurement.**
* The *language of this contract* is **English**
* The *law of the contract* is the law of **England, subject to the jurisdiction of the courts of England**

|  |  |
| --- | --- |
|  | * The *period for reply* is **two** weeks |
|  | * The *Adjudicator nominating body* is **The Institution of Civil Engineers** |
|  | * The *tribunal* is **arbitration** |
|  | * The following matters will be included in the Risk Register: |
|  | * The *starting date* is **1st April 2022** |
| 3 Time | * The *service period* **shall be for an initial term of six (6) years commencing on the *starting date* and may be varied by any extension to this contract pursuant to clause 33.1 or the earlier termination of this contract in accordance with its terms.** |
|  | * The *assessment interval* is **monthly** |
| 5 Payment | * The *currency of this contract* is the **Pound Sterling (£)** |
|  | * The *interest rate* is **2**% per annum above the **Bank of England Base Rate**. |
|  | * The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer’s* property is **£5 million.** |
| 8 Risks and insurance | * The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer’s* property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor)* arising from or in connection with the *Contractor’s* Providing the Service for any one event is **£10 million.** |
|  | * The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is **£10 million.** |

**Optional Statements**

|  |  |
| --- | --- |
|  | **If the tribunal is arbitration** |
|  | * The arbitration procedure is the Institution of Civil Engineers most recently published arbitration procedure |
|  | * The place where the arbitration is to be held is in London |
|  | * 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 it is the President of the Institution of Civil Engineers |
|  |  |
|  | **If no plan is identified in part two of the Contract Data**   * The *Contractor* submits a first plan for acceptance within [2] weeks of the Contract Date. |
|  |  |
|  |  |
|  | **If there are additional *Employer’s* risks** |
|  | These are the additional *Employer’s* risks: |
|  | 1. N/A |
|  |  |
|  |  |
|  | **If the *Employer* is to provide Plant and Materials** |
|  | * The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of **£** Unlimited. |
|  | **If additional insurances are to be provided** |
|  | * The *Contractor* provides these additional insurances: |
|  | Professional indemnity insurance in respect of the liability of the *Contractor* for negligence in Providing the Service |
|  | Cover / indemnity is £2,000,000 for any one claim or series of claims arising out of the same cause, provided that such insurance continues to be available at commercially reasonable rates |
|  |  |
|  | **If Option A is used** |
|  | * The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than two (2) weeks or as otherwise agreed with the Service Manager. * The *method of measurement* is: the document headed Volume 4 |
|  |
| **Option X17**  **Option X18** | * The *service level table* is Volume 2 Works Information Appendix 06 of the Service Information * The Contractor’s liability to the Employer for indirect or consequential loss is limited to: £5,000,000 (five million pounds) |
|  | * For any one event, the Contractor’s liability to the Employer for loss of or damage to the Employer’s property is limited to: unlimited * The Contractor’s liability for Defects due to his design is limited to: £2,000,000 (two million pounds). * The Contractor’s total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to: £7,000,000 (seven million pounds) * The end of liability date is 12 years after the end of the *service period*. |
| **Option X19** | * The *Contractor* submits a Task Order Programme to the *Service Manager* within seven (7) days of receiving the Task Order (or such other period as the *Service Manager* specifies). |
| **Option X20** | * A report of performance against each Key Performance Indicator is provided at intervals of one (1) month or as otherwise agreed with the Service Manager. |
| **Option Y(UK)3** | |  |  |  |  | | --- | --- | --- | --- | | term |  | person or organisation | | | None |  | *N/A* | | |  |  |  | | |  |  |  | | |  |  |  | |
| **Option Z** | The *additional conditions of contract* are set out in Annex Z. | |

# Contract Data Part Two - Data provided by the *Contactor*

|  |  |
| --- | --- |
| Statements given in all contracts | * The *Contractor* is   Name:    Address**:** |
|  | * The *direct fee percentage* is  **%** |
|  | * The *subcontracted fee percentage* is % |
|  | * The key people are   (1) Name:  Job:  Responsibilities:  Qualifications:  Experience:  (2) Name:  Job:  Responsibilities:  Qualifications:  Experience:  (3) Name:  Job:  Responsibilities:  Qualifications:  Experience:   * The following matters will be included in the Risk Register |

Optional Statements

If the Contractor is to provide Service Information for his plan

• The Contractor’s Service Information for the Contractor’s plan is in:

……………………………………………………………………………

If a plan is identified in the Contract Data

• The plan identified in the Contract Data is:

………………………………………………………………………………….

If Option A is used

• The price list is: ………………………………………………………………………………….

If Option A is used

• The tendered total of the Prices is:

|  |  |  |
| --- | --- | --- |
| ***service* component** | ***service*** | **Price** |
| [….] | […………………………..] | £ [……] |
| [….] | […………………………..] | £ [……] |
| [….] | […………………………..] | £ [……] |
| [….] | […………………………..] | £ [……] |
| **TOTAL** |  | **£ [……]** |

**Option Z: Additional conditions of contract**

Added, Deleted, Amended and Substituted Clauses in accordance with Option Z of the New Engineering Contract 3rd Edition Term Services Contract

| **Z Clause Ref** | **Description** |
| --- | --- |
| **General** | |
| Z2 | Identified and Defined Terms |
| Z3 | Interpretation and the Law |
| Z4 | Communications |
| Z5 | The *Service Manager* |
| Z6 | Early Warning |
| Z7 | Ambiguities and Inconsistencies |
| Z8 | Service Instructions |
| **The *Contractor’s* main responsibilities** | |
| Z9 | Providing the Service |
| Z10 | Revising the *Contractor*’*s* Plan |
| Z11 | People |
| Z12 | Working with the *Employer* and Others |
| Z13 | Sub-Contracting |
| Z14 | Other responsibilities |
| Z15 | Health and Safety |
| Z16 | Starting and the *service period* |
| **Time** | |
| Z17 | Access |
| Z18 | Contract Extension |
| **Testing and Defects** | |
| Z19 | Tests and Inspections |
| Z20 | Correcting Defects |
| Z21 | Accepting Defects |
| Z22 | Searching and notifying Defects |
| **Payment** | |
| Z23 | Assessing the Amount Due |
| Z24 | Payment |
| Z25 | Variation in Spend Adjustments |
| Z26 | Budget Management |
| **Compensation events** | |
| Z27 | Compensation Events |
| Z28 | Quotations for Compensation Events |
| Z29 | Assessing Compensation Events |
| Z30 | The *Service Manager’s* assessments |
| Z31 | Implementing Compensation Events |
| **Use of equipment, Plant and Materials** | |
| Z32 | The Parties’ use of Equipment, Plant and Materials |
| Z33 | Marking Equipment, Plant and Materials outside the Affected Property |
| Z34 | Objects and Materials within the Affected Property |
| Z35 | Intellectual Property |
| **Risks and insurance** | |
| Z36 | Indemnity |
| Z37 | Insurance Cover |
| Z38 | Insurance Policies |
| **Termination** | |
| Z39 | Termination |
| **Option W2** | |
| Z40 | Dispute Resolution |
| **Option X1** | |
| Z41 | Price Adjustment for inflation |
| **Option X2** | |
| Z42 | Changes in the law |
| **Option X4** | |
| Z43 | **NOT USED** |
| **Option X17** | |
| Z44 | Low Service Damages |
| **Option X19** | |
| Z45 | Task Order |
| **Option X20** | |
| Z46 | Key Performance Indicators |
| **Option Y(UK)2** |  |
| Z47 | The Housing Grants, Construction and Regeneration Act 1996 |
|  | |
| **Z48 to Z100 - Not Used** | |
|  | |
| Z101 | *Employer’*s right to remove part of the *service* from the contract |
| Z102 | Notice of Breach |
| Z103 | Step-In Rights |
| Z104 | Audit and Compliance |
| Z105 | Bribery Act 2010 |
| Z106 | Equal Opportunities |
| Z107 | Whistle Blowing |
| Z108 | *Contractor* not Agent |
| Z109 | Confidentiality |
| Z110 | Publicity |
| Z111 | Amendments |
| Z112 | TUPE Regulations |
| Z113 | Data Protection |
| Z114 | Conflicts of Interest |
| Z115 | European Economic Monetary Union |
| Z116 | Freedom of Information Act |
| Z117 | Assignment |
| Z118 | No Fetter |
| Z119 | Waiver |
| Z120 | Set Off |
| Z121 | Severance |
| Z122 | Whole Agreement |
| Z123 | Supervision |
| Z124 | Fault Management System |
| Schedule 1 | TUPE and Pensions |

# ECC Contract - Option Z: additional conditions of contract

The following provisions supplement, modify or replace the published provisions of the NEC3 Term Services Contract (April 2013)

|  |  |  |
| --- | --- | --- |
| **Z2** | **Identified and defined terms** | |
|  | Delete Option A Clause 11.2 (17) and replace with: | |
|  | 11.2 | (17) The Price for Services Provided to Date is the total of   * the Price for Routine Services Provided to Date; * the Price for Non-Routine Services Provided to Date, and * the Price for Emergency Services Provided to Date. |
|  | Add new Clauses as follows: | |
|  | 11.2 | (22) Acquired Rights Directive means Council Directives 77/187/EEC and 2001/23/EC as amended. |
|  |  | (23) Additional Services means those services defined within the Service Information, Volume 3 SS03 Non-Routine Services. |
|  |  | (24) Adjustment Tables mean those Tables detailed within Z41 |
|  |  | (25) Ancillary Equipment means equipment detailed within Volume 2 Works Information Appendices, Appendix 21 |
|  |  | (26) Annual Reconciliation Notice means as defined in Clause 56.2. |
|  |  | (27) Associated Company means in respect of a relevant company, any other company which would be a group undertaking (as that phrase is defined in Section 1161 of the Companies Act 2006) of that relevant company including for the avoidance of doubt a company which is a subsidiary, a holding company or a company which is a subsidiary of a holding company of that relevant company. |
|  |  | (28) Bank of England Base Rate means the rate at which the Bank of England lends money to high street banks. |
|  |  | (29) Basic Facility means the services required to ensure delivery of emergency provisions as defined within the Service Information and listed within Section 3 of the Price List – Emergency Services |
|  |  | (30) Budget Management Requirements are detailed within the Service Information. |
|  |  | (31) CDM Regulations means the Construction (Design and Management) Regulations 2015. |
|  |  | (32) Confidential Information means any of the terms of this contract or any confidential or proprietary information (including, documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, and other data, records, drawings and information) provided to or arising or acquired by it pursuant to the terms or performance of this contract (including without limitation any such documents or information supplied in the course of proceedings under Clause W2 (Dispute Resolution)) and any information documents data or other material disclosed or made available by the *Employer* prior to the *starting date*. |
|  |  | (33) Contract Year means a period of twelve months commencing on 1st April, with the exception of   * the first Contract Year, which commences on the *starting date* and ends on the 31st March first occurring thereafter and * the last Contract Year, which commences on 1st April and ends at the end of the *service period* (whether by expiry or termination). |
|  |  | (34) Contractor Default Reason for Terminating means any of the reasons identified (where the *Contractor* is the other Party), in Clause 91. |
|  |  | (35) Damage Repairs means those services defined within the Volume 3 Service Information, SS03 Non-Routine Services – Section 03 |
|  |  | (36) Defects Certificate is either a list of Defects that the *Service Manager* has notified before the Defects Date which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none. |
|  |  | (37) Defect Correction Period means **2** weeks unless the *Service Manager* determines that a different period applies. The *Service Manager* may instruct a different period due to a reasonable requirement to benefit the safety of users of the Affected Property and/or to accommodate lead in times for supply of Materials and Equipment or any other reasonable requirement determined by the *Service Manager* (which is not a compensation event). |
|  |  | (38) Defects Date is 52 weeks after Task Completion. |
|  |  | (39) Design Data means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models, reports, data and any other documents or materials in any medium including all eye readable or computer or other machine readable data, used, prepared or to be prepared by or on behalf of the *Contractor* (and/or any of the *Contractor’s* agents, employees, contractors or Subcontractors of any tier) in connection with the *service*. |
|  |  | (40) Direct Losses means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law. |
|  |  | (41) Emergency Attendance means the services undertaken by the Contractor to attend to emergencies as defined within Volume 3 Service Information SS04 Emergency Services and listed within the Price List under the heading Section 3 – Emergency Services. |
|  |  | (42) Emergency Service Representative means the person or persons referred to in Clause 13.13 |
|  |  | (43) Emergency Services means the Basic Facility provided by the *Contractor* to provide the service and the Emergency Attendance which the *Contractor* may from time to time be required to provide as set out in the Service Information. For the avoidance of doubt Emergency Services include Basic Facility and Emergency Attendance and are identified within Section 3 of the Price List. |
|  |  | (44) Employee Liability Information means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE. |
|  |  | (45) Employer Data means any data, document or information however stored which is communicated in writing, orally, electronically or by any other means by the *Employer* or *Service Manager* to the *Contractor* or is obtained by the *Contractor* during the course of the *Contractor* Providing the Service. |
|  |  | (46) Faults are defined within the Service Information, Volume 3, SS02 – Section 04 |
|  |  | (47) Fault Management System is defined within the Service Information, Volume 3, SS02 – Section 02 |
|  |  | (48) Fault Reports are defined within the Service Information, Volume 3, SS03 – Section 04 |
|  |  | (49) Future Contractor has the meaning given in Clause 112.6 |
|  |  | (50) Good Industry Practice means at any time the exercise of that degree of skill, care, diligence, prudence and foresight and the use of methods, acts, techniques, standards and workmanship which are in accordance with applicable and generally accepted good practice and which would reasonably and ordinarily be expected at such time from a skilled and experienced contractor complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the *service*. |
|  |  | (51) Health and Safety Policy is as defined within the Service Information. |
|  |  | (52) Initial Service Delivery Statements means the proposed Service Delivery Statements submitted by the *Contractor* prior to the Contract Date as set out in the Quality Submission. |
|  |  | (53) Intellectual Property means all intellectual property rights including without limitation all current and future legal and/or equitable interests in registered or unregistered trade marks, service marks, any patents or patent applications, registered and unregistered designs, registered and unregistered design rights, utility marks, copyrights (including rights in computer software and database and topography rights), moral rights, unauthorised extraction and/or re-utilisation rights, trade names, discoveries, inventions, confidential information, know‑how or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above. |
|  |  | (54) Key Contractor Performance Indicator means an aspect of performance by the *Contractor* for which a target is stated in the Performance Dashboard. |
|  |  | (55) Method of Measurement means the *method of measurement* identified in Contract Data Part One. |
|  |  | (56) Modification Works means those services defined within the Service Information, Volume 3, SS03 – Section 02 |
|  |  | (57) New Roads and Street Works Act means the New Roads and Street Works Act 1991 and its current Codes of Practice as its various parts are implemented by Government legislation. |
|  |  | (58) Non-Routine Services means the maintenance repair works and/or new works, testing and other services identified as such in the Service Information which the *Contractor* may from time to time be required to provide. For the avoidance of doubt Non-Routine Services include Modification Works, Damage Repairs (only those Damage Repairs not deemed to be included within Cyclical Maintenance), Additional Services and Support Services and are identified within Sections 2 and 4(where appropriate) of the Price List. |
|  |  | (59) Normal Working Hours means 07:00hrs to 18:00hrs on any Working Day. |
|  |  | (60) Operations means as defined in Clause 25.4. |
|  |  | (61) Overall Performance is the score calculated by the Performance Dashboard that represents the *Contractor’s* performance against Key Contractor Performance Indicators over one Contract Year. |
|  |  | (62) Parity Charge means those charges identified within the *service level table* levied against the *Contractor* for a failure to provide the Street Authority with appropriate and correct noticing. |
|  |  | (63) Performance Dashboard is the document that records targets and actual performance for each Key Contractor Performance Indicator as set out in Appendix 10 & 11 of the Volume 4 Works Information Appendices and as revised in accordance with this contract. |
|  |  | (64) Quality Management System means the organisational structure, procedures, processes and resources for determining and implementing quality policy to be operated by the *Contractor* in accordance with this contract. |
|  |  | (65) Quality Submission means the Contractor’s response to Volume 5 Returnable Schedules of the issued by the Employer, as incorporated in the Service Information. |
|  |  | (66) Relevant Approval means an approval which is required pursuant to this contract or pursuant to any applicable *law of the contract* for the carrying out of any part of the *service* (including for the avoidance of doubt the requirements of any relevant planning, building regulations or other consent, licence, approval or authority of which the *Contractor* is or should be aware). |
|  |  | (67) Relevant Authority means any person whose authority is or may be required for the carrying out of all or any part of the *service* (including without limitation the Operations) or which has any authority or right in respect of any part of any of the *service* under any applicable *law of the contract*, and “Relevant Authorities” shall be construed accordingly. |
|  |  | (68) Relevant Service Transfer Date means the date on which a Transferring Employee transfers to the *Contractor* and/or one or more Subcontractor by virtue of a Relevant Transfer. |
|  |  | (69) Relevant Transfer means a relevant transfer for the purposes of TUPE. |
|  |  | (70) Remedial Notice means a notice served pursuant to Clause 102.2. |
|  |  | (71) Remedial Period means the period within which the *Contractor* remedies a breach of its obligations under this contract referred to in a Remedial Notice and determined in accordance with Clause 102. |
|  |  | (72) Returning Employees means those employees wholly or mainly engaged in the provision of the *service* immediately before the expiry or termination of this contract or relevant part of the *service* whose employment transfers to the *Employer* or a Future Contractor pursuant to TUPE. |
|  |  | (73) Routine Services means the routine works and services required to maintain the existing stock of Traffic Signal and Ancillary Equipment within the Affected Property and provide and maintain the Fault Management System. For the avoidance of doubt Routine Services include Cyclical Maintenance and the Fault Management System and are identified within Section 1 of the Price List. |
|  |  | (74) Service Delivery Statement means method statements, operational plans, operational statements, resource plans, technical proposals, technical solutions, procedures and other data, information or proposals for Providing the Service submitted by the *Contractor* (before or after the Contract Date) in accordance with the Service Information or this contract and which comprise the Initial Service Delivery Statements and any subsequent Service Delivery Statements forming part of the Contractor’s plan in each case which are accepted by the *Service Manager*. |
|  |  | (75) Service Instruction means a written instruction from the *Service Manager* detailing but not limited to servicesand budget for a Contract Year. For the avoidance of doubt Service Instructions include, but are not limited to, those works or services identified within Sections 1 to 4 (NOT including Emergency Attendance) of the Price List. |
|  |  | (76) Service Removal Notice means a notice issued by the *Service Manager* to the *Contractor* in accordance with Clause Z101. |
|  |  | (77) Site Acceptance Test (SAT) means the inspection, functionality tests and safety tests carried out by the *Service Manager* with the joint co-operation of the *Contractor,* prior to an installation being switched on. The SAT is completed and upon acceptance by the *Service Manager* a Task Completion Certificate is issued. |
|  |  | (78) Special Requirements means the special requirements in relation to the *Employer* as Local Highway Authority and as waste disposal authority and in relation to any statutory undertaker or body as detailed within the Service Information and/or as may be imposed from time to time via a *Service Manager’s* instruction to change the Service Information. |
|  |  | (79) Star Rate means works and services carried out that are different to those contained within the Price List and the *Service Manager* does not consider that daywork rates or Defined Costs are an appropriate mechanism for valuing work or services then the *Service Manager* may fix additional rates (known as Star Rates) to be incorporated into the Price List. |
|  |  | (80) Strategic Partnering Team means as described in the Service Information. |
|  |  | (81) Street Authority means for the purposes of this contract, the *Employer’s* role as highway authority responsible for streets maintained at public expense. The Street Authority’s roles and responsibilities are as defined within the New Roads and Street Works Act 1991 and the current Codes of Practice as its various parts are implemented by legislation. |
|  |  | (82) Street Works Noticing are those notices required to be provided by the *Contractor* in accordance with the provisions of this contract. |
|  |  | (83) Support Services means those services defined within the Service Information, Volume 3, SS03 – Section 05 |
|  |  | (84) Without prejudice to clause X19.1(1), Task means any of the Non-Routine Services and Emergency Attendance which the *Service Manager* instructs the *Contractor* to carry out in accordance with this contract. Clause X19 (Task Order) shall apply to instructions by the Service Manager to carry out a Task. For the avoidance of doubt Tasks include, but are not limited to, those works or services identified within Sections 2, 3 (NOT including Basic Facility) and 4 (where appropriate) of Volume 5 – Schedule 6 - Price List. |
|  |  | (85) Task Completion Certificate is the certificate the *Service Manager* issues to the *Contractor* specifying when Task Completion was achieved. The Task Completion Certificate is issued upon the issue of a Site Acceptance Test certificate and where Task Completion has been achieved. |
|  |  | (86) The Price for Non-Routine Services Provided to Date is the total of   * the amount calculated by multiplying the quantity of work completed by the rate for Non-Routine Services where; * the price for work or services which the *Contractor* is instructed to provide is identified in the Price List detailed as Section 2 (Non-Routine Services); or * where measured rates do not apply, the *Service Manager* instructs Star Rates; or * the *Service Manager* instructs a basis for payment using Section 4 (Dayworks). * The choice of evaluation being at the absolute discretion of the *Service Manager*.   which   * is certified by the *Contractor* as achieving technical compliance and * is recorded by the *Contractor* in accordance with the Service Information. |
|  |  | (87) The Price for Routine Services Provided to Date is the total of   * the amount calculated by multiplying the quantity of work completed by the rate for Routine Services where; * the price for work or services which the *Contractor* is instructed to provide is identified in Volume 5 – Schedule 6 Price List detailed as Section 1 (Routine Services); or * where measured rates do not apply, the *Service Manager* instructs Star Rates; or * the *Service Manager* instructs a basis for payment using Section 4 (Dayworks). * The choice of evaluation being at the absolute discretion of the *Service Manager*.   which   * is certified by the *Contractor* as achieving technical compliance and * is recorded by the *Contractor* in accordance with the Service Information. |
|  |  | (88) The Price for Emergency Services Provided to Date is the total of   * the amount calculated by multiplying the quantity of work completed by the rate for Emergency Services where; * the price for work or services which the *Contractor* is instructed to provide is identified in Volume 5 – Schedule 6 - Price List detailed as Section 3 (Emergency Services); or * where measured rates do not apply, the *Service Manager* instructs Star Rates; or * the *Service Manager* instructs a basis for payment using Section 4 (Dayworks). * The choice of evaluation being at the absolute discretion of the *Service Manager*.   which   * is certified by the *Contractor* as achieving technical compliance; * is recorded by the *Contractor* in accordance with the Service Information and * provides the *Service Manager* (in respect to Emergency Attendance) with sufficient information to authenticate payment in accordance with the terms of the Service Information and this contract. |
|  |  | (89) Time Recording System means the system required to be operated by the Contractor in accordance with the Service Information. |
|  |  | (90) Traffic Signal Equipment means equipment detailed within the Volume 2 Works Information Appendices, Appendix 21 |
|  |  | (91) Traffic Sensitive Routes means as defined within the New Roads and Street Works Act 1991, detailed within the Service Information or as otherwise amended from time to time. |
|  |  | (92) Transferees means any person whose contract of employment will by virtue of the application of TUPE in relation to the carrying out of this contract, becomes a contract of employment with the *Contractor*. |
|  |  | (93) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006. |
|  |  | (94) Working Day means any day, excluding Saturday, Sunday and public holidays. |
|  |  | (95) Works Programmes means programmes created, maintained, reviewed and amended by the *Contractor* which relate to how the *Contractor* delivers work and services associated with this contract. |
| **Z3** | **Interpretation and the Law** | |
|  | Add new Clause as follows: | |
|  | 12.5 | Any requirement for any thing or action to be “in accordance with”, “or equivalent” or “in compliance with” any standard, code, specification or other requirement or stipulation means that such thing or action exceeds or at least equals that standard, code, specification or other requirement or stipulation. Where a product name is stated within the Price List it has the same meaning as if the product name had been stated with the additional wording ‘or equivalent’. |
|  | 12.6 | Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this contract. |
|  | 12.7 | All references to any statute or statutory provision (including any subordinate legislation) include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute. |
|  | 12.8 | Person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association. |
|  | 12.9 | Any reference to a public organisation or representative includes a reference to any successor to such public organisation or representative or any organisation or entity or representative which takes over the functions or responsibilities of such public organisation or representative. |
|  | 12.10 | Wherever pursuant to this contract the *Employer* is obliged to pay any amount to the *Contractor* in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the *Contractor*   * such obligation applies only to so much of such sums in the nature of costs, expenses, fees or charges as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including where the payment is made to the C*ontractor* or an Associated Company of the *Contractor*), so much of them as are proper and reasonable; and * the *Contractor*, where requested by the *Service Manager*, provides supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums. |
|  | 12.11 | Any reference to the statutory duties or functions of the *Employer* is a reference to such duties or functions (including powers and discretions) from time to time and includes any common law duties and functions (including powers and discretions). |
| **Z4** | **Communications** | |
|  | Delete Clause 13.1 and replace as follows: | |
|  | 13.1 | Unless otherwise stated within the Service Information, each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract.* |
|  | Delete Clause 13.8 and replace as follows: | |
|  | 13.8 | The *Service Manager* may withhold acceptance of a submission by the *Contractor* on any ground. Withholding acceptance on   * reasonable grounds, * at the *Service Manager’s* absolute discretion (where expressly so provided in this contract) or * for any other reason stated in this contract   is not a compensation event. |
|  | Add new Clauses as follows: | |
|  | 13.9 | The *Contractor* submits to the *Service Manager* the reports required by (and in such numbers and format as may be required pursuant to) the Service Information and so as to fulfil the Service Delivery Statements. If the *Service Manager* considers that any report has not been compiled in accordance with this contract or is based on erroneous information or data, the *Service Manager* serves a notice of objection within four weeks of receipt of the report. If such objection is not resolved by agreement between the Parties within two weeks of the date of the *Service Manager’s* notice, either Party may refer the dispute for resolution pursuant to Clause W2. The *Contractor* issues a revised report as soon as practicable after resolution (whether by agreement or determination pursuant to Clause W2) of an objection notified by the *Service Manager*. |
|  | 13.10 | The *Contractor* retains at his own cost copies of all Design Data, reports and other documents which record the *service* for the period stated in the Service Information. Records are maintained and updated in the form and manner required by the Service Information or as otherwise instructed by the *Service Manager*. |
|  | 13.11 | The *Contractor* Provides the Service in a manner that enables efficient and effective communication between the *Contractor’s* staff and the *Employer’s* staff and ensures that the key persons named in Contract Data Part 2 and those detailed within the Volume 2 Works Information Appendices (Appendix 03 - Partnering Information) attend such meetings as the *Employer* or the *Service Manager* may require from time to time on 12 hours’ notice (or shorter where necessary) whether at the *Employer’s* offices or as otherwise agreed with the *Employer* or *Service Manager*. The cost of attending such meetings is deemed to be included in the Prices. |
|  | 13.12 | The *Contractor* operates information and electronic communication systems in compliance with the Service Information and operates such information systems and communication technology strategies as are necessary to fulfil the Service Delivery Statements to the reasonable satisfaction of the *Service Manager.* The cost of meeting such requirements is deemed to be included in the Prices. |
|  | 13.13 | The *Contractor* provides the *Service Manager* with names and contact details of one or more competent representatives (“Emergency Services Representative”) to receive instructions regarding the Emergency Services. |
|  | 13.14 | The *Contractor* agrees to the *Service Manager* providing details of the Emergency Services Representative to Others and to the *Service Manager* and/or the *Employer* and/or Others contacting the Emergency Services Representative to provide instructions in relation to the Emergency Services. |
|  | 13.15 | The *Contractor* ensures that at least one Emergency Services Representative is available at all times throughout the *service period* to receive instructions from the *Service Manager* and/or Others and/or the *Employer* in relation to the Emergency Services. |
| **Z5** | **The Service Manager** | |
|  | Add new Clauses as follows: | |
|  | 14.5 | Any decision by the *Service Manager* is specific to the circumstances to which it relates and is not construed as binding on or limiting any other decision made by the *Service Manager* whether in the same or similar circumstances or otherwise. |
|  | 14.6 | The *Service Manager* may give an instruction to the *Contractor* which changes the Method of Measurement and such an instruction is not a compensation event under the contract |
| **Z6** | **Early Warning** | |
|  | Delete Clause 16.1 and replace as follows: | |
|  | 16.1 | The *Contractor* 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, * interfere with the timing of the *service,* * impair the effectiveness and usefulness of the *service,* * change the Accepted Plan, * delay Task Completion, * delay Service Instruction Completion or * otherwise conflict with the requirements of this contract.   The *Contractor* may give an early warning by notifying the *Service Manager* of any matter which could increase his total cost. The *Service Manager* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required. |
| **Z7** | **Ambiguities and Inconsistencies** | |
|  | In Clause 17.1 and replace as follows: Insert at the end of the first sentence “Such an ambiguity or inconsistency shall be deemed not to be a compensation event and there shall be no effect upon the Prices, the Defined Cost or any applicable completion date. | |
|  | 17.1 |  |
|  | Add new Clauses as follows: | |
|  | 17.2 | The Contractor unconditionally assumes and accepts responsibility for any ambiguity, inconsistency, omission, mistake or discrepancy contained within or between the Service Information, the Activity Schedule and any other document forming the contract. |
|  | 17.3 | Where there is any ambiguity, inconsistency, omission, mistake or discrepancy as set out in clause 17.2, the Contractor shall inform the Service Manager in writing of its proposed amendment to remove the discrepancy and the Service Manager shall decide between the discrepant item or otherwise may accept the Contractor’s proposed amendment, and such amendment shall not be a compensation event and there shall be no effect upon the Prices, the Defined Cost, or meeting any applicable completion date. |
| **Z8** | **Service Instructions** | |
|  | Add new Clauses as follows: | |
|  | 19.1 | The *Service Manager* issues Service Instructions to the *Contractor* for Routine Services as detailed within the Service Information. The *Employer* has no liabilityfor any inconvenience, disruption, expenses, cost or losses arising from any Service Instruction save for the amounts payable in accordance with this contract. |
| **Z8A** | **Price List and Method of Measurement** | |
|  | Add new Clauses as follows: | |
|  | 19A.1 | Any reference in this contract to the Price List shall be read and construed as if the following words were added immediately after the words “Price List”: “*as read and construed in conjunction with the Method of Measurement*”. |
|  | 19A.2 | The Contractor acknowledges and agrees that the Price List shall be used in conjunction with the Method of Measurement when determining the Price for Services Provided to Date. |
| **Z9** | **Providing the Service** | |
|  | Delete Clause 20.1 and replace as follows: | |
|  | 20.1 | The *Contractor* Provides the Service   * in accordance with the Service Information and other requirements of this contract, * in an efficient, economic, effective and safe manner and in accordance with Good Industry Practice, * in accordance with all applicable legislation including any legislation detailed within this contract, * in accordance with any Accepted Plan and in a timely manner so as to avoid any unnecessary delay in achieving the Task Completion Date or Service Instruction Completion Date, * in such manner as will fulfil the Service Delivery Statements, * in accordance with the Quality Submission and the Quality Management System and * to the reasonable satisfaction of the *Service Manager*. |
|  | Add new Clauses as follows: | |
|  | 20.6 | The *Contractor*   * designs the parts of the *service* which the Service Information or a Task Order states he is to design and in doing so exercises the skill and care normally used by professionals providing services similar to the *services.* * provides all labour, Equipment, Plant and Materials necessary to properly carry out the *service* in accordance with this contract, * makes the necessary arrangements and is responsible for obtaining all Relevant Approvals required to Provide the Service at his own cost (save where otherwise stated in this contract), * recognises the *Employer’s* statutory duties including under the New Roads and Street Works Act and Provides the Service in a manner that enables the *Employer* to fulfil such duties. The *Contractor* serves the Street Authority with all notifications required by the *Service Manager*, * liaises with the Street Authority regarding the application and processing of road closure notices, including but not limited to, informing the Street Authority and Others regarding any changes to programmes of work which may result in a change being made to the original road closure notice, * recognises that the *service* encompasses many of the *Employer’s* statutory duties and customer care objectives, and undertakes to give the *service* the highest priority, * ensures that no unnecessary interference with or obstruction to the convenience of the public or access to or use of public or private roads and footpaths access ways or other routes occurs, * complies with the Special Requirements, * complies with the partnering information stated in the Service Information, * utilises and operates a system of software for management of Service Instructions and Task Orders in accordance with the Service Information, * complies with the obligations in respect of Works Programmes. |
|  | 20.7 | The *Contractor* operates a Quality Management System for providing the *service*. The Quality Management System complies with the requirements stated in the Service Information. The *Contractor’s* quality policy statement and a comprehensive quality plan are submitted to the *Service Manager* for his approval, prior to the *starting date.* |
| **Z10** | **Revising the *Contractor’s* plan** | |
|  | Delete Clause 22.1 and replace as follows: | |
|  | 22.1 | The *Contractor* submits a revised plan (including, where relevant, revised Service Delivery Statements) to the *Service Manager* for acceptance showing the effects of implemented compensation events and other changes or at the request of the *Service Manager* from time to time during the *service period*. It is submitted   * within the *period for reply* after the *Service Manager* has instructed him to, * when the *Contractor* chooses to (if not instructed by the *Service Manager* or required by this contract) and * (unless otherwise agreed with the *Service Manager*) in any event not later than 30 calendar days before the beginning of each Contract Year save for the first Contract Year. |
| **Z11** | **People** | |
|  | Add new Clauses as follows: | |
|  | 24.3 | Any decision of the *Service Manager* as to whether any person is not to become involved in or is to be removed from involvement in the performance of the *service* is final and conclusive. |
|  | 24.4 | Neither the *Employer*, nor the *Service Manager*, nor its or their employees, servants or agents has any liability in respect of any claim costs loss action or damage made or any award of compensation in respect of redundancy or unfair or wrongful dismissal to any employee of the *Contractor* or any Subcontractor, or other person engaged by the *Contractor* arising from the operation of this contract and the *Contractor* indemnifies the *Employer,* the *Service Manager* and such employees servants or agents jointly and severally against any such loss costs claims actions or damages. |
|  | 24.5 | The *Contractor* provides to the *Service Manager* such information and documentation as the *Service Manager* reasonably requires from time to time to satisfy him that all persons to be engaged by the *Contractor* to carry out the *service* or any part thereof are competent to carry out the *service* or such part and have suitable qualifications and the appropriate level of experience and training and have appropriate certification from an appropriate professional body. |
|  | 24.6 | From time to time the *Service Manager* may require the *Contractor* to give to him a list of names and addresses of all persons who are or may be at any time concerned with the *service*. The *Contractor* provides such written information within two Working Days of such a request to the *Service Manager* specifying the capacities in which they are concerned, and giving such other particulars and evidence of identity and other supporting evidence as the *Service Manager* reasonably requires. |
|  | 24.7 | If the *Service Manager* considers that the *Contractor* is at any time providing insufficient or inappropriately qualified or experienced staff, the *Contractor* complies at its own cost with any reasonable instructions from the *Service Manager* regarding the matter. |
|  | 24.8 | During the *service period* neither Party solicits or endeavours to entice away from or discourage from being employed by the other any individual who is for the time being an officer or employee of the other (whether or not such individual would commit a breach of contract by reason of leaving that employment). |
|  | 24.9 | The *Contractor* has provided to the *Employer* within his Quality Submission details of its strategy, policies, practices and procedures for retaining and recruiting appropriately qualified and experienced staff. Without prejudice to its other obligations the *Contractor* maintains (and where appropriate augments) and implements practices, policies, procedures and strategies which are at least equivalent in terms of capacity to achieve their aims of recruitment and maintaining an appropriately qualified, experienced and sufficient staff resource to deliver the *service* in accordance with this contract. |
| **Z12** | **Working with the *Employer* and Others** | |
|  | Add new Clauses as follows: | |
|  | 25.3 | Where necessary in order to Provide the Service, the *Contractor* holds or attends meetings with Others. The *Contractor* informs the *Service Manager* of such meetings in sufficient time to enable the *Service Manager* to attend such meetings if the *Service Manager* so wishes. |
|  | 25.4 | The *Contractor* co-operates with any other contractors, and/or suppliers engaged in connection with any services or works relating to the *service* (the “Operations”) or any part thereof (including without limitation the Relevant Authorities) and assists the *Employer* and *Service Manager* in ensuring that the *service* and their respective inputs into the Operations are properly co-ordinated with the intention of ensuring that the Operations are carried out as quickly, efficiently and economically and with as few disputes as possible and uses its best endeavours acting in good faith to agree such arrangements (and agree variations to such arrangements) as may be required from time to time with such persons as to ensure that no interference, obstruction, hindrance or delay is caused to the *service* or the Operations but where such interference, obstruction, hindrance or delay is unavoidable that such interference, obstructions, hindrance or delay to the Operations is kept to a minimum. |
| **Z13** | **Sub-Contracting** | |
|  | Add new Clause as follows: | |
|  | 26.5 | The *Contractor* does not subcontract any part of the *service* without the written consent of the *Service Manager* where the aggregate value of the proposed subcontract (excluding subcontracts in respect of Plant and Materials or Equipment) together with any other such subcontracts previously let in respect of the *service* would cause the aggregate value of such subcontracts let in any Contract Year to exceed 40% of the value of the *service* in that Contract Year. |
|  | 26.6 | The *Contractor* does not subcontract any part of the *service* if the *Service Manager* is not reasonably satisfied that the subcontract has been procured in circumstances and on terms which are designed to achieve value for money to the *Employer* and quality of service. |
|  | 26.7 | The *Contractor* does not subcontract if the subcontracting would not of itself, or in the context of other subcontracting already approved, be in accordance with and fulfil the Service Delivery Statements to the reasonable satisfaction of the *Service Manager*. |
| **Z14** | **Other responsibilities** | |
|  | Add new Clauses as follows: | |
|  | 27.5 | After providing any element of the *service* the *Contractor* leaves the Affected Property unimpaired. |
|  | 27.6 | The Contractor at all times prevents any nuisance (including, but without limitation, any noisy working operations) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the services and assists the Employer in defending any action or proceeding which may be instituted in relation thereto provided that the Contractor is not liable where the nuisance or other interference was an inevitable consequence of the carrying out of the services. |
|  | 27.7 | Without prejudice to the obligations of the Contractor under clause 27.6, the Contractor at all times ensures that there is no trespass by the Contractor, its servants, agents, sub-contractors or suppliers on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the services and the Contractor takes all reasonable safety and other measures to prevent damage or injury to any persons (including, but without limitation, the occupiers or adjoining or neighbouring property and members of the public). |
| **Z15** | Health and Safety | |
|  | Add new Clauses as follows: | |
|  | 28.1 | The Parties act in accordance with the requirements of the Health and Safety at Work Etc Act 1974 and all other relevant   * Regulations made in pursuance of that Act (including the CDM Regulations) and * Approved Codes of Practice (ACoPs) “Managing Health and Safety in Construction - Construction (Design and Management) Regulations 2015 HSE publication L153) and guidance   in relation to their respective roles ascertained in accordance with this contract. |
|  | 28.2 | The *Contractor* is the Principal Contractor as defined by and for the purposes of the CDM Regulations and the Principal Designer (where stated in the Service Instruction / Task /or Contract Data) and, as applicable, performs the requirements imposed on such parties under the CDM Regulations, the *Contractor* ensures that:   * he is fully aware of his obligations under CDM Regulations (in particular where he is responsible for any design the provisions of Regulations 11 and 18) and possesses the requisite degree of competence and level of resources to meet those obligations; * all Subcontractors are fully aware of their obligations under the CDM Regulations (in particular where they are responsible for any design the provisions of Regulations 11 and 18) and are fully competent and are adequately resourced to meet those obligations; and * (where he is not the Principal Designer) he at all times co-operates and assists the Principal Designer in the exercise of his duties under the CDM Regulations and supplies all information relevant to the *works* reasonably required in connection with it   If the *Contractor* is not appointed CDM Designer in respect of a Service Instruction or Task, the CDM Designer for the Service Instruction or Task is the person notified to the *Contractor* by the *Service Manager*. |
|  | 28.3 | Where the *Contractor* is not the CDM Designer   * the *Employer* ensures that the CDM Designer carries out all his duties under the CDM Regulations and * the *Contractor* provides, and ensures that any Subcontractor, through the *Contractor*, provides to the CDM Designer such information as is required including for the preparation of the health and safety file within the *period for reply*. |
|  | 28.4 | The *Service Manager* acts as and discharges all the duties of a designer as required under the CDM Regulations in respect of all parts of the *service* which the Service Information or a Task Order states he is to design and to which the CDM Regulations apply. |
|  | 28.5 | Where a project (Service Instruction or Task) is notifiable the *Contractor* acts as and discharges all the duties of the designated principal contractor in respect of all parts of the *service* to which the CDM Regulations apply. In particular, the *Contractor* prepares and provides to the *Service Manager* a copy of the construction phase plan in accordance with regulation 12 of the CDM Regulations prior to the start of any construction work and notifies any subsequent significant and relevant amendments to the construction phase plan to the *Service Manager* and, if the *Contractor* is not the CDM Designer, to the CDM Designer*.*  Irrespective of whether a project is notifiable, the Contractor submits to the *Service Manager* his proposals for the provision of welfare facilities during the construction phase before the start of any construction work. |
|  | 28.6 | In addition to the other requirements in this Clause the *Contractor*   * complies with all other statutory requirements in relation to health and safety, * has delivered to the *Employer* on or before the *starting date* a general statement of Health and Safety Policy with which it will comply in the performance of the *service,* * maintains and provides information for the *Service Manager’s* health and safety file for all Task Orders and Service Instructions irrespective of whether or not the project is notifiable, * at all times employs a person (the “Health and Safety Manager”) who shall irrespective of his/her other responsibilities have specific responsibility, authority and resources for establishment maintenance updating and implementation of health and safety guidance standards practices and procedures in connection with the *service,* rectifying shortfalls in health and safety practice that he/she identifies or is made aware of within an appropriate timeframe and reporting to the *Service Manager* on performance against such standards and procedures. The *Contractor* informs the *Service Manager* of the identity of the Health and Safety Manager (and any replacement) and provides a curriculum vitae detailing his/her job specification, qualifications and responsibilities. The appointment of the Health and Safety Manager is subject to approval of the *Service Manager,* * as soon as reasonably practicable following a request from the *Service Manager* delivers copies of any documentation (not previously supplied) relating to health and safety relevant to the *service* including without limitation any health and safety file, * on being notified by the *Service Manager* or on otherwise becoming aware of any defect within any health and safety practice and/or procedures take immediate steps to rectify such defect promptly and * complies at its own cost with any reasonable requirement of the *Service Manager* concerning health and safety including, but not limited to, the provision of information to be included within the health and safety files in respect of all Service Instructions and Task Orders. |
| Z16A | Service Allocation | |
|  |  | Insert a new clause 29 as follows:  29.1 The Employer makes no representations or warranties to the Contractor about the minimum or total amount or value of the service that he will instruct the Contractor to do under the contract, and any indications of these amounts or values in the Service Information or any other documentation about the contract are estimates only and the Contractor does not have any claim for loss of profit or loss of business or otherwise if the service or any part of the service is less in amount or value or scope than anticipated.  29.2 The Service Manager may give an instruction to omit any part of the service including in circumstances where it is intended that those parts of the service omitted will be executed by others. The Contractor acknowledges and agrees that such an instruction by the Service Manager is not a compensation event and it has no claim for loss or revenue, loss of opportunity, loss of any contract, loss of profit or for any indirect loss or damage against the Employer in relation thereto. |
|  |  |  |
| **Z16** | **Starting and the *service period*** | |
|  | Delete Clause 30.1 and replace as follows | |
|  | 30.1 | Save for the change management and mobilisation proposals identified in the Quality Submission, which the *Contractor* implements prior to the *starting date* in accordance with the Quality Submission to the satisfaction of the *Service Manager*, the *Contractor* does not start work until the *starting date* and Provides the Service throughout the *service period*. |
| **Z17** | **Access** | |
|  | Add new Clauses as follows: | |
|  | 31.2 | The *Contractor* is deemed to have satisfied itself as to the various routes and means of access and conditions at the Affected Property and has satisfied itself that it is able to access all parts of the Affected Property that it requires in order to Provide the Service in accordance with this contract. |
|  | 31.3 | Where the *Contractor* requires access to any area of land which is owned by or in the control of Others the *Contractor* notifies the *Service Manager* and the *Service Manager* seeks the Relevant Approvals required for the *Contractor.* The *Service Manager* may issue instructions to the *Contractor* in relation to the *Contractor’s* access to and use of such land and the *Contractor* complies with the *Service Manager’s* instructions at all times. The *Contractor* indemnifies the *Employer* in relation to any claims against the *Employer* as a result of the *Contractor’s* failure to follow any instruction issued by the *Service Manager* pursuant to this Clause or any negligent act or omission of the *Contractor*. |
|  | 31.4 | The *Contractor* accepts any restrictions in place in connection with Traffic Sensitive Routes in Somerset. |
|  | 31.5 | The *Contractor* acknowledges that Routine Services make allowance for any costs incurred by the *Contractor* in respect of any temporary traffic management and welfare facilities which may be required by the Service Information or otherwise instructed by the *Service Manager* in order to Provide the Service. For the avoidance of doubt any temporary traffic management and welfare facilities instructed by the *Service Manager* is not a compensation event. |
|  | 31.6 | The *Contractor* acknowledges that Non-Routine Services make allowance for any costs incurred by the *Contractor* in respect of any temporary traffic management and welfare facilities which may be required by the Service Information or otherwise instructed by the *Service Manager* in order to Provide the Service. Notwithstanding this statement, those temporary traffic management and welfare facilities separately identified within Volume 5 – Schedule 6 Section 2 of the Price List are chargeable. For the avoidance of doubt any temporary traffic management and welfare facilities instructed by the *Service Manager* is not a compensation event. |
| **Z18** | **Contract Extension** | |
|  | Add new Clause as follows: | |
|  | 33.1 | The *Employer* may at any time extend the *service period* for two (2) further periods of two (2) years each. The decision whether or not to extend the *service period* is at the absolute discretion of the *Employer*. If the Employer wishes to extend the *service period* it gives six (6) months’ written notice to the Contractor prior to the expiry of the *service period*. |
| **Z19** | **Tests and Inspections** | |
|  | Delete Clauses 40.1 - 40.6 and replace as follows: | |
|  | 40.1 | The *Service Manager* may carry out or instruct the *Contractor* to carry out any test or inspection whether required by   * the Service Information, * the applicable *law of the contract* or * the *Service Manager* (including without limitation testing or inspections over and above those stated within this contract that the *Service Manager* requires from time to time)   in order to establish whether the *service* provided by the *Contractor* is in accordance with this contract. |
|  | 40.2 | The *Contractor* co-operateswith the *Service Manager* in the inspection, monitoring and testing of the *service* or part thereof as required by the *Service Manager*. |
|  | 40.3 | The *Contractor* provides all materials, facilities, samples, assistance, instruments, machines and labour for the tests and inspections referred to in Clause 40.1 to be carried out (whether by the *Contractor* or the *Service Manager*) except to the extent that the Service Information expressly states that the *Service Manager* is to make such provision. |
|  | 40.4 | The *Contractor* notifies the *Service Manager* of each of his tests and inspections before it starts and afterwards notifies the *Service Manager* of its results. The *Contractor* notifies the *Service Manager* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Service Manager* may watch any test done by the *Contractor*. |
|  | 40.5 | The cost of any test or inspection referred to in Clause 40.1 (where such test or inspection is carried out by the *Contractor*) is borne by the *Contractor*, save for any test or inspection which is not required by the Service Information or by the applicable *law of the contract* or because the test or inspection was required to be repeated and which does not reveal a Defect. |
|  | 40.6 | If any test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect in accordance with Clause 42.1 and the test or inspection is repeated. If the *Contractor* fails to repeat the test or inspection, the *Employer* is entitled to employ and pay other persons to do so and to recover the cost from the *Contractor* as a debt. |
|  | 40.7 | The *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed. |
|  | 40.8 | The *Contractor* allows within his rates and Prices to make available to the *Service Manager* suitable Equipment, Plant and Labour to enable the Service Manager to undertake ad hoc Tests and Inspections amounting to a total of 120hrs per Contract Year. To clarify, for the avoidance of doubt the 120hrs relate only to Tests and Inspections specifically instructed by the *Service* Manager and where no Defects are identified. Tests and Inspections may also relate to testing and inspecting works undertaken by Others. |
|  | 40.9 | The *Service Manager* reserves his right to Test and Inspect each order for compliance upon notified completion by the *Contractor.* In the event that the Service Manager is required to revisit a Task Order as a result of: -   * the *Contractor’s* incorrect notification of Task Completion; or * Failure by the *Contractor* to attend site at an agreed time to meet with the *Service Manager* to undertake a Site Acceptance Test; or * the *Service Manager’s* identification of a Defect   the *Contractor* pays the amount identified within the *service level table* for each Task Order where a revisit is required. |
| **Z20** | **Correcting Defects** | |
|  | Delete Clauses 42.1 and 42.2 and replace as follows: | |
|  | 42.1 | The *Contractor* corrects Defects whether or not the *Service Manager* notifies him of them. The *Contractor* corrects Defects as soon as reasonably practicable and in any event before the end of its Defect Correction Period. Subject to Clause 42.2, this period begins when the Defect is notified or first found by the *Contractor* whichever is the earlier. If the *Contractor* does not correct a Defect within the Defect Correction Period, the *Service Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. |
|  | 42.2 | The *Service Manager* arranges for the *Employer* to allow the *Contractor* access to and use of any part of the Affected Propertyif it is needed for correcting a Defect subject to the *Contractor* obtaining Relevant Approvals. Where access to and use of the relevant part of the Affected Property has been delayed the Defect Correction Period begins when the necessary access and use have been provided. |
| **Z21** | **Accepting Defects** | |
|  | Delete Clause 43.1 and replace as follows: | |
|  | 43.1 | The *Contractor* and the *Service Manager* may each propose to the other that the Service Information should be changed so that a Defect does not have to be corrected. |
|  | Add new Clause as follows: | |
|  | 43.2 | If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Service Instruction/Task Completion Date or both to the *Service Manager* for acceptance. If the *Service Manager* accepts the quotation, he gives an instruction to change the Service Information, the Prices and the Service Instruction/Task Completion Date accordingly. |
| **Z22** | **Searching and notifying Defects** | |
|  | Add new Clauses as follows: | |
|  | 44.1 | Until the expiry of the *service period*, the *Service Manager* may instruct the *Contractor* to search for Defects and such an instruction does not give rise to a compensation event. He gives his reason for the search with his instruction. Searching for Defects includes any of the following   * uncovering, dismantling, re-covering and re-erecting work * providing facilities, materials and samples for tests and inspections to be done by the *Service Manager* and * doing tests and inspections not required by the Service Information. |
|  | 44.2 | Until the later of   * the expiry of the *service period* or * fifty two weeks after Service Instruction/Task Completion to which the Defect relates   the *Service Manager* notifies the *Contractor* of each Defect which he finds and the *Contractor* notifies the *Service Manager* of each Defect which he finds. The time limit stated in this Clause 44.2 does not prejudice any other rights the *Employer* may have in respect of Defects. |
| **Z23** | **Assessing the Amount Due** | |
|  | Delete Clause 50.1 and replace as follows: | |
|  | 50.1 | The *Contractor* assesses the amount due at each assessment date. The *Contractor* submits an application for payment to the *Service Manager* on or before each assessment date with details of his assessment of the amount due (showing a separate assessment for each Task, each Service Instruction and any other amounts due). The application for payment is made in a format submitted by the *Contractor* and approved by the *Service Manager* prior to the *starting date* and complies with the Service Information and other requirements of this contract.  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 end of the *service period* or the issue of the last Defects Certificate, whichever is the later. |
|  | Delete Clause 50.4 and replace as follows: | |
|  | 50.4 | The *Service Manager* is entitled to reject any application for payment and to make his own assessment of the amount due if, in the *Service Manager’s* opinion   * the amount due is incorrectly assessed, * the application for payment is not supported by appropriate receipts and documentation (which includes where payment is claimed for time spent or expended in performing any element of the *service* time sheets or work sheets completed on a daily basis in accordance with the Time Recording System, identifying the date and time and time spent on each such day and work performed by each employee in providing that element of the *service*) or * the *Contractor* fails to provide copies of or access to documents and records required under Clause 104, unless the *Service Manager* is satisfied that the absence of such supporting evidence is beyond the reasonable control of the *Contractor*, that any default in compliance with any agreed processes or procedures for monitoring and recording time spent, quantities utilised or expenses incurred was unintentional and that there is suitable alternative and verifiable evidence to support the application.   The *Service Manager* gives the *Contractor* details of how the amount due has been assessed. |
| **Z24** | **Payment** | |
|  | Delete Clause 51.1 and replace as follows: | |
|  | 51.1 | The *Service Manager* certifies a payment within 26 days of the assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract. The final date for payment is as stated in Y2.2. |
|  | Delete the first sentence of Clause 51.2 and replace with the following: “Each certified payment is made within 30 days of the later of:   * + - * 1. the date on which payment becomes due in accordance with clause Y(UK)2; or         2. the date of receipt by the Employer of a VAT invoice. | |
|  |  |  |
|  | Add new Clause as follows: | |
|  | 51.5 | Not later than 3 days after receipt of the *Service Manager’s* certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the *Service Manager’s* certificate with a copy of the certificate attached. If the *Service Manager* does not issue a certificate within 5 days of the date on which payment becomes due then 6 days after the due date the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the *Contractor’s* application submitted under clause 50.1. The *Contractor* submits separate invoices in respect of any Tasks or Service Instructions for which the *Service Manager* requests a separate invoice. |
| **Z25** | **Variation in Spend Adjustments** | |
|  | Add new Clauses as follows: | |
|  | 55.1 | No guarantee of turnover for this contract is given and the Employer makes no representations or warranties to the Contractor about the minimum or total amount or value of the service that he will instruct the Contractor to do under the contract. The *Contractor* allows within his rates and Prices for fluctuation in budget expenditure and for the avoidance of doubt this is not a compensation event and the Contractor does not have any claim for loss of profit or loss of business or otherwise if the service or any part of the service is less in amount or value or scope than anticipated. |
| **Z26** | **Budget Management** | |
|  | Add new Clauses as follows: | |
|  | 56.1 | The *Contractor* continually monitors spend against compliance with the Budget Management Requirements. |
|  | 56.2 | No later than 14 calendar days after the end of each Contract Year, the *Contractor* submits a statement (the “Annual Reconciliation Notice”) which sets out the information required by the Service Information and other requirements of this contract. The *Service Manager* at his absolute discretion may suspend assessment until such time when the *Contractor* has provided the Annual Reconciliation Notice and such suspension of payment is not a compensation event. |
|  | 56.3 | If the Annual Reconciliation Notice shows a net amount due from the *Employer* to the *Contractor,* or a net amount due from the *Contractor* to the *Employer,* such amount shall be included in the *Contractor’s* next application for payment. |
| **Z27** | **Compensation Events** | |
|  | Clause 60.1 shall be amended so that the words “Subject to clause 60.2 below” are added at the start of the sentence. | |
|  | Delete Clause 60.1 (1) and replace with: | |
|  | 60.1 | (1) The *Service Manager* gives an instruction changing the Service Information except   * a change made in order to accept a Defect * a change to the Service Information provided by the *Contractor* for his plan which is made either at his request or to comply with other Service Information provided by the *Employer* or with the contract * a change made pursuant to Clause 18.1 where the matter giving rise to the instruction is a matter which was foreseen by the *Contractor* or ought to have been foreseen by a *Contractor* experienced in providing services of a similar nature and value to the *service* detailed within this contract * a change made to remove all or part of the *service* from this contract pursuant to Clause 101.5 * a change made to omit all or part of the *service* from this contract pursuant to Clause 101.7 |
|  | In clause 60.1(5) delete “Others”. | |
|  | Delete Clause 60.1 (7) and replace with: | |
|  | 60.1 | (7) The *Service Manager* changes a decision which he has previously communicated to the *Contractor* except where such change is at the instigation or request of the *Contractor* or arises from or in connection with any default of the *Contractor*. |
|  | Delete Clause 60.1 (8) and replace with: | |
|  | 60.1 | (8) The *Service Manager* withholds an acceptance for a reason not stated in this contract other than (i) acceptance of a quotation for not correcting a Defect, (ii) on reasonable grounds or (iii) at the *Service Manager’s* absolute discretion (where expressly so provided in this contract). |
|  | Add new Clauses as follows: | |
|  | 60.1 | (15) The *Service Manager* instructs the *Contractor* to carry out a test or inspection which is not required by the Service Information or by the applicable *law of the contract* or because the test or inspection was required to be repeated and no Defect is found. |
|  | 60.1 | (17) The *Service Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Affected Property. |
|  | 60.2 | The Contractor acknowledges and agrees that the following shall not constitute compensation events under this contract:   * temporary traffic management and welfare facilities instructed by the Service Manager; * the Service Manager withholding acceptance of a submission in the circumstances stated in clause 13.8; * an instruction by the Service Manager resolving an ambiguity, inconsistency, omission, mistake or discrepancy in any of the documents forming the contract; * an instruction by the Service Manager to the Contractor to search for Defects; * fluctuations or changes in the minimum or total amount or value of the service which the Employer instructs the Contractor to do under the contract and/or fluctuation in budget expenditure; * an instruction by the Service Manager to omit any part of the service; * suspension of payment in the circumstances specified in clause 56.2. |
|  |  | |
| **Z28** | **Quotations for compensation events** | |
|  | Delete Clause 62.6 and replace with the following: | |
|  | 62.6 | If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply to the notification within four weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor’s* notification is treated as acceptance of the quotation by the *Service Manager.* |
| **Z29** | **Assessing compensation events** | |
|  | In Clause 63.2, add the following wording at the start of the clause: “Subject to clause 63.3, | |
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|  |  |  |
|  | Delete Clause 63.3 and replace with the following: | |
|  | 63.3 | Rates and Prices in the Price List are used as the basis for assessing compensation events unless the *Service Manager*, in his absolute discretion,states that clause 63.2 (Defined Cost plus Fee) applies or states that the dayworks rates in Volume 5 – Schedule 6 Section 4 of the Price List shall be used as the basis for assessment instead of rates and Prices in the Price List, in which case the changes to the Prices are assessed as the effect of the compensation event upon   * the value of the work already done calculated using the dayworks rates and * the value of the work not yet done calculated using the dayworks rates.   The date when the *Service Manager* instructed or should have instructed the *Contractor* to submit quotations divides the work already done from the work not yet done. |
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|  | Delete Clause 63.4 and replace with the following: | |
|  | 63.4 | If the effect of the compensation event is to reduce the rates and Prices in the Price List or, if applicable, the total Defined Cost or value of work calculated using dayworks rates, the Prices are not reduced except as stated in this contract. |
|  | Delete Clause 63.8 and replace with the following: | |
|  | 63.8 | Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any changes to the Prices or Defined Cost due to the event are reasonably incurred and that the Accepted Plan can be changed. |
|  | Delete clause 63.9. | |
|  | Delete Clause 63.10 and replace with the following: | |
|  | 63.10 | If the effect of a compensation event is to reduce the rates and Prices in the Price List or, if applicable, the total Defined Cost or value of work calculated using dayworks rates, and the event is   * a change to the Service Information or * a correction of an assumption stated by the *Service Manager* for assessing an earlier compensation event,   the Prices are reduced. |
|  | Add a new Clause 63.13 as follows: | |
|  | 63.13 | Assessment of the effect of a compensation event includes any changes required to the Method of Measurement as a result of any changes to the Prices |
| **Z30** | **The Service Manager’s assessments** | |
|  | Delete Clause 64.3 and replace with the following: | |
|  | 64.3 | If the *Service Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply within four weeks (or such other period of time as the Service Manager acting reasonably considers necessary) of this notification the notification is treated as acceptance of the *Contractor’s* quotation by the *Service Manager.* |
|  | Add a new Clause 64.4 as follows: | |
|  | 64.4 | For the avoidance of doubt if the *Service Manager* assesses a compensation event (or an item to be assessed in the same way as a compensation event) the *Service Manager* may assess based on stated assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction. |
| **Z31** | **Implementing Compensation Events** | |
|  | Add new Clauses as follows: | |
|  | 65.4 | Any changes assessed as being required to the Method of Measurement are included in the notification implementing a compensation event. |
| **Z32** | **The Parties’ use of equipment, Plant and Materials** | |
|  | Add new Clauses as follows: | |
|  | 70.3 | The *Employer* and/or *Service Manager* have the right to use any Plant and Materials and Equipment provided by the *Contractor* for the purposes stated in the Service Information. |
|  | 70.4 | Whatever title the *Contractor* has to Plant and Materials passes to the *Employer* if it has been delivered to the Affected Property. The title to Plant and Materials passes back to the *Contractor* if it is removed from the Affected Property with the *Service Manager’s* permission. |
|  | 70.5 | Whatever title the *Contractor* has to Equipment, Plant and Materials which is outside the Affected Property passes to the *Employer* if the *Service Manager* has marked it as for this contract pursuant to Clause 71.1. |
|  | 70.6 | The *Contractor* removes Equipment from the Affected Property when it is no longer needed for the *service*, unless the *Service Manager* otherwise consents. |
|  | 70.7 | The *Contractor* ensures that he has title to Plant and Materials to be used in Providing the Service and that such title is free from encumbrances. |
| **Z33** | **Marking Equipment, Plant and Materials outside the Affected Property** | |
|  | Add new Clause as follows: | |
|  | 71.1 | The *Service Manager* marks Equipment, Plant and Materials which are outside the Affected Property as for this contract if:   * this contract identifies them for payment and * the *Contractor* has prepared them for marking as the Service Information requires and has included any claim for payment for them in any application for payment, certificate or invoice. |
| **Z34** | **Objects and Materials within the Affected Property** | |
|  | Add new Clauses as follows: | |
|  | 72.1 | The *Contractor* has no title to an object of value or of historical or other interest within the Affected Property. The *Contractor* notifies the *Service Manager* when such an object is found and the *Service Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions. |
| **Z35** | **Intellectual Property** | |
|  | Add new Clauses as follows: | |
|  | 73.1 | The *Contractor* assigns to the *Employer* all present and future intellectual property rights in any material created by or on behalf of the *Contractor* in Providing the Services. |
|  | 73.2 | Title to all Intellectual Property rights created by or on behalf of the *Contractor* in connection with or relevant to the Services or the subject of this Contract (including the rights in respect of any software used in Providing the Services) but to which clause 73.1 does not apply (“Background IP”) shall remain the property of the *Contractor*. |
|  | 73.3 | The *Contractor* grants the *Employer* an irrevocable non-exclusive royalty-free perpetual non-terminable licence to use (and permit its agents, contractors and consultants to use) any and all Background IP for all purposes associated with the *service* and the use, maintenance, modification and improvement of any part of the *Employer*’s highways network. |
| **Z36** | **Indemnity** | |
|  | Add new Clauses as follows: | |
|  | 82.3 | Clause 82.1 is subject to any express obligation of a Party to indemnify the other stated elsewhere in this contract. |
|  | 82.4 | The *Employer’s* liability to the *Contractor* under this contract whether in contract, tort (including negligence), breach of statutory duty or otherwise is limited to any loss, damage cost or expense to the extent arising from or in connection with   * any failure by the *Employer* to make proper payment to the *Contractor* in accordance with this contract and * any negligent act or omission of the *Employer* or any of its agents or employees giving rise to death or personal injury. |
| **Z37** | **Insurance Cover** | |
|  | Add new Clauses as follows: | |
|  | 83.3 | The *Contractor* provides whatever assistance the *Employer* reasonably requires for the purpose of handling third party claims. For the avoidance of doubt this includes the provision of all written records which may be reasonably required and the attendance at court of the *Contractor’s* staff as witnesses. |
|  | 83.4 | The *Contractor* procures and maintains such other insurances required by the applicable *law of the contract* including but not limited to motor insurances. |
| **Z38** | **Insurance Policies** | |
|  | Add new Clauses as follows: | |
|  | 84.5 | Each Party complies with the terms and conditions of their insurance policies. Each Party notifies the other of any terms and conditions of the insurance policies which require compliance from the other Party and the other Party will thereafter comply with such terms and conditions. |
| **Z39** | **Termination** | |
|  | Delete Termination Table detailed within Clause 90.2 and replace as follows:- | |
|  | **TERMINATION TABLE**   |  |  |  |  | | --- | --- | --- | --- | | **Terminating Party** | **Reason** | **Procedure** | **Amount due** | | The *Employer* | A reason other than R1-R23 | P1, P2 and P4 | A1, A2 and A4 | | R1-R15 or R18 | P1, P2, P3 and P4 | A1, A2 and A3 | | R17 or R20 | P1 and P4 | A1 and A2 | | R21 | P1, P3 and P4 | A1 and A2 | | R22 | P1, P2 and P4 | A1 and A3 | | R23 | P1 and P4 | A1 and A2 | | R24 | P1, P2 and P3 | A1 and A3 | | Partial suspension | P3 and P4 | Not applicable | | The *Contractor* | R1-R10, R16 or R19 | P1, P2 and P4 | A1, A2 and A4 | | R17 or R20 | P1, P2 and P4 | A1 and A2 | | |
|  | Add new Clauses as follows: | |
|  | 90.6 | For the avoidance of doubt, subject to the exercise through the *Employer* of any right to suspend the performance of the *service* by the *Contractor*, the Parties continue to perform all of their obligations under this contract notwithstanding the giving of any notice pursuant to Clause 90.1 until the termination certificate is issued. |
|  | 90.7 | The *Contractor* notifies the *Service Manager* of the occurrence and details of any event or circumstance which could or would, with the passage of time or otherwise, constitute or give rise to a reason for terminating identified in Clause 90.2 promptly upon the *Contractor* becoming aware of the occurrence thereof. |
|  | Amend Clause 91.2 (R11) as follows: | |
|  | 91.2 | Substantially failed to Provide the Service (R11) which includes, but is not limited to, failure by the *Contractor* to remedy a breach within the Remedial Period. |
|  | Add new Clauses as follows: | |
|  | 91.8 | The *Employer* may terminate if the *Contractor* fails to pay any sum due to the *Employer* hereunder and such failure continues for 60 calendar days after the *Employer* has notified the *Contractor* that such sum has not been paid; or any breach of Clause 104 (Audit and compliance) or Clause 105 (Corrupt Practices) (R22). |
|  | 91.9 | Without prejudice to the *Employer’s* right to terminate at any time and for any reason under Clause 90.2, at any time after the first eighteen (18) months of the *service period*, the *Employer* may terminate by giving at least six months’ notice in writing to the *Contractor* (R23). |
|  | 91.10 | The *Employer* may terminate if the *Contractor* breaches clause 105 or if any Associated Person (or anyone employed by or acting on behalf of the Associated Person) engaged or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the *Employer* in breach of section 7(1) Bribery Act (R24) |
|  | Procedures on Termination | |
|  | Amend Clause 92.2 as follows: | |
|  | Delete 1st Paragraph and replace with:- | |
|  | 92.2 | The procedure on termination, or partial suspension under Clause 95, also includes one or more of the following as set out in the Termination Table. The Contractor shall have no liability for any loss or damage caused by the Employer’s misuse of the Equipment. |
|  | Add new Clause as follows: | |
|  | 92.3 | On the termination of this contract for any reason:   * the *Contractor* co-operates fully with the *Service Manager* and any third party who is to provide any part of the *service* in order to achieve a smooth transfer of the *service*, so as to avoid undue delay or inconvenience * the *Contractor* as soon as practicable vacates the Affected Property and leaves the Affected Property in a clean and orderly condition and * in the event that the *Employer* wishes to enter into another contract for the provision of the *service* or any part thereof the *Contractor* complies (and ensures its Subcontractors comply) with all reasonable requests of the *Employer* to provide in confidence information relating to the *service* or the relevant part thereof. |
|  | Suspension of Payments | |
|  | Add new Clauses as follows: | |
|  | 94.1 | Upon the occurrence of a Contractor Default Reason for Terminating or the *Employer* having knowledge of an occurrence that may lead to a Contractor Default Reason for Terminating, the *Employer* may at its option and without prejudice to any of its rights or remedies, suspend any payment due from the *Employer* to the *Contractor* in relation to this contract or retain any other amount due from the *Employer* to the *Contractor*. The *Employer* gives notice of intention to withhold payment under Clause Y2.3 (if applicable). |
|  | 94.2 | Prior to exercising the rights under Clause 94.1 the *Employer* serves a notice on the *Contractor* informing it that the *Employer* intends to exercise such rights, unless the *Contractor* remedies the matter or matters referred to in the notice within the time period specified in the notice, which time period is such time period as is reasonable in all the circumstances and in any event does not exceed 7 days (or such longer period as may be agreed by the *Employer* in writing at its absolute discretion). |
|  | 94.3 | If the matter or matters notified in the notice served under Clause 94.2 is or are not remedied within the time period referred to in such notice, then the *Employer* may suspend or retain payments in full without further notice being required and no further payments become due to the *Contractor* under this contract until such time as the following conditions are satisfied:   * there is no continuing Contractor Default Reason for Terminating * there are no other material unperformed obligations under this contract * the *Contractor* demonstrates to the reasonable satisfaction of the *Employer* and *Service Manager* that it is capable of performing all of its obligations under this contract and * the *Contractor* resumes performance of all of its obligations under this contract. |
|  | 94.4 | Upon satisfaction of all of the conditions in Clause 94.3 payments again become due to the *Contractor* in accordance with this contract.  The *Employer* is entitled to retain from the *Contractor* costs incurred by the *Employer* arising from or in connection with the relevant Contractor Default Reason for Terminating, including without limitation, all costs incurred by the *Service Manager* in serving notices, engaging Others to perform the obligations of the *Contractor* and all administrative expenses of the *Service Manager*, *Employer* and other staff including general staff costs and overheads which relate or are attributable to such performance or engagement. |
|  | Partial Suspension | |
|  | Add new Clauses as follows: | |
|  | 95.1 | Upon the occurrence of a Contractor Default Reason for Terminating or the *Employer* and/or *Service Manager* reasonably being of the opinion that there is a risk or occurrence that may lead to a Contractor Default Reason for Terminating, the *Employer* or *Service Manager* may at its option and without prejudice to any of its rights or remedies, suspend performance of part of the *Contractor’s* functions to be performed by it under this contract and thereafter itself perform or procure Others to perform such part of the functions until such time as the *Contractor* demonstrates to the reasonable satisfaction of the *Employer* and *Service Manager* that it will perform and is capable of performing its obligations under this contract. |
|  | 95.2 | In the case of a partial suspension of the performance by the *Contractor*, the *Contractor* reimburses the *Employer* all additional costs incurred by the *Employer* in performing or engaging Others to perform the functions of the *Contractor* which are suspended (including, without limitation, the relevant administrative expenses of the *Service Manager* and the *Employer*, including an appropriate sum in respect of general staff costs and overheads). |
| **Z40** | **Dispute Resolution** | |
|  | Add new Clause as follows: | |
|  | W2.1(3) | Notwithstanding Clause W2.1(1), the Parties refer any disputes (save for any disputes relating to the Code which are resolved in accordance with Clause 112) to the Strategic Partnering Team, who meet to discuss and seek to resolve any disputes without the need to refer them to adjudication. |
| **Z41** | **Price adjustment for inflation** | |
|  | Delete Clauses X1.1, X1.2, X1.3, X1.4 and X1.5 and replace as follows: | |
|  | X1.1 | The Prices remain fixed as set out in the Price List from the *starting date* until 31st March 2023. The remainder of the *service period* is divided into consecutive periods for the purpose of adjusting the Prices. The relevant periods and the date used for the adjustment calculation ("the Adjustment Date”) are as follows:    Period Adjustment Date  1st April 2022 to 31st March 2023 Tendered rates apply  1st April 2023 to 31st March 2024 September 2022  1st April 2024 to 31st March 2025 September 2023  1st April 2025 to 31st March 2026 September 2024  1st April 2026 to 31st March 2027 September 2025  1st April 2027 to 31st March 2028 September 2026  If *service period* is extended beyond 31st March 2028  1st April 2028 to 31st March 2029 September 2027  1st April 2029 to 31st March 2030 September 2028  1st April 2030 to 31st March 2031 September 2029  1st April 2031 to 31st March 2032 September 2030 |
|  | X1.2 | At the commencement of each such relevant period the Prices are adjusted in accordance with this Clause X1 and such Prices as adjusted shall apply for the purpose of all calculations of the Price for Services Provided to Date, unless otherwise specified within this Clause X1, in respect of the *service* to be provided in that relevant period. |
|  | X1.3 | Compensation events are paid at the Prices applicable by the application of this Clause X1 at the date upon which the *Contractor* incurred the cost claimed. |
|  | X1.4 | General Principles   * the Prices applicable to each Service Instruction and Task Order are those current upon the date the work is carried out. * items in the Price List tendered as percentages are not eligible for adjustment. Only those rates tendered as Pound Sterling are adjusted for inflation/deflation in accordance with Clause X1 * “Adjustment Date” has the meaning given in Clause X1.1. * “Base Date” means **September 2021.** |
|  |  | The Percentage Adjustment is the sum of the Weighted Percentage Adjustments calculated using formula using the BCIS Price Adjustment Formula Indices – (Specialist Engineering ‘Series 3’ and Civil Engineering ‘1990 Series’ as set out within this Clause X1.  The Weighted Percentage Adjustment is calculated as follows:  WPA = (( A – B ) ÷ B) x 100 x W  where:  WPA = Weighed Percentage Adjustment at relevant Adjustment Date  A = Relevant Index at relevant Adjustment Date  B = Relevant Index at Base Date  W = Relevant Index Weighting  and where each Relevant Index and its respective Relevant Index Weighting as set out below:   |  |  |  | | --- | --- | --- | | 0.650 | E1 - Labour | Specialise Engineering Formulae – ‘Series 3’ | | 0.150 | E2 – Materials | | 0.075 | Index No.2 – Plant & Road Vehicles | Civil Engineering Formula – ‘1990 Series’ | | 0.025 | Index No.10 – DERV Fuel | | 0.100 | Non Adjustable |  | | 1.000 |  |  |   For clarity, the following would all be adjusted by the Percentage Adjustment: -   * Price List Section 1 – Routine Services * Price List Section 2 – Non-Routine Services * Price List Section 3 – Emergency Services * Price List Section 4 - Dayworks * Low service damages and delay damages |
|  | X1.5 | Hypothetical example as follows: -  September 2012 “Adjustment Date”  September 2011 “Base Date”   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | **W** | **B** | **A** | **WPA** | | **INDEX** | **DESCRIPTION** | **WEIGHTING** | **Sep-21** | **Sep-22** | **Weighted %** | | **NO.** |  |  |  |  | **Adjustment** | | E1 | Labour | 0.650 | 276 | 292 | 3.77 | | E2 | Materials | 0.150 | 207 | 200 | -0.51 | | 2 | Plant & Road Vehicles | 0.075 | 191 | 191 | 0.00 | | 10 | DERV Fuel | 0.025 | 400 | 420 | 0.13 | |  | Non Adjustable | 0.100 |  |  |  | |  | **Total** | **1.000** |  |  | **+3.39** |   The Percentage Adjustment for service period 1st April 2013 to 31st March 2014 would be +3.39%. |
|  | X1.6 | Other Provisions (Price List Section 5)  Not adjusted for price fluctuation and remain fixed for the duration of the *service period.* |
|  | X1.7 | Low service damages & delay damages  All low service damages and delay damages (excluding Parity Charge) in the *service level table* are adjusted for price fluctuation in accordance with Clause X1 |
|  | X1.8 | Parity Charge  The Parity Charge identified in the *service level table* is not adjusted for inflation in accordance with the provisions of this contract. The Parity Charge is adjusted to fall in line with current legislation and for the avoidance of doubt this is not a compensation event. |
| **Z42** | **NOT USED** | |
| **Z43** | **NOT USED** | |
| **Z44** | **Low service damages** | |
|  | Add new Clauses as follows: | |
|  | X17.2 | The *Contractor* agrees that the low service damages stated in the *service level table* are a genuine pre-estimate of the *Employer’*s losses in respect of a failure to achieve the relevant service level. |
|  | X17.3 | The *Contractor* agrees that the Parity Charge listed as a low service damage within the *service level table* detailed there for ease of reference is adjusted in line with appropriate legislation so as to ensure parity in the way in which the Street Authority treats users of the Affected Property. |
|  | X17.4 | The *Contractor* further agrees that the low service damages stated in the *service level table* do not limit the *Contractor’s* liability and the *Employer* may, in addition to being paid the low service damages stated in the *service level table*,   * claim any losses incurred by the *Employer* over and above such low service damages and * enforce any obligation of the *Contractor* to indemnify the *Employer* against claims, proceedings, compensation and costs due to events at the *Contractor’s* risk including, without limitation, claimsfor loss of or damage to property and liability for bodily injury to or death of a person arising from or in connection with the *Contractor’s* Providing the Service. |
| **Z45** | **Task Order** | |
|  | Add new clause X19.1A: | |
|  | X19.1A Under this contract, Non-Routine Services will be instructed by the Service Manager using Task Orders and Option X19 shall apply to such Task Orders. | |
|  | Delete Clause X19.1 and replace with: | |
|  | X19.1 | 1. A Task is work within the *service* which the *Service Manager* may instruct the *Contractor* to carry out within a stated period of time. 2. A Task Order is the *Service Manager’s* instruction to carry out a Task. 3. Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects which would have prevented the *Employer* or Others from using the Affected Property and Others from doing their work and is ultimately determined by the Service Manager and relayed to the Contractor within the Task Completion Certificate. 4. Task Completion Date is the date for completion stated in the Task Order unless otherwise changed in accordance with this contract. |
|  | Delete Clause X19.3 and replace with: | |
|  | X19.3 | The amount of delay damages for the late completion of a Task is identified within Volume 1, Appendix 6 – Service Level Table, or as otherwise stated on the Task Order for each calendar day (or part day) from the Task Completion Date until Task Completion. The *Contractor* pays the amount of delay damages from the Task Completion Date until Task Completion. The *Contractor* acknowledges that the sums stated within Volume 1, Appendix 6 – Service Level Table are a genuine pre-estimate of the *Employer’*s losses in respect of any failure by the *Contractor* to meet the Task Completion Date.  The Prices for items in the Task price list which are not taken from the Price List are assessed in the same way as compensation events. |
|  | Delete Clause X19.4 and replace with: | |
|  | X19.4 | The *Service Manager* may instruct the *Contractor* to start work on a Task before a Task Order is issued, in which case the *Service Manager* provides the *Contractor* with such details of the Task as he is able to provide pending issue of a Task Order. Receipt of a Task Order by the *Contractor* after the starting date stated in the Task Order is not a compensation event. The *Contractor* does not start any work included in the Task until the *Service Manager* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the *service period*.  The Service Manager may issue an instruction changing a Task Order. |
|  | Delete Clause X19.10 (2) with no replacement. | |
|  | Add new Clauses as follows: | |
|  | X19.13 | For the avoidance of doubt the *Service Manager* is not obliged to issue Task Orders to the *Contractor* and the *Contractor* has no claim against the *Service Manager* or *Employer* in respect of any decision not to appoint the *Contractor* to perform any particularTask or Tasks generally or award to Others/third parties. |
|  | X19.14 | Within 14 calendar days from receipt of a notice to the *Contractor* identifying the relevant third party, the *Contractor* enters into a collateral warranty in the form set out in Volume 5 (subject to such reasonable amendments as the *Employer* may agree) with a third party on whose behalf the *Service Manager* issues a Task Order under this contract. |
|  | X19.15 | Having issued a Task Order to the *Contractor,* if in the reasonable opinion of the *Service Manager* the *Contractor* is unable to achieve Task Completion by the Task Completion Date the *Service Manager* may withdraw the Task Order and issue to Others/third parties. The withdrawal of the Task Order is at the absolute discretion of the *Service Manager* and for the avoidance of doubt is not a compensation event and the Contractor acknowledges and agrees that it shall have no claim for any loss, cost, or damages arising from the withdrawal of the Task Order in accordance with this clause. |
|  | X19.16 | At the Defects Date or at the end of the Defects Correction Period if later, the Service Manager issues a Defects Certificate. |
| **Z46** | **Key Performance Indicators** | |
|  | Delete Clauses X20.1, X20.2, X20.3, X20.4 and X20.5 and replace as follows: | |
|  | X20 | Key Contractor Performance Indicators |
|  | X20.1 | From the *starting date* until the end of the *service period,* the *Contractor* reports to the *Service Manager* his performance against each of the Key Contractor Performance Indicators in a format required by the *Service Manager* together with any supporting documents as may be required by the *Service Manager*. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator. The forecast final measurements for each Contract Year are included in the *Contractor’s* plan. |
|  | X20.2 | If the *Contractor’s* forecast final measurement against a Key Contractor Performance Indicator will not achieve the target stated in the Performance Dashboard, he submits to the *Service Manager* his proposals for improving performance in accordance with the Service Information. |
|  | X20.3 | The *Contractor* is paid the amount stated in Volume 5 – Schedule 6 – Price List-Section 5 Table B according to Overall Performance. Payment of the amount is included in the next amount due after the Performance Dashboard includes actual performance in respect of all Key Contractor Performance Indicators for a Contract Year. The amount to be paid is calculated separately for each Contract Year using the Overall Performance calculated for that Contract Year. |
|  | X20.4 | The *Service Manager* may in his absolute discretion, after consulting the *Contractor* in accordance with the partnering arrangements stated in the Service Information, add or remove Key Contractor Performance Indicators from the Performance Dashboard and may also amend performance targets, methods of calculation and weightings within the Performance Dashboard. The addition or removal of Key Contractor Performance Indicators or amendment to targets, methods of calculation and weightings within the Performance Dashboard is not a compensation event. |
| **Z47** | **Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996** | |
|  | Delete Clause Y2.2 and replace with: | |
|  | Y2.2 | The date on which a payment becomes due is **twenty one** days after the assessment date.  The final date for payment shall be **30** days from the later of:-  (a) the date on which payment becomes due; or  (b) the date of receipt by the *Employer* of a VAT invoice pursuant to clause 51.5.  The *Service Manager's* certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated. |
|  | Add new Clause as follows: | |
|  | Y2.5 | If the *Service Manager* fails to issue the *Service Manager's* certificate correctly or on time the *Contractor's* application for payment (if any) is the notice of payment as long as it specifies the sum the *Contractor* considers to be due on the payment due date and the basis on which that sum is calculated. |
|  |  |  |
| Z48 to Z100 Not Used | | |
|  |  | |
|  | **Other** | |
|  |  | |
| **Z101** | *Employer’*s right to remove part of the *service* from the contract | |
|  | Add new Clauses as follows: | |
|  |  | Task Orders |
|  | 101.1 | For the avoidance of doubt the *Service Manager* is not obliged to issue Task Orders to the *Contractor* and the *Contractor* has no claim against the *Service Manager* or *Employer* is respect of any decision not to appoint the *Contractor* to perform any particular Task or Tasks generally or award to Others/third parties. Engaging Others/third parties to provide the service is not a compensation event and the Contractor acknowledges and agrees that it shall have no claim for any loss, cost, or damages as a result of the Employer engaging others to carry out work which is the same as or similar to the service |
|  |  | Service Instructions |
|  | 101.2 | Without prejudice to the *Employer’s* other rights under this contract if the *Service Manager* believes that the *Contractor* is persistently or materially failing to provide the level, quality, quantity and/or standard of performance of *service* required of the *Contractor* pursuant to this contract, the *Service Manager* may instigate the removal of part of the *service* by issuing to the *Contractor* a Service Removal Notice*.*  The Service Removal Notice provides sufficient detail to enable the *Contractor* to identify the nature of the dissatisfaction and defines the part of the *service* which is to be removed. |
|  | 101.3 | The *Contractor* and the *Service Manager* meet to discuss the Service Removal Notice within 28 calendar days of its receipt by the *Contractor*. |
|  | 101.4 | If the *Contractor* and the *Service Manager* are in agreement as to the basis for the Service Removal Notice they produce an agreed minute of the actions (which for the avoidance of doubt includes relevant time scales), if any, which the *Contractor* is to take to remedy the situation and the *Contractor* implements those actions. These are not a compensation event. |
|  | 101.5 | If, in the reasonable opinion of the *Service Manager,* the *Contractor* fails to remedy the situation then the *Service Manager* may make alternative arrangements for the provision of the *service* and remove the part of the *service* from this contract and may recover any additional costs it incurs in doing so from the *Contractor.* This action is not a compensation event and does not prejudice any right of the *Employer* to terminate the contract. |
|  | 101.6 | If the *Contractor* and the *Service Manager* are not in agreement as to the basis for the Service Removal Notice and/or the actions to be taken to remedy then the matter is referred to the procedure under Clause W2 (Dispute Resolution). |
|  | 101.7 | Notwithstanding the absence of any breach by the *Contractor* of any of the terms of this contract and/or any failure to provide the level, quality, quantity and/or standard of performance of *service* required of the *Contractor* pursuant to this contract, the *Employer* may in his absolute discretion change the Service Information to omit all or any part of the Non-Routine Services. Such omission is not a compensation event and for the avoidance of doubt the *Contractor* has no claim against the *Employer* in contract, tort (including negligence), breach of statutory duty or otherwise in respect of any such omission as a result of removal of such Non-Routine Services. |
| **Z102** | **Notice of Breach** | |
|  | 102.1 | Without prejudice to any other obligation under this contract the *Contractor* notifies the *Service Manager* of the occurrence of any breach of its obligations under this contract as soon as practicable after it becomes aware of such matter but in any case within 7 calendar days of such matter becoming apparent to the *Contractor* or, if earlier, of the date upon which the same ought reasonably to have become apparent to the *Contractor*. |
|  | 102.2 | If at any time the *Service Manager* is reasonably of the opinion that the *Contractor* has failed to perform any of its obligations under this contract (whether or not such failure has been notified under Clause 102.1) and such failure is capable of remedy, then the *Service Manager* may serve a notice (a “Remedial Notice”) on the *Contractor* requiring the *Contractor* (at its own cost and expense and such instruction is not a compensation event) to remedy such failure (and any damage resulting from such failure) within a reasonable period (the “Remedial Period”) and for the avoidance of doubt a failure to perform includes a failure to remedy as required by this Clause 102.2). This clause is without prejudice to any other right or remedy which the Employer may have under this contract or at common law. |
| **Z103** | **Step-In Rights** | |
|  | Add new Clauses as follows: | |
|  | 103.1 | Without prejudice to Clause 103.2, if at any time the *Service Manager* serves a Remedial Notice and the *Contractor* fails to remedy the failure within the Remedial Period, then the *Employer* may (without prejudice to any other right or remedy available to it) itself take such steps as necessary to remedy such failure or engage Others to take such steps, and the provisions of Clause 103.3 apply. |
|  | 103.2 | Notwithstanding any other provision of this contract and without prejudice to any other right or remedy of the *Employer* where it appears to the *Service Manager* necessary in order to secure the carrying out of any statutory function where this is contributed to by any non-compliance with or breach of the *Contractor’s* obligations under this contract the *Service Manager* may give notice requiring the *Contractor* forthwith to take such steps as it considers necessary or expedient to mitigate or preclude such state of affairs. In the event that the *Contractor* fails to take such steps as the *Service Manager* thinks necessary and within such time as the *Service Manager* thinks fit, then the *Employer* may take such steps itself or engage Others to take such steps, and the provisions of Clause 103.3 apply. |
|  | 103.3 | Except to the extent that the Parties agree, or it is determined under Clause W2 (Dispute Resolution), that the *Contractor* had not failed to perform its obligations under this contract (in the case of any action taken pursuant to Clause 103.1) or the *Service Manager* was not reasonable in requiring the *Contractor* to take such steps as are referred to in Clause 103.2 or, such steps were not necessary in order to secure the carrying out of any statutory function (any such determination to be made on the basis of the facts known to the *Service Manager* or of which the *Service Manager* ought reasonably to have been aware having made reasonable enquiries at the time it took or required such action to be taken), the *Contractor* reimburses the *Employer* for all costs incurred by it in taking the steps or engaging Others to take the steps referred to in Clause 103.1 or Clause 103.2 (including, without limitation, the relevant administrative expenses of the *Employer* and the *Service Manager*, including an appropriate sum in respect of general staff costs and overheads). |
| **Z104** | **Audit and compliance** | |
|  | Add new Clauses as follows: | |
|  | 104.1 | The *Contractor* co-operates fully and in a timely manner with any request from time to time of the *Employer* (in respect of any investigation proposed or being carried out by the Local Government Ombudsman (pursuant to Section 26 of the Local Government Act 1974 or otherwise)) or any auditor (whether internal or external) of or on behalf of the *Employer* (whether made prior to the end of the works period or any time within a period of eighteen months thereafter) to provide documents, or to procure the provision of documents, relating to the *works*, and to provide, or to procure the provision of, any oral or written explanation relating to the same. |
|  | 104.2 | The *Contractor* permits access to the *Employer* and/or any auditors to any and all documentation in the possession, custody or control of the *Contractor* (who procures that any person acting on its behalf (including any Subcontractor) who has such documents and/or any information also provides such access). For the avoidance of doubt, this right includes the power to interview staff, Subcontractors, staff of Subcontractors, take copies of any and all documentation and have access to and take copies of any computer data held for the purposes of the works. The *Contractor* uses its best endeavours to make any staff and/or Subcontractors identified by the *Employer* or the auditors available to be interviewed and uses all reasonable endeavours to ensure that they co-operate fully with the *Employer* and/or auditor for that purpose. The auditor has the same rights of access to property, and to monitor, view and inspect the operation, state and progress of the works and to monitor compliance with the responsibilities under this contract. |
| **Z105** | **Bribery Act 2010** | |
|  | Add new Clauses as follows: | |
|  | 105.1 | For the purposes of this clause 105 the following definitions apply:  Associated Person – a person who performs service for or on behalf of the Contractor's behalf;  Bribery Act – the Bribery Act 2010;  Corrupt Activity – extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, bribery, corruption or any similar activity including without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act if such practice or conduct had been carried out in the United Kingdom. |
|  | 105.2 | The *Contractor* warrants to the *Employer* that it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity or any activity, practice or conduct which could or would place the *Employer* in breach of section 7(1) Bribery Act; |
|  | 105.3 | The *Contractor* warrants to the *Employer* that it has and shall maintain and implement Adequate Procedures designed to prevent the Contractor, its current and former directors, officers and employees and any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act; |
|  | 105.4 | The *Contractor* warrants to the *Employer* that it shall include undertakings similar to those contained in this clause in any contract it may enter into with any Subcontractors; |
|  | 105.5 | The *Contractor* warrants to the *Employer* that from time to time, at the reasonable request of the *Employer*, it will confirm in writing that it has complied with its undertakings under clauses 105.2 to 105.4 and will provide any information reasonably requested by the *Employer* in support of such compliance; |
|  | 105.6 | The *Contractor* warrants to the *Employer* that it shall maintain adequate records to assist in verifying its compliance with this clause and shall permit the *Employer* and its third party representatives, on reasonable notice during normal business hours to access and take copies of such records and to meet with the *Contractor's* personnel to audit the *Contractor's* compliance with its obligations under this clause and the *Contractor* shall give all necessary assistance to the conduct of such audits. |
|  | 105.7 | The *Contractor* warrants to the *Employer* that it shall indemnify the *Employer* against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against, the *Employer* as a result of any breach of this clause by the Contractor or any breach of provisions equivalent to this clause in any contract with a Subcontractor. |
| **Z106** | Equal Opportunities | |
|  | Add new Clauses as follows: | |
|  | 106.1 | The *Contractor* adopts a policy to comply with its statutory obligations under:   * The Equality Act 2010 * any other equalities legislation introduced during the *service period*   and accordingly does not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, sex, sexual orientation, religion or belief, age or any disability or for any other reason specified in any legislation introduced during the *service period,*  in relation to decisions to recruit train or promote or otherwise in relation to the terms and conditions on which it engages its personnel and does not discriminate on such groups in selection of any Subcontractors or other suppliers. |
|  | 106.2 | In the event of any finding of unlawful discrimination being made against the *Contractor* by any court or tribunal, or of any adverse finding in any formal investigation by the Equality and Human Rights Commission the *Contractor* takes appropriate steps to prevent repetition of the unlawful discrimination and, on request, provides the *Employer* with details of any steps taken. |
|  | 106.3 | The *Contractor*, on request, provides the *Employer* with examples of the instructions and other documents, recruitment advertisements and other literature. |
|  | 106.4 | The *Contractor* observes as far as possible the Equality and Human Rights Commission’s Codes of Practice in employment. |
|  | 106.5 | The *Contractor* uses reasonable endeavours to procure that Subcontractors comply with this Clause 106 as if reference to the *Contractor* were a reference to any Subcontractor. |
|  | 106.6 | The *Contractor* implements procedures and systems which would fulfil the Service Delivery Statements in respect of avoidance of discrimination and the support of equal opportunities. |
|  | 106.7 | The *Contractor*, on request, provides the *Employer* with information and access to such documents as the *Employer* may require to enable it to satisfy itself that the *Contractor* complies and will continue to comply with all current legislation in respect of equality and diversity. |
|  | 106.8 | The *Contractor* complies with Appendix 27 of the Service Information – Equalities. |
| **Z107** | Whistleblowing | |
|  | Add new Clause as follows: | |
|  | 107.1 | The *Contractor* confirms that the *Employer’s* Chief Executive, Director of Corporate Resources, Monitoring Officer and Assistant Director (Audit and Performance) are authorised as persons to whom the *Contractor's* staff may make a qualifying disclosure under the Public Interests Disclosure Act 1998 and declares that any of its staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment. The *Contractor* further declares that any provision in an agreement purporting to preclude a member of its staff from making a protected disclosure is void. |
| **Z108** | *Contractor* not Agent | |
|  | Add new Clauses as follows: | |
|  | 108.1 | Unless otherwise expressly stated in this contract, the *Contractor* is not and in no circumstances holds itself out as being the servant or agent of the *Employer.* |
|  | 108.2 | The *Contractor* is not and in no circumstances holds itself out as being authorised to enter into any contract on behalf of the *Employer* or in any other way bind the *Employer* to the performance, variation, release or discharge of any obligations. |
|  | 108.3 | The *Contractor* has not and in no circumstances holds itself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind. |
| **Z109** | Confidentiality | |
|  | Add new Clauses as follows: | |
|  | 109.1 | Each Party agrees, for itself and its respective directors, officers, employees, servants and agents, to keep confidential and not to disclose to any person (save as otherwise provided by the contract including without limitation by this Clause) any Confidential Information provided always that a Party is entitled to disclose the whole or any part of the Confidential Information  109.1.1 to its directors, officers, employees, servants, Subcontractors, agents or professional advisers to the extent necessary to enable it to perform (or to cause to be performed) or to enforce any of its rights or obligations under this contract,  109.1.2 when required to do so by the *law of the contract* or by or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any governmental agency,  109.1.3 in the case of the *Contractor* to any bank or financial institution from whom it is seeking or obtaining finance,  109.1.4 to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure,  109.1.5 to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to it prior to such disclosure,  109.1.6 to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to the other Party or  109.1.7 where the Party is the *Employer*  109.1.7.1 to the extent required for the purpose of the construction, operation, modification, maintenance or repair of the Affected Property in the event of termination of the contract  109.1.7.2 without limitation to Clause 109.1.2 in relation to the outcome of the procurement process for the *service* as may be required to be published in the Official Journal of the European Union or elsewhere  109.1.7.3 to any department, office or agency of the Government (including for the avoidance of doubt the Audit Commission and the District Audit Service) where required for parliamentary, governmental, statutory or judicial purposes or  109.1.7.4 where not falling within Clause 109.1.7.3 to the Department for Transport or the Office of the Deputy Prime Minister (but excluding any pricing information)  and, in the cases of Clauses 109.1.1 and 109.1.3 above, upon obtaining from such person or entity to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the Confidential Information in question. |
|  | 109.2 | On termination of this contract each Party returns to the other such Confidential Information within its possession or control as may belong to the other Party, save that under this Clause information belonging to the *Contractor* necessary for the construction completion maintenance repair or modification of the *service*, or the Affected Property or any part thereof or the purposes reasonably ancillary thereto and/or any information provided in connection with any investigation, examination, monitoring permitted by this contract all of which Confidential Information may be used or applied for all purposes for which such information is reasonably required.  The obligations of the Parties under this Clause (Confidentiality) continue for a period of 5 years following the termination of this contract notwithstanding such termination.  Without prejudice to any other rights and remedies that the other Party would have, each of the Parties agrees that damages would not be an adequate remedy for any breach of this Clause (Confidentiality) and that the other Party is entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause (Confidentiality). |
| **Z110** | Publicity | |
|  | Add new Clause as follows: | |
|  | 110.1 | The *Contractor* publicises information concerning this contract or the *service* only with the *Employer’s* express prior written agreement and observes the *Employer’s* protocol relating to media coverage the purpose of which is to avoid the publication of information which is inaccurate or which is presented in a way which is misleading or damaging to the *Employer*.  The *Employer* wishes to increase public awareness of the *service* which it provides and will take every opportunity to ensure that its corporate identity is associated with service delivery.  If the provision of the *service* involves the production and distribution of information, promotional literature, press releases or other material including the publication of material, publication of material for use on web sites, the *Contractor* submits proofs of any such material to the *Employer* for approval before publication and the *Employer* uses all reasonable endeavours to notify the *Contractor* of its approval or otherwise within the *period for reply*. |
| **Z111** | Amendments | |
|  | Add new Clause as follows: | |
|  | 111.1 | No amendment to this contract is effective unless in writing and executed as a deed by the Parties. |
| **Z112** | TUPE Regulations | |
|  | Add new Clause as follows: | |
|  | 112.1 | The Parties comply with their obligations in Schedule 1. |
| **Z113** | Data Protection | |
|  | Add new Clauses as follows: | |
|  | 113.1 | In this clause 113 the following terms have the following meanings:   1. Controller: as defined in the Data Protection Legislation. 2. Data Subject: as defined in the Data Protection Legislation. 3. Domestic Law: the law of the United Kingdom or a part of the United Kingdom. 4. Personal Data: as defined in the Data Protection Legislation. 5. Processor: as defined in the Data Protection Legislation. 6. Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. 7. UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |
|  | 113.1A | Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 113 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. |
|  | 113.2 | The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. |
|  | 113.3 | Without prejudice to the generality of clause 113.1A, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement. |
|  | 113.4 | Without prejudice to the generality of clause 113.1A, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:   1. process that Personal Data only on the documented written instructions of the Employer unless the Contractor is required by Domestic Law to otherwise process that Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the Employer; 2. ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); 3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; 4. not transfer any Personal Data outside of the UK unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:     (i) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;    (ii) the Data Subject has enforceable rights and effective remedies;    (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and    (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;   1. notify the Employer immediately if it receives:     (i) a request from a Data Subject to have access to that person's Personal Data;    (ii) a request to rectify, block or erase any Personal Data;    (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);   1. assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; 2. notify the Employer without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement; 3. at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination or expiry of the agreement unless required by the Domestic Law to store the Personal Data; 4. maintain complete and accurate records and information to demonstrate its compliance with this clause 113 and allow for audits by the Employer or the Employer's designated auditor and immediately inform the Employer if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation. |
|  | 113.5 | The Contractor shall indemnify the Employer against any losses, damages, cost or expenses incurred by the Employer arising from, or in connection with, any breach of the Contractor's obligations under this clause 113. |
|  | 113.6 | Where the Contractor intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:   1. notify the Employer in writing of the intended processing by the Sub-Contractor; 2. obtain prior written consent from the Employer to the processing; 3. enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 113. |
|  | 113.7 | The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination. |
| **Z114** | Conflicts of Interest | |
|  | Add new Clause as follows: | |
|  | 114.1 | The *Contractor* ensures that no conflict of interest arises between its performance of the *service* and any other matter in which it may be interested whether directly or indirectly. |
| **Z115** | Not used | |
| **Z116** | Freedom of Information Act | |
|  | Add new Clause as follows: | |
|  | 116.1 | In responding to requests for information in relation to this contract which are made under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice the *Employer* is entitled to provide information in relation to this contract, save for such information which in the *Employer’s* opinion is exempt information as described within any provision of Part II of the Freedom of Information Act 2000, and where it is the public interest to maintain the exemption.  The *Contractor* assists the *Employer* at no additional charge in meeting any requests for information in relation to this contract which are made to the *Employer* in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice. The *Employer* may from time to time serve on the *Contractor* an information notice requiring the *Contractor* within such time and in such form as is specified in the information notice, to furnish to the *Employer* such information as the *Employer* may reasonably require relating to such requests for information. |
| **Z117** | **Assignment** | |
|  | Add new Clause as follows: | |
|  | 117.1 | The *Employer* is entitled to assign the benefit of and its rights under this contract at any time without the *Contractor’s* consent subject to the *Employer* giving prior written notice of such assignment to the *Contract.* The *Contractor* is not entitled to assign the benefit of and its rights under this contract without the *Employer’s* prior written consent. |
| **Z118** | No Fetter | |
|  | Add new Clause as follows: | |
|  | 118.1 | For the avoidance of doubt nothing contained or implied in this contract prejudices or affects the *Employer*’s rights, powers, duties and obligations in the exercise of its functions (including without prejudice to the generality of the foregoing functions as Highways Authority, Waste Authority, Planning Authority and as a local authority in connection with environmental health matters) as may be amended supplemented or increased from time to time and the rights powers duties and obligations of the *Employer* as a local authority and/or pursuant to its other functions and duties may be as fully and effectually exercised or discharged as if the contract had not been executed. |
| **Z119** | Waiver | |
|  | Add new Clause as follows: | |
|  | 119.1 | No term or provision of this contract is waived by any Party unless a waiver is given in writing by the Party and no failure by the *Service Manager* or the *Employer* at any time to enforce any provision of this contract or to require performance by the *Contractor* of any of the provisions of this contract is construed as a waiver of any such provision and does not affect the validity of this contract or any part thereof or the right of the *Service Manager* and/or the *Employer* to enforce any provision in accordance with its terms.  No waiver under this Clause is a waiver of a past or future default or breach, nor does it amend, delete or add to the terms, conditions or provisions of this contract unless (and then only to the extent) expressly stated in that waiver. |
| **Z120** | Set Off | |
|  | Add new Clause as follows: | |
|  | 120.1 | Wherever any sum of money is recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum then due or which at any time thereafter may become due to the *Contractor* whether under this contract or any other agreement between the *Employer* and the *Contractor*. |
| **Z121** | Severance | |
|  | Add new Clause as follows: | |
|  | 121.1 | If any provision of this contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect   * that does not affect or impair the legality, validity or enforceability of any other provision of this contract which continues in full force and effect as if this contract had been executed with the invalid provision eliminated except where it deprives one of the Parties of a substantial part of the benefit intended to be derived by it from this contract without providing any corresponding benefit * the Parties in good faith amend and, if necessary, execute such further assurances in relation to this contract to reflect as nearly as possible the spirit and intention behind the illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended clause complies with the laws of the jurisdiction and * if the Parties cannot agree upon the terms of any amendment or assurance within 6 months of the date upon which the provision was determined to be wholly or partly illegal, invalid or unenforceable by any court, tribunal or administrative body then the dispute is determined in accordance with the dispute resolution procedures contained within this contract. |
| **Z122** | **Whole Agreement** | |
|  | Add new Clause as follows: | |
|  | 122.1 | The contract and all documents referred to herein constitute the entire agreement between the Parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Parties. The *Contractor* acknowledges that it does not enter into the contract in reliance on any warranty, representation or undertaking other than those contained in the contract, and that its only remedies are for breach of contract provided that this shall not exclude any liability which the *Employer* would otherwise have to the *Contractor* in respect of statements made fraudulently by or on behalf of the *Employer* prior to the *starting date*. |
| **Z123** | Supervision | |
|  | Add new Clause as follows: | |
|  | 123.1 | In the event that the *Service Manager* decides that the *Contractor* has substantially failed to Provide the Service, which includes, but not limited to, any breach notified to the *Contractor* by the *Service Manager* which is not remedied within the Remedial Period the *Service Manager* may (without prejudice to any other right or remedy available to the *Employer*) by notice to the *Contractor* indicate the intention to appoint a person to monitor and supervise the *Contractor* until such time as the *Contractor* shall have demonstrated to the reasonable satisfaction of the *Service Manager* that it is capable of performing its obligations under the contract. The *Contractor* shall compensate the *Service Manager* for all costs incurred in connection with such supervision (including, without limitation, the relevant administrative expenses and an appropriate sum in respect of general staff costs and overheads). |
| **Z124** | Fault Management System | |
|  | Add new Clause as follows: | |
|  | 124.1 | The *Contractor* supplies and installs a Fault Management System with all necessary software and hardware for a fully functional system compliant with Volume 3 Service Information, including but not limited to details as specified within SS02 – Routine Services, Section 2 – Fault Management System. |
|  | 124.2 | The *Contractor* ensures that the Fault Management System is in place and fully operational on or before the *starting date*.  This will require the *Contractor* to install and comprehensively test systems to ensure compliance, during the mobilisation period. |
|  | 124.3 | The *Contractor* agrees to pay all reasonable costs incurred by the Employer in the event that the Fault Management System fails to be fully operational on the *starting date.* For the avoidance of doubt these costs include without limitation, the relevant administrative expenses and an appropriate sum in respect of general staff costs and overheads. |

# SCHEDULE 1 – PART 1 TUPE PROVISIONS

1. Interpretation

The definitions and rules of interpretation in this paragraph apply in this Agreement:

1. **Acquired Rights Directive**: the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020.
2. Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
3. Effective Date: the date(s) on which the Services (or any part of the Services), transfer from any Third Party Employer to the Contractor or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Contractor or Sub-Contractor.
4. Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:
   1. the identity and age of the employee;
   2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
   3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
   4. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Contractor arising out of the employee's employment with the transferor;
   5. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.
5. Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.
6. Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Employer or a Replacement Contractor by virtue of the application of TUPE.
7. Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.
8. Replacement Services: any services that are fundamentally the same as any of the Services and which the Employer receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Employer internally or by any Replacement Contractor.
9. Replacement Contractor: any third party Contractor of Replacement Services appointed by the Employer from time to time.
10. Services: means any part of the *service*
11. Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-Contractor to the Employer or any Replacement Contractor.
12. Staffing Information: in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Employer may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.
13. Sub-Contractor: the contractors or Contractors engaged by the Contractor to provide goods, services or works to, for or on behalf of the Contractor for the purposes of providing the Services to the Employer.
14. Contractor's Final Staff List: the list of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.
15. Contractor's Provisional Staff List: the list prepared and updated by the Contractor of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.
16. Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Contractor or Sub-Contractor by virtue of the application of TUPE.
17. Third Party Employer: a contractor engaged by the Employer to provide some or all of the Services to the Employer before the Effective Date and whose employees will transfer to the Contractor on the Effective Date.
18. TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.
19. Transfer of employees to the Contractor on the effective date
    1. The Employer and the Contractor agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Third Party Employees shall transfer to the Contractor or Sub-Contractor. The Contractor shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
    2. The Employer shall use its best endeavours to procure that the Third Party Employer indemnifies in full the Contractor against all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law incurred by the Contractor in connection with or as a result of:
       1. any claim or demand against the Contractor by any person who is or has been employed or engaged by the Third Party Employer in connection with the provision of any of the service where such claim arises as a result of any act, fault or omission of the Third Party Employer;
       2. any claim by any employee, trade union or staff association or employee representative arising from or connected with any failure by the Third Party Employer to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Acquired Rights Directive or otherwise.
    3. The Contractor shall be liable for and indemnify and keep indemnified the Employer and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
       1. any proposed changes to terms and conditions of employment the Contractor or Sub-Contractor may consider making on or after the Effective Date;
       2. any of the employees informing the Employer and any Third Party Employer they object to being employed by the Contractor or Sub-Contractor; and
       3. any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor or Sub-Contractor may consider taking on or after the Effective Date.
    4. The Contractor shall be liable for and indemnify and keep indemnified the Employer and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
    5. The Contractor shall immediately on request by the Employer and/or the Third Party Employer provide details of any measures that the Contractor or any Sub-Contractor envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor will give confirmation of that fact, and shall indemnify the Employer and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
20. Employment exit provisions
    1. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Employer or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
    2. The Contractor shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Employer and at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Employer, including information as to the application of TUPE to the employees. The Contractor shall notify the Employer of any material changes to this information as and when they occur.
    3. At least 28 days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-Contractor shall prepare and provide to the Employer and/or, at the direction of the Employer, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.
    4. The Employer shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as the Services (or any part of the Services).
    5. The Contractor warrants to the Employer and the Replacement Contractor that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.
    6. The Contractor shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
    7. The Employer regards compliance with this paragraph 3 as fundamental to the Agreement. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Employer to suspend payment under the contract until such information is provided, or indefinitely.
    8. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Employer's prior written consent, unless such changes are required by law. The Contractor shall and shall procure that any Sub-contractor shall supply to the Employer full particulars of such proposed changes and the Employer shall be afforded reasonable time to consider them.
    9. In the six months prior to termination of this Agreement, the Contractor shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Contractor's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Employer's prior written consent.
    10. The Contractor shall indemnify and keep indemnified in full the Employer and each and every Replacement Contractor against all Employment Liabilities relating to:
        1. any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or
        2. any trade union or staff association or employee representative,

arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

* 1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
  2. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Employer in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
  3. Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.