

DATED **[INSERT DATE HERE]**

FORM OF AGREEMENT FOR AN NEC4 TERM SERVICE CONTRACT

between

DERBYSHIRE COUNTY COUNCIL

and

[INSERT CONTRACTOR NAME HERE]

IN RELATION TO

HIGHWAYS DRAINAGE CLEANSING

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THIS DEED is dated

PARTIES

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall , Matlock DE4 3AG (*Client*, which expression shall include its permitted successors in the exercise of its statutory functions, successors in title and permitted assignees)

And

- (2) **[CONTRACTOR]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is **[ADDRESS]** (*Contractor*)

BACKGROUND

- (A) This Agreement relates to services to be undertaken by the *Contractor* for the *Client* in respect of highways drainage cleansing (subject to any variations in accordance with this contract) (the "**Project**").
- (B) The *Client* wishes to appoint the *Contractor* to Provide the Service in accordance with the terms of this Agreement.
- (C) The *Contractor* has agreed to Provide the Service in accordance with the terms of this Agreement.

AGREED TERMS

1. INTERPRETATION

Unless the context otherwise requires:

- (a) any term used with initial capital letters has the meaning given to it in the *conditions of contract*, and
- (b) any italicised term has the meaning given to it in the Contract Data.

2. CONTRACTOR'S RESPONSIBILITIES

The *Contractor* will Provide the Service and will carry out its other duties in relation to the Contract in accordance with the *conditions of contract* and other contract documents specified in clause 4 below and will exercise the powers granted to it under those documents impartially using its professional discretion.

3. CLIENT'S RESPONSIBILITIES

The *Client* will pay the *Contractor* for carrying out the *service* and will carry out its other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 4 below.

4. CONTRACT FOR THE SERVICE

The contract for the *service* comprises:

- (a) This Agreement;
- (b) the *conditions of contract* in the form of the NEC4 Term Service Contract, June 2017 edition, incorporating the following options:

- (i) Main Option A;
 - (ii) Dispute resolution option W2;
 - (iii) Secondary Options, X11 (Termination by the *Client*), X21 (Whole Life Cost), X23 (Extending the Service Period), X24 (The *accounting periods*), and Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996);
- (c) the Contract Data at Annex 1;
 - (d) the amendments to and *additional conditions of contract* at Annex 2;
 - (e) the Scope at Annex 3;
 - (f) the Affected Property at Annex 4;
 - (g) the Price List at Annex 5;
 - (h) the Key Performance Indicators at Annex 7;
 - (i) the Data Protection provisions at Annex 8;
 - (j) the Community Benefits provisions at Annex 9;
 - (k) the TUPE provisions at Annex 10; and
 - (l) the Schedule of Cost Components.

5. PRIORITY OF DOCUMENTS

- 5.1 The documents comprising this contract are mutually explanatory and are to be read as a whole.
- 5.2 Without prejudice to clause 7.1, 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:
- (a) this Agreement,
 - (b) the Contract Data,
 - (c) the amendments to and *additional conditions of contract*,
 - (d) the Scope and
 - (e) any other document forming part of the contract.

6. PRIOR AGREEMENTS

- 6.1 This Agreement is the complete and entire contract between the *Client* and the *Contractor* in relation to the *service* and supersedes any previous agreement between the Parties in relation to the *service*. Insofar as the *Contractor* has:
- (a) performed a part of its obligations under this Agreement; or
 - (b) carried out any of the *service*

before the date of this Agreement, the obligations and liabilities of the *Contractor* under this Agreement shall take effect in all respects as if the Agreement had been dated prior to the performance of that part of its obligations *service*.

- 6.2 The Parties are not bound by, or liable for, any statement, representation, promise, inducement or understanding made prior to the Contract Date which is not contained in this Agreement.

7. VARIATION

- 7.1 The terms of this Agreement may only be varied by an express written agreement to that effect executed as a deed by the *Client* and the *Contractor*.

- 7.2 No waiver, estoppel, acceptance, or other ground on which the *Client* may be said to have lost its right to insist on its strict rights under this Agreement, shall have such effect unless expressly so executed as a variation to this Agreement as stated in clause 7.1.

8. JOINT AND SEVERAL LIABILITY (WHERE THE **CONTRACTOR** IS A PARTNERSHIP)

The *Contractor's* obligations are the joint and several obligations of all the partners of the *Contractor* whether or not they have executed this Agreement and the partners of the *Contractor* who have executed this Agreement jointly and severally warrant that in executing this deed they have the power to bind under seal all the partners of the *Contractor* jointly and severally.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED BY THE **CLIENT**

Namely:

by affixing hereto its common seal

in the presence of:-

..... []

..... []

EXECUTED AS A DEED BY THE **CONTRACTOR**

acting by a director and its secretary/two directors whose signatures are here subscribed

namely.....

[Signature]..... Director

and.....

[Signature]..... Director/Secretary

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

The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution option W2 and secondary Options X11, X21, X23, X24, Y(UK)2 and Z of the NEC4 Term Service Contract (June 2017), as supplemented and amended by the *additional conditions of contract*.

The *service* is: Cyclical cleansing and all other works related to the Highway drainage network as detailed in Annex 3.

The *Client* is

Name: Derbyshire County Council

Address for communications: County Hall, Matlock, Derbyshire, DE4 3AG

Address for electronic communications:

Highway.drainage@derbyshire.gov.uk

The *Service Manager* is

Name: [Richard Ward]

Address for communications:

County Hall, Matlock, Derbyshire, DE4 3AG

Address for electronic communications:

Highway.drainage@derbyshire.gov.uk

The Affected Property is listed in **Annex 4**

The Scope is in **Annex 3**.

The *shared services* which may be carried out outside the Service Areas are **[Not used]**

The *language of the contract* is **English**.

The *law of the contract* is the law of **England**.

The *period for reply* is **two (2)** weeks except that

- The *period for reply* for [] is []
The *period for reply* for [] is []

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than
[a calendar month].

2. The Contractor's main responsibilities Not used.

3. Time The *starting date* is []

The *service period* is until 31st March 2027 commencing on the Contract Date.

The *Contractor* submits revised plans at intervals no longer than [3 weeks]

The period within which the *Contractor* is to submit a Task Order programme for acceptance is [3 weeks]

If no plan is identified in part two of the Contract Data The period after the Contract Date within which the *Contractor* is to submit a first plan for acceptance is [2 weeks]

4. Quality Management The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is **[two (2) weeks.]**

5. Payment The *currency of the contract* is the **Pound Sterling (£).**

The *assessment interval* is **[a calendar month.]**

The *interest rate* is [3]% per annum above the **base rate, from time to time, of the [Bank of England].**

If the period within which payments are made is not three weeks and Y(UK)2 is not used The period within which payments are made is [Not used]

If the period for certifying a final assessment is not thirteen weeks The period for certifying a final assessment is 13 weeks

6. Compensation events

If Option A is used The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is []%.

If there are additional compensation events

These are the additional compensation events

1. The Environment Agency changes the categorisation of gully emptyings to hazardous waste.

8. Liabilities and insurance

These are additional *Client's* liabilities

There are no additional *Client* liabilities

The minimum amount of cover for insurance against loss of or damage to property (except 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* Providing the Service for any one event is **[£10 million]**.

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is **[£5 million]**.

If the *Client* is to provide Plant and Materials The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of [] that required by Annex 6 (Access and Loan Agreement)].

If the *Client* is to provide any of the insurances stated in the Insurance Table The *Client* provides these insurances from the Insurance Table

(1) Insurance against []
Minimum amount of cover is []
The deductibles are []

(2) Insurance against []

Minimum amount of cover is []
The deductibles are []

If additional insurances are to be provided The *Client* provides these additional insurances

(1) Insurance against []
Minimum amount of cover is []
The deductibles are []

(2) Insurance against []
Minimum amount of cover is []
The deductibles are []

Resolving and avoiding disputes The *tribunal* is the Courts of England.

The *Adjudicator nominating body* is the Technology and Construction Solicitors' Association.

X23: Extending the Service Period The *maximum service period* is until 31st March 2030.

The periods for extension are

Order	<i>period for extension</i> (months)	<i>notice date</i>
First	12	1 month prior to the Expiry Date
Second	12	1 month prior to the expiry of the previous extension
Third	12	1 month prior to the expiry of the previous extension

If there are criteria for extension Not used.

X24: the accounting periods The accounting periods are the dates stated in the Contract Data of assessment of the Contractors share

Y(UK)1: Project Bank Account Not used.

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

If Y(UK)2 is used and the date on which a payment is due is not fourteen weeks after the end of the The period is [14] weeks

accounting period or
Service period

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

The period for payment is [30] days after the date on which
payment becomes due.

Option Z

The *additional conditions of contract* are **set out in Annex 2**.

Part two – Data provided by the *Contractor*

1. General

The *Contractor* is

Name:

Address for communications:

Address for electronic communications:

The *fee percentage* is []%

The *service areas* are []

The *key persons* are:

- (1) Name:
 Job:
 Responsibilities:
 Qualifications:
 Experience:

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

2. The *Contractor's* main responsibilities

If the *Contractor* is to provide Scope for its plan

The Scope provided by the *Contractor* for its plan is in []

3. Time

If a plan is to be identified in the Contract Data

The plan identified in the Contract Data is []

5. Payment

The *price list* is set out at **Annex 5**

The tendered total of the Prices is []

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are
Name (1)

Address for communications

Address for electronic communications

Name (1)

Address for communications

Address for electronic communications

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

Not used.

Annex 2 amendments to and *additional conditions of contract*

The amendments to and *additional conditions of contract* are part of this contract and are set out below:

PART A: Amendments to the *conditions of contract*:

The *conditions of contract* are amended as set out below:

Clause	Amendment
11.2(3)	Delete and replace with: "The Contract Date is the date of execution of the form of Agreement between the Parties to which these <i>additional conditions of contract</i> are appended or (if earlier) the date when the <i>Contractor</i> first begins to Provide the Service."
11.2(4)	after the words "this contract or any other contract with the <i>Client</i> ", insert: "or committing or engaging in extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including, without limitation, any activity, practice or conduct which would or could constitute an offence under the Bribery Act 2010 whether in connection with the <i>service</i> or otherwise."
11.2(5)	In the second bullet point, delete the words "applicable law" and replace with: "Applicable Law"
11.2(30)	Add a new clause 11.2(30), as follows: "Applicable Law is any statute, statutory instrument, regulation, directive, rule, judgement, order, decision, recommendation or statutory guidance made under any statute or directive having the force of law which affects the <i>service</i> or the performance of all or any of the obligations under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the <i>service</i> , including without limitation any statutory provisions and any decision, notice, direction, instruction, permission or award of a relevant authority."
11.2(31)	Add a new clause 11.2(31), as follows: "Associated Person is any officer, employee, agent, sub-contractor, adviser or representative."
11.2(32)	Add a new clause 11.2(32), as follows: "CDM Regulations are the Construction (Design and Management) Regulations 2015 and any related guidance issued by the Health & Safety Executive from time to time and any replacement or amendment of those regulations."
11.2(33)	Add a new clause 11.2(33), as follows: "Consents are any and all consents, licences, authorizations, permits, permissions, registrations, filings, exemptions, approvals and the like required from Others in order for the <i>Contractor</i> to Provide the Service in accordance with this contract (and a "Consent" is any one of them)."
11.2(34)	Add a new clause 11.2(34), as follows:

	<p>“Control means control within the meaning of section 1124 of the Corporation Tax Act 2010.”</p>
11.2(35)	<p>Add a new clause 11.2(35), as follows:</p> <p>“Confidential Information is all information of a confidential nature disclosed in whatever form by the <i>Client</i> or an Associated Person of the <i>Client</i> and includes, without limitation:</p> <ul style="list-style-type: none"> (i) all knowhow, trade secrets, financial, commercial, technical or strategic information of any kind; and (ii) all information produced or developed in the performance of this contract; and (iii) all information agreed to be, or marked as, confidential; and (iv) any information the <i>Contractor</i> knows, or could reasonably be expected to know, is confidential, <p>but does not include:</p> <ul style="list-style-type: none"> (v) any information that was known to the <i>Contractor</i> before that information was imparted by the <i>Client</i>; or (vi) any information that is in or subsequently comes into the public domain (through no fault of the <i>Contractor</i>); or (vii) any information that is received by the <i>Contractor</i> without restriction on disclosure or use from a third party lawfully entitled to disclose to the <i>Contractor</i> without such restrictions; or (viii) any information that is developed by any of the <i>Contractor</i>’s employees who have not had any access to, or use or knowledge of, that information imparted by the <i>Client</i>; or (ix) any information that the Parties agree in writing is not confidential.”
11.2(36)	<p>Add a new clause 11.2(36), as follows:</p> <p>“RPI is the retail price index published by the Office for National Statistics (UK) or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made)”;</p>
11.2(37)	<p>Add a new clause 11.2(37), as follows:</p> <p>“Data is any document or other information provided by the <i>Client</i> to the <i>Contractor</i> in electronic data form which relates to the Affected Property and/or the <i>services</i> and/or any <i>Others</i>”.</p>
11.2(38)	<p>Add a new clause 11.2(38), as follows:</p> <p>“Documents are all drawings, plans, specifications, schedules, reports, calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the <i>Contractor</i> in the course of Providing the <i>Services</i> whether in existence or to be made or produced and including all amendments and additions to them.”</p>
11.2(38)	<p>Add a new clause 11.2(38), as follows:</p>

	"Funder means a person, firm, company or entity having legal capacity that has provided, or is to provide, finance in connection with the whole or any part of the Project, or in connection with the site of the Project, whether acting on its own account, as agent for a syndicate of other parties or otherwise."
11.2(40)	Add a new clause 11.2(40), as follows: "Key Performance Indicators are the key performance indicators set out in Annex 7."
11.2(41)	Add a new clause 11.2(41), as follows: "Performance Deductions are the performance deductions set out in Annex 7."
12	Add new clauses 12.5 to 12.7, as follows: "12.5 references to a document include any revision made to it in accordance with this contract. 12.6 references to a statute or statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and includes corresponding legislation in any other relevant part of the United Kingdom and any code of practice made under it. 12.7 references to a standard include any current relevant standard that replaces it."
13.9	Add a new clause 13.9 as follows: "13.9 If the <i>Contractor</i> does not reply to a communication from the <i>Service Manager</i> within the <i>period for reply</i> the <i>Client</i> may charge the <i>Contractor</i> for any direct costs, losses or expenses that the <i>Client</i> reasonably incurs by reason of the <i>Contractor's</i> failure to respond within the <i>period for reply</i> . The <i>Client</i> may set off or deduct such amounts from the amount due to the <i>Contractor</i> at the next assessment date."
14.6	Add a new clause 14.6, as follows: "14.6 No inspection testing approval or review nor any omission to inspect test approve or review on the part of the <i>Client</i> or the <i>Service Manager</i> diminishes any duty or liability of the <i>Contractor</i> under this contract."
15.1	After the first sentence in the last paragraph of clause 15.1, insert: "Notification of an early warning specifies the cause of the delay, the likely effect on the total of the Prices; the timing of the service; and the effectiveness of the service and identifies remedial actions."
15.5	Add a new clause 15.5, as follows: "15.5 The <i>Contractor</i> uses all reasonable endeavours to mitigate the effect on the <i>services</i> of any event or circumstances contained in an early warning notification."
20.1	Add, at the end of the clause: "and in compliance with Consents and Applicable Law."
20.2	Add, at the end of the clause: "and around it."

20.5	<p>Add a new clause 20.5, as follows:</p> <p>"20.5 The <i>Contractor's</i> obligation is to use the skill and care normally used by a competent and qualified professional experienced in carrying out services similar to the <i>service</i> in relation to projects of a similar size, nature, value, scope, timescale and complexity to the Project."</p>
20.6	<p>Add a new clause 20.6, as follows:</p> <p>"20.6 Where and to the extent that the <i>Contractor</i> is responsible for the specification of work, goods or materials or for the inspection of work as a part of the <i>service</i>, the <i>Contractor</i> does not specify or authorise for use or permit to be used in the Project any goods, products, materials, substance or building practices which:</p> <ul style="list-style-type: none"> (a) are prohibited by this contract; (b) are generally known within the construction industry at the time of use to be deleterious or hazardous to the health and safety of occupants of the Project or to the durability and stability of the Project in the particular circumstances in which such goods, products, materials, substances, building practices or techniques are used and having regard to the British Property Federation/British Council for Offices report Good Practice in the Selection of Construction Materials (as may be reviewed or amended from time to time); and/or (c) do not comply with relevant British Standard Specifications (or their European Union equivalent) and Codes of Practice and good building practice current at the time of use and/or (d) do not comply with any publications of the Building Research Establishment related to the specification of products or materials. <p>The <i>Contractor</i> notifies the <i>Client</i> immediately if the <i>Contractor</i> becomes aware that any of the items referred to in this clause 20.6 have been specified for use or used."</p>
22.3	<p>Add a new clause 22.3, as follows:</p> <p>"22.3 For the duration of the Service Period, the <i>Contractor</i> will have and maintain appropriate skilled and experienced human resources, necessary for Providing the Service. The <i>Contractor</i> will provide evidence of its human resources and their deployment in Providing the Service on the request of the <i>Service Manager</i> within the <i>period for reply</i>."</p>
24.2	<p>Delete clause 24.2 and replace with:</p> <p>"24.2 The <i>Contractor</i> submits the name of each proposed Subcontractor to the <i>Service Manager</i> for acceptance. A reason for not accepting the Subcontractor is that:</p> <ul style="list-style-type: none"> • the appointment will not allow the <i>Contractor</i> to Provide the Service, • the <i>Service Manager</i> is not, acting reasonably, satisfied with the financial stability of the Subcontractor (the <i>Service Manager</i> will be deemed to be acting reasonably if he identifies a detrimental change in the financial standing or credit rating of the Subcontractor), <p>The <i>Contractor</i> does not appoint a proposed Subcontractor until the <i>Service Manager</i> has</p>

	<ul style="list-style-type: none"> accepted the Subcontractor and, to the extent these <i>conditions of contract</i> require, accepted the subcontract documents.
25.5	<p>Add a new clause 25.5, as follows:</p> <p>“25.5 The <i>Contractor</i> complies with any rules, regulations, policies and procedures (including health and safety policies and quality assurance procedures) issued by the <i>Client</i>.”</p>
26.1	<p>Delete clause 26.1 and replace with:</p> <p>The <i>Contractor</i> does not assign this contract without the written consent of the <i>Client</i>. The <i>Client</i> may assign or transfer its rights under this contract to any third party with an interest in the Affected Property without the consent of the <i>Contractor</i>.”</p>
27.2	<p>Delete clause 27.2 and replace with:</p> <p>“Without prejudice to clause 27.1, unless the Client gives its prior written consent, the <i>Contractor</i> does not divulge to any third party nor (except for the purposes of the <i>service</i>) make use of any Confidential Information relating to the <i>Client</i>, the <i>service</i> or otherwise and does not release to any third party any information relating to the <i>service</i> and does not take or authorize the taking of any photographs of the <i>service</i> or the Affected Property or publish or authorize the publication of any articles, photographs or other illustrations of the <i>service</i> or the Affected Property.”</p>
27.3	<p>Add a new clause 27.3, as follows:</p> <p>“27.3 The <i>Contractor</i> indemnities the <i>Client</i> and keeps the <i>Client</i> indemnified and holds harmless the <i>Client</i> from and against any losses, damages, liability, costs (including, without limitation, legal fees) and expenses which the <i>Client</i> incurs or suffers as a result of or arising from any breach of this clause 27.”</p>
27.4	<p>Add a new clause, 27.4, as follows:</p> <p>“27.4 The <i>Contractor</i> notifies the <i>Client</i> of any change of Control within 1 month of the change of Control.”</p>
30.1	<p>At the end of the clause insert:</p> <p>"The <i>Contractor</i> proceeds regularly and diligently to Provide the Service in accordance with this contract and uses all reasonable endeavours to prevent or reduce any delay in the progress of the <i>service</i>".</p>
30.4	<p>Add a new clause 30.4, as follows:</p> <p>“30.4 This contract commences on the Contract Date and ends on 31st March 2027 (the “Expiry Date”) unless extended pursuant to clause 30.5 or terminated earlier in accordance with clause 90.”</p>
30.5	<p>Add a new clause 30.5, as follows:</p> <p>“30.5 The <i>Client</i> notifies the <i>Contractor</i> of any extension to the Service Period not less than 1 month prior to:</p> <ul style="list-style-type: none"> the Expiry Date; or in the case of any extension which is not the first extension expiry of the previous extension.

31.5	<p>Add a new clause 31.5 as follows:</p> <p>“31.5 If the <i>Contractor</i> fails to provide any plan required by the Contract Data by the time stipulated in the Contract Data and in accordance with the Scope, the <i>Client</i> may set off or withhold from any sums due to the <i>Contractor</i>, a sum not exceeding ten per cent (10%) of the sums due, until the relevant plan is provided.”</p>
40.2	<p>In clause 40.2 delete:</p> <p>"is that it does not allow the <i>Contractor</i> to Provide the Service" and replace with:</p> <p>"is that it:</p> <ul style="list-style-type: none"> • does not allow the <i>Contractor</i> to Provide the Service; • is inadequately prepared or is not practicable; or • does not comply with the requirements stated in the Scope.” <p>At the end of the second paragraph of clause 40.2, insert:</p> <p>"The <i>Contractor</i> complies with the accepted quality plan."</p>
45	<p>Add a new clause 45, as follows:</p> <p>“45 Nothing in clauses 40 to 44 affects any other right or remedy under the contract or at law, including the <i>Client’s</i> right to claim damages for a Defect as a breach of contract.”</p>
50.10	<p>Add a new clause 50.10, as follows:</p> <p>"50.10 In assessing the amount due, the <i>Service Manager</i> may deduct the whole of the Price for Service Provided to Date until the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • has signed this contract; and/or • submits to the <i>Service Manager</i> evidence that it has the insurances required by this contract
50.11	<p>Add a new clause 50.11, as follows:</p> <p>“50.11 Subject to compliance with clause Y2.3, the <i>Service Manager</i> may reduce, deduct or extinguish from any payment due to the <i>Contractor</i> under this contract, the following:</p> <ul style="list-style-type: none"> • [any Performance Deductions that the <i>Client</i> is entitled to deduct; and/or] • any payment in respect of any <i>services</i> (including in respect of the <i>Contractor</i> correcting any Defects) which the <i>Contractor</i> has either failed to provide or has provided inadequately; and/or • any sum or sums which the <i>Client</i> has suffered or incurred or anticipates suffering or incurring due to a <i>Contractor’s</i> breach of or failure to observe <i>the</i> provisions of this contract (including failure to correct Defects under the contract) and a failure to observe the provisions of the Key Performance Indicators; and/or • any other sum or sums which the <i>Client</i> becomes entitled to receive under this contract,

	without prejudice to any other rights or remedies of the <i>Client</i> . As a separate right the <i>Client</i> may at its discretion recover any Performance Deductions or any other sums due to the <i>Client</i> under this contract from the <i>Contractor</i> as a debt due to the <i>Client</i> from the <i>Contractor</i> ."
50.12	<p>Add a new clause 50.12, as follows:</p> <p>"50.12 If this contract is terminated for any of reasons R1-R10A of clause 91.1, the <i>Client</i> is not obliged to pay the <i>Contractor</i> the notified sum on or before the final date for payment (as set out in clause Y2.2)".</p>
50.13	<p>Add a new clause 50.13, as follows:</p> <p>"50.13 Notwithstanding any other provision of this contract, the <i>Service Manager</i> may when making any payment to the <i>Contractor</i> under this contract, delete, correct and/or modify any sum or sums previously paid by the <i>Client</i> (or deemed to have been paid by the <i>Client</i> pursuant to the terms of this clause 50)."</p>
50.14	<p>Add a new clause 50.14, as follows:</p> <p>"50.14 All amounts payable by the <i>Client</i> under the contract are exclusive of VAT. Where any taxable supply for VAT purposes is made under the contract by the <i>Contractor</i> to the <i>Client</i>, the <i>Client</i> will on receipt of a valid VAT invoice from the <i>Contractor</i>, pay to the <i>Contractor</i> such additional amounts in respect of VAT as are chargeable on the <i>services</i>."</p>
50.15	<p>Add a new clause 50.15, as follows:</p> <p>"50.15 Any overpayment by the <i>Client</i> to the <i>Contractor</i>, whether of the Price for Services Provided to Date or any other amounts paid to the <i>Contractor</i> or of VAT are sums of money recoverable by the <i>Client</i> from the <i>Contractor</i>."</p>
50.16	<p>Add a new clause 50.16, as follows:</p> <p>"50.16 The <i>Contractor</i> maintains complete and accurate records of the time spent, activities undertaken, and materials used by the <i>Contractor</i> in providing the <i>services</i>. The <i>Contractor</i> allows the <i>Client</i> to inspect such records at all reasonable times on request."</p>
50.17	<p>Add a new clause 50.17, as follows:</p> <p>"50.17 The <i>Contractor</i> warrants and represents that all calculations and information contained or referred to in each and every invoice and application for payment, and all assumptions on the basis of which the same were made, are fair, true, accurate and reasonable and no material adverse change has occurred since the date on which such information was supplied, which renders the same untrue or misleading in any material respect."</p>
50.18	<p>Add a new clause 50.18, as follows:</p> <p>"50.18 Failure to give a notice of payment in accordance with this contract, for any reason, is not a deemed acceptance or any waiver by the <i>Service Manager</i> or <i>Client</i> of the <i>Client's</i></p>

	right to challenge the entitlement of the <i>Contractor</i> to payment that would have been due if the relevant notice had been given.”
51.1	At the end of the first sentence before the full stop, insert: “or the date of submission by the <i>Contractor</i> of its application or where Option Y(UK) 2 applies, the <i>Service Manager</i> certifies a payment no later than 5 days after the due date set out in clause Y2.2”.
51.4	Delete and replace with: “Simple interest is calculated at the rate of [3]% (three percent) over the Bank of England bank rate for the time being. The Parties acknowledge that such interest is a substantial remedy for late payment in compliance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).”
60.1(5)	At the end of the clause insert: “Except where the instruction is given as a result of the <i>Contractor’s</i> breach of this contract.”
60.1(10)	At the end of the clause insert: “Except where the test or inspection is done as a result of the <i>Contractor’s</i> breach of this contract or where the <i>Service Manager</i> reasonably suspects that the test or inspection is necessary to confirm whether or not the <i>Contractor</i> is in breach of this contract, or a defect has been covered up.”
60.1(17)	Delete and replace with: “any circumstance or event, which affects a part of the Affected Property, at a time when the <i>Contractor</i> is scheduled to provide the <i>services</i> at that part of the Affected Property and which prevents the <i>Contractor</i> from Providing the Service in accordance with the Task Order programme. Provided that such circumstance or event is not caused by or contributed to by the <i>Contractor</i> .”
60.1A	Add a new clause 60.1A, as follows: "60.1A If, an instruction or information given by the <i>Service Manager</i> (not expressed to be a change in the Scope) is likely to be a compensation event, the <i>Contractor</i> (except in an emergency) gives the <i>Service Manager</i> an early warning notice, before acting on the instruction or information. The <i>Service Manager</i> confirms or withdraws the instruction or information within the <i>period for reply</i> ."
61.3	Delete: “unless the event arises from the <i>Service Manager</i> giving an instruction or notification or changing an earlier decision”
62.6	Delete “may” and replace with, “will”.
63.4	Delete.
63.13	Delete.
63.16	Add a new clause 63.16, as follows:

	<p>"63.16 Where a compensation event or its effect is in part attributable to the <i>Contractor's</i> fault (including any fault on the part of any Associated Person of the <i>Contractor</i>), the Prices, the Completion Date and Key Dates are not changed to the extent attributable to the <i>Contractor's</i> fault."</p>
64.3	Delete "may" and replace with, "will".
72.1	<p>Delete 72.1 and replace with:</p> <p>"72.1 The copyright in all documents prepared by the <i>Client</i> is and remains the property of the <i>Client</i>."</p>
72.2	<p>Add a new clause 72.2, as follows:</p> <p>"72.2 The <i>Contractor</i>:</p> <ul style="list-style-type: none"> • gives the <i>Client</i>, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of all materials prepared by or on behalf of the <i>Contractor</i> for the <i>service</i> for any purpose relating to the <i>service</i> and/or the Project. The licence; <ul style="list-style-type: none"> – carries the right to grant sub-licences; – is transferable to third parties; – survives termination (for any reason) of the <i>Contractor's</i> employment under this contract. • obtains equivalent rights to the rights contained in the licence from subcontractors in relation to any material produced by a subcontractor. • warrants that the use of the materials for the purposes of the <i>services</i> and/or the Project will not infringe the rights of any third parties. • gives the <i>Client</i> copies of the materials on request, subject to the <i>Client</i> paying the <i>Contractor's</i> reasonable copying charges."
81.1	<p>Delete and replace with:</p> <p>"The <i>Contractor's</i> liabilities are, from the <i>starting date</i> until the expiry of the Service Period, the risks and/or liabilities which are not the <i>Client's</i> liabilities including (without limitation):</p> <ul style="list-style-type: none"> • Claims and proceedings from Others and compensation and cost payable to Others which arise from or in connection with the <i>Contractor</i> Providing the Service. • Loss or damage to any Plant and Materials before they are included in the Affected Property and Equipment. • Loss or damage to the Affected Property and other property owned or occupied by the <i>Client</i>, which arises from or in connection with the <i>Contractor</i> Providing the Service. • Death and bodily injury to the employees of the <i>Contractor</i>. • Costs incurred by the <i>Client</i> which arise from a failure by the <i>Contractor</i> to use the skill and care required by clause 20.5."

84.2	<p>Delete and replace with:</p> <p>"The <i>Contractor</i> promptly notifies the <i>Service Manager</i> of every claim it makes (or procures the notification of any claim the <i>Contractor</i> makes) under an insurance policy which relates to the first or second row of the Insurance Table and the Affected Property. The <i>Contractor</i> does not knowingly do or omit to do anything to cause the insurance policies to become void or voidable."</p>
90.2	<p>In the Termination Table under the heading 'Reason' in the <i>Client</i> row after "R21" insert "R22".</p> <p>In addition, in the <i>Client</i> row after "R17 or R20", insert " or R23".</p>
91.1	<p>In clause 91.1 add a bullet point after "(R10).", as follows:</p> <ul style="list-style-type: none"> – "Issued a notice of intention to appoint an administrator (R10A)."
91.8	<p>Add a new clause 91.8, as follows:</p> <p>"91.8 the <i>Client</i> may terminate if the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • Fails to remedy a breach within the timescales notified to it in accordance with clause Z5.7; and/or • In the reasonable opinion of the <i>Client</i>, consistently fails to comply with the Key Performance Indicators, whether or not the <i>Contractor</i> subsequently remedies any or all of the breaches (R22)."
91.9	<p>Add a new clause 91.9, as follows:</p> <p>"91.9 the <i>Client</i> may terminate if there is a change of Control of the <i>Contractor</i> (R23)."</p>
92.2	<p>Add a new clause 92.3, as follows:</p> <p>"92.3 Upon termination of this contract (howsoever terminated) the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • promptly takes all necessary steps to stop performance of the <i>service</i> in an orderly manner and with reasonable speed and economy and • delivers to the <i>Client</i> all documents in the <i>Contractor</i>'s possession that belong to the <i>Client</i>; and • gives to the <i>Client</i> all hard copy and electronic data (including material prepared by any Subcontractor) prepared by or on behalf of the <i>Contractor</i> under this contract. The <i>Client</i> has the right to use such material for completion of the <i>service</i> and/or the Project."
93.2	<p>Delete:</p> <p>"A3 A deduction of the forecast of the additional cost to the <i>Client</i> of completing the whole of the <i>service</i>."</p> <p>and replace with:</p> <p>"A3 A deduction of any loss or costs incurred by the <i>Client</i> as a result of the termination including the additional cost to the <i>Client</i> of completing the whole of the <i>services</i> taking into account as part of the cost any share of savings payable to the <i>Contractor</i> or a replacement contractor (and after termination the <i>Client</i> shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the</p>

	event that the loss or costs exceeds the amount payable to the <i>Contractor</i> in accordance with this contract, the <i>Client</i> may recover such excess from the <i>Contractor</i> as a debt)."
X21	In clause X21.2 after "Affected Property" insert: "or to reduce the cost of any other aspect of the <i>service</i> "
X23.1	Delete: "The <i>Client</i> may, with the agreement of the <i>Contractor</i> , extend the Service Period by a <i>period for extension</i> up to the <i>maximum service period</i> . The <i>Client</i> notifies the <i>Contractor</i> and the <i>Service Manager</i> of each agreed period for extension before its <i>notice date</i> . Each <i>period for extension</i> is agreed and applied separately and in the order set out in the Contract Data." and replace with: "The <i>Client</i> may extend the Service Period by a <i>period for extension</i> up to the <i>maximum service period</i> . The <i>Client</i> notifies the <i>Contractor</i> and the <i>Service Manager</i> of each <i>period for extension</i> before its notice date. Each <i>period for extension</i> is applied separately and in the order set out in the Contract Data in increments of one year."
Y2.2	In the first bullet point after "The final date for payment is the later of", delete "fourteen" and replace with "[thirty]".
Y2.3	Delete "seven" and replace with "one"

PART B: Additions to the *conditions of contract*:

The *conditions of contract* are added to as set out below:

Clause	
Z1	Not used.
Z2	Not used
Z3	<p>"<i>Contractor's</i> due diligence of the condition of the Affected Property"</p> <p>Z3.1 The <i>Contractor</i> confirms that it has:</p> <ul style="list-style-type: none"> • satisfied itself of the condition, nature and extent of the risks assumed by it under this contract; • gathered all information necessary to perform its obligations under this contract including information as to the nature, location and condition of the Affected Property; • any other relevant information in relation to the existing structures of the Affected Property; and <p>Z.3.2 Notwithstanding any other provision of this contract no failure on the part of the <i>Contractor</i> to discover or foresee any condition, nature, risk, contingency or circumstance</p>

	<p>shall entitle the <i>Contractor</i> to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to a compensation event.</p> <p>Z3.3 The <i>Contractor</i> may not rely upon any survey, report or other document prepared by or on behalf of the <i>Client</i> regarding any matter referred to in clause Z3.1 and the <i>Client</i> makes no representation or warranty as to the accuracy or completeness of any survey, report or document.</p> <p>Z3.4 The <i>Client</i> has no liability arising out of or in relation to any survey, report or document or from any representation or statement, whether made negligently or otherwise, contained in any survey, report or other document provided to the <i>Contractor</i> in relation to the <i>service</i>.”</p>
Z4	<p>“Quality Assurance and innovation</p> <p>Z.4.1 The <i>Contractor</i> maintains and causes its subcontractors to maintain, a quality assurance system as set out in the Scope. The existence of a quality assurance system does not relieve the <i>Contractor</i> to any degree from any of its duties, obligations or liabilities under this contract.</p> <p>Z.4.2 The <i>Contractor</i> complies with the quality assurance system as set out in the Scope.</p> <p>Z.4.3 The <i>Contractor</i> complies with any requirements to innovate as set out in the Scope.”</p>
Z5	<p>“Key Performance Indicators</p> <p>Z.5.1 The <i>Contractor</i> complies with the Key Performance Indicators.</p> <p>Z.5.2 The <i>Contractor’s</i> performance in Providing the Service and its other duties and obligations under this contract is measured against the Key Performance Indicators from the <i>starting date</i> throughout the Service Period.</p>

	<p>Z5.3 The <i>Client</i> may waive, reinstate, add to, amend and/or delete any of the Key Performance Indicators at any time in its absolute discretion, subject to providing reasonable notice to the <i>Contractor</i>.</p> <p>Z5.4 The parties meet at such intervals prescribed by the <i>Client</i>, but at least once during each month of the contract to review the <i>Contractor's</i> performance in relation to the Key Performance Indicators.</p> <p>Z5.5 The <i>Client</i> maintains a record of all measurements of the <i>Contractor's</i> performance against the Key Performance Indicators and of the review meetings carried out in accordance with clause Z5.5.</p> <p>Z5.6 The <i>Contractor</i> assists the <i>Client</i> with:</p> <ul style="list-style-type: none"> • any review of the Key Performance Indicators; • monitoring and collating measurements against the Key Performance Indicators; and • reviewing the <i>Contractor's</i> performance against the Key Performance Indicators. <p>Z5.7 The <i>Contractor</i> remedies any failure to comply with the Key Performance Indicators within two weeks or such other reasonable time as is stipulated by the <i>Client</i>.</p> <p>Z5.8 The <i>Contractor</i> is not penalised for its performance against the measured Key Performance Indicators in the first the six months of the <i>service period</i>."</p>
Z6	<p>"Confidentiality and Freedom of Information Act</p> <p>Definitions</p> <p>In this clause Z6, the following capitalized terms have the meaning attributed to them in this clause Z6:</p> <p>"Code of Practice" means any code of practice or guidance issued under or in connection with the FOIA and the EIR by the relevant governmental or statutory body and as the same may be amended, updated or replaced from time to time;</p> <p>"Confidential Information" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the contract and:</p> <ul style="list-style-type: none"> • the release of which is likely to prejudice the commercial interests of the <i>Client</i> or the <i>Contractor</i> respectively; or • which is a trade secret; <p>"EIR" means the Environmental Information Regulations 2004; and</p> <p>"FOIA" means the Freedom of Information Act 2000.</p> <p>Z6.1 In respect of any Confidential Information it may receive from the other Party (the "Discloser") and subject always to the remainder of this clause, each Party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any Confidential Information to any third party without the Discloser's prior written consent provided that:</p> <ul style="list-style-type: none"> • the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract;

	<ul style="list-style-type: none"> the provisions of this clause shall not apply to any Confidential Information which: <ul style="list-style-type: none"> is in or enters the public domain other than by breach of the contract or other act or omissions of the Recipient; is obtained by a third party who is lawfully authorised to disclose it; is authorised for release by the prior written consent of the Discloser; or the disclosure of which is required to ensure the compliance of the <i>Client</i> with the FOIA and the EIR and/or any applicable Codes of Practice. <p>Z6.2 Nothing in this clause prevents the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the <i>Contractor</i> is the Recipient, to the <i>Contractor's</i> immediate or ultimate holding company provided that the <i>Contractor</i> procures that such holding company complies with this clause as if any reference to the <i>Contractor</i> in this clause were a reference to such holding company.</p> <p>Z6.3 The <i>Contractor</i> acknowledges that the <i>Client</i> is subject to the FOIA and the EIR. The <i>Contractor</i> notes and acknowledges the FOIA and the EIR and the applicable Codes of Practice. The <i>Contractor</i> will act (and will provide reasonable assistance to the <i>Client</i> to enable it to act) in accordance with the FOIA and the EIR and the Codes of Practice to the extent that they apply to the <i>Contractor's</i> performance under the contract.</p> <p>Z6.4 The <i>Contractor</i> agrees that:</p> <ul style="list-style-type: none"> without prejudice to the generality of clause Z6.1 the provisions of this clause are subject to the respective obligations and commitments of the <i>Client</i> under the FOIA and the EIR and the Codes of Practice; the decision on whether any exemption applies to a request for disclosure of information is a decision solely for the <i>Client</i>. where the <i>Client</i> is managing a request referred to in clause Z6.5 the <i>Contractor</i> shall co-operate with the <i>Client</i> and shall respond within five (5) working days of any request by the <i>Client</i> for assistance in determining how to respond to a request for disclosure. <p>Z6.5 The <i>Client</i> will consult the <i>Contractor</i> in relation to any request for disclosure of the <i>Contractor's</i> Confidential Information in accordance with the Codes of Practice."</p>
Z7	<p>"Price Adjustment for Inflation</p> <p>Z7.1 On or within 16 weeks of the first anniversary of the <i>Contract Date</i> and each subsequent anniversary, the <i>Contractor</i> may notify the <i>Client</i> that it is seeking an adjustment to the rates and Prices in the Price List and the rates for people and Equipment in the Contract Data.</p> <p>Z7.2 Any notice served under clause Z7.1 must contain details of the <i>Contractor's</i> proposals for adjustment to the prices and rates, which must be based only on the percentage increase or decrease during the previous 12 months in the:</p> <ul style="list-style-type: none"> AWE Private Sector Year on Year Three Month Average Growth (%): Seasonally Adjusted Total Pay Excluding Arrears KAC6 index ("AWE") published by the Office for National Statistics (UK) or failing such publication or in the event of a fundamental change to the index, such

	<p>other index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) applying to labour costs.</p> <p>And</p> <ul style="list-style-type: none"> • RPI applying to all other costs. <p>Any of the <i>Contractor's</i> proposals seeking an increase must be based upon evidenced cost increases experienced directly by the <i>Contractor</i> during the previous 12 months.</p> <p>Z7.3 On or within 16 weeks of the first anniversary of the Contract Date and each subsequent anniversary, the <i>Client</i> may notify the <i>Contractor</i> that it is seeking an adjustment to the rates and Prices in the Price List and the rates for people and Equipment in the Contract Data.</p> <p>Z7.4 Any notice served under clause Z7.3 must contain details of the <i>Client's</i> proposals for adjustment to the prices and rates, which must be based only on the percentage increase or decrease during the previous 12 months in the:</p> <ul style="list-style-type: none"> • AWE Private Sector Year on Year Three Month Average Growth (%): Seasonally Adjusted Total Pay Excluding Arrears KAC6 index ("AWE") published by the Office for National Statistics (UK) or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) applying to labour costs. <p>And</p> <ul style="list-style-type: none"> • RPI applying to all other costs. <p>Z7.5 Following the issue of a notice under clause Z7.1 or Z7.3, the parties meet within 2 weeks of the date of the relevant notice to discuss the proposals contained in the notice and will use reasonable endeavours to agree a change to the rates and Prices in good faith.</p> <p>Z7.6 The parties acknowledge that any review carried out in accordance with clause Z7.5 may result in the rates and/or Prices being increased, decreased or remaining the same.</p> <p>Z7.7 The rates and Prices in the Price List and the rates for people and Equipment in the Contract Data are changed in accordance with any agreement reached between the <i>Client</i> and the <i>Contractor</i> under clause Z7.5 and notified, in writing, to the <i>Contractor</i> by the <i>Client</i>.</p>
Z8	<p>"Slavery and Trafficking"</p> <p>Z8.1 The <i>Contractor</i> complies with all Applicable Law pertaining to anti-slavery and human trafficking from time to time in force including but not limited to the Modern Slavery Act 2015. The <i>Client</i> is committed to ensuring that within its own supply chain there is no trafficked, bonded, child, forced or compulsory labour or servitude.</p> <p>Z8.2 The <i>Contractor</i> represents and warrants that:</p>

	<ul style="list-style-type: none"> • it has and will continue to comply with the Modern Slavery Act 2015 and that there is no trafficked, bonded, child, forced or compulsory labour or servitude within its own organisation or within its supply chains; • its responses to any information required by the <i>Client</i> (whether at the pre-qualification stage of tendering or otherwise) in respect of slavery and human trafficking are complete and accurate; and • neither the <i>Contractor</i> nor any of its Associated Persons: <ul style="list-style-type: none"> ○ has been convicted of any offence involving slavery and/or human trafficking; or ○ is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking. • it will notify the <i>Client</i> as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract. <p>Z8.3 It is a condition precedent to sub-contracting by the <i>Contractor</i> that the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • implements due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains to ensure there is no slavery or human trafficking in its supply chains; and • includes a corresponding obligation to that contained in this clause Z8 in any contract with any of its own suppliers, sub-suppliers or subcontractors.
Z9	<p>“Anti-Corruption</p> <p>For the purposes of this clause Z8 Bribery Act means the Bribery Act 2010 which includes all regulations and orders made under the statute and, unless the context otherwise requires any statute, regulations or orders amending, consolidating or replacing them in force from time to time.</p> <p>Z9.1 The <i>Contractor</i> warrants and undertakes to the <i>Client</i> that:</p> <ul style="list-style-type: none"> • it has not and will not engage in any Corrupt Activity (which for the purposes of this Option Z9 means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering and/or any similar activity including, without limitation, any activity, practice and/or conduct which would constitute an offence under Sections 1, 2 and/or 6 of the Bribery Act) in relation to the services and/or this contract; and • it has not and will not engage in any activity, practice and/or conduct which could place the Client in breach of Section 7(1) of the Bribery Act; and • it has and will maintain in place adequate procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under Section 7 of the Bribery Act. <p>Z9.2 The <i>Contractor</i> warrants that it has complied with its undertakings under clause Z9.1 and that the <i>Client</i> relies on that warranty for its compliance with the Bribery Act and legislation governing any Corrupt Activity.</p> <p>Z9.3 The <i>Contractor</i> notifies the <i>Client</i> immediately in writing if its warranty in clause Z9.2 change or ceases to be accurate and complete.”</p>

Z10	<p>“Trespass and Nuisance</p> <p>Z10.1 The <i>Contractor</i> at all times takes reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any statutory nuisance or any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier of the Affected Property or any statutory undertaker, arising out of or in the course of Providing the Service or of carrying out any obligation to the <i>Client</i> required by this contract. The <i>Contractor</i> assists the <i>Client</i> in defending any action or proceedings arising out of or in connection with this contract or the Project.</p> <p>Z.10.2 The <i>Contractor</i> is responsible for and indemnifies the <i>Client</i> from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any trespass, nuisance or interference, except only where the trespass, nuisance or interference is the consequence of an instruction of the <i>Client</i> (which is not the result of any negligence, default or breach of contract by or on behalf of the <i>Contractor</i> or any of its Associated Persons) and has not been avoided despite the <i>Contractor</i> using all reasonable and practical means to avoid the same.”</p>
Z11	<p>“Cyber Security</p> <p>Not withstanding the rights under the Access and Loan Agreement (Annex 6)</p> <p>The <i>Contractor</i>:</p> <p>Z.11.1 does not access the <i>Client’s</i> IT and communications systems nor jeopardise the <i>Client’s</i> existing IT security systems and procedures in any way (save with the prior written consent of the <i>Client</i> or as specifically required pursuant to this agreement). Without prejudice to generality of the foregoing, the <i>Contractor</i> must not introduce any software or code (including any virus or disabling code) onto the <i>Client’s</i> systems save in circumstances where such code has been subjected to appropriate testing by the <i>Client</i> or else the <i>Client</i> has confirmed in writing that such software or code may be introduced onto the <i>Client’s</i> systems by the <i>Contractor</i>.</p> <p>Z.11.2 only uses the <i>Client’s</i> data to the extent required to Provide the Service.</p> <p>Z.11.3 notifies the <i>Client</i> as soon as possible upon discovery of any data security incident affecting or likely to affect the <i>Client’s</i> data or its IT and communications systems.</p> <p>Z.11.4 fully indemnifies the <i>Client</i> from and against all loss caused to the <i>Client</i> as a result of the <i>Contractor’s</i> misuse of the <i>Client’s</i> data and/or the <i>Contractor</i> breaching this clause Z11. The <i>Contractor</i> is not responsible for any loss or damage to <i>Client’s</i> data to the extent that such loss or damage was caused by the <i>Client</i> or a third party (other than an Associated Person of the <i>Contractor</i>).</p>
Z12	<p>“Additional Service</p> <p>Z12.1 The <i>Service Manager</i> notifies the <i>Contractor</i> if a service is required which is not part of the service (the “Additional Service”) and includes details of the Additional Service. The <i>Service Manager</i> includes in the notification an instruction to the <i>Contractor</i> to submit a quotation.</p>

	<p>Z12.2 The <i>Contractor</i> provides a quotation to the <i>Service Manager</i> for the Additional Service within the time for reply stated in the <i>Service Manager's</i> notice.</p> <p>Z12.3 After discussing with the <i>Contractor</i> different ways of dealing with the instruction which are practicable, the <i>Service Manager</i> may instruct the <i>Contractor</i> to submit alternative quotations. The <i>Contractor</i> submits the quotations to the <i>Service Manager</i> and may submit quotations for other methods of dealing with the Additional Service which it considers practicable and in consideration of clause X21.</p> <p>Z12.3 Quotations for an Additional Service comprise changes to the Prices and any delay to a Task Completion Date assessed by the <i>Contractor</i>. The <i>Contractor</i> submits details of the assessment with each quotation. If the plan or a programme for remaining works is altered by the Additional Service, the <i>Contractor</i> includes the alterations to the Accepted Plan and/or any affected Task Order programme in the quotation.</p> <p>Z12.4 The <i>Service Manager</i> replies to a quotation within two weeks of the submission. The reply is;</p> <ul style="list-style-type: none"> • a notification of acceptance of the quotation; • an instruction to submit a revised quotation; or • that the <i>Service Manager</i> accepts the quotation. <p>Z12.5 The <i>Service Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"> • the <i>Contractor</i> to submit a quotation; or • the <i>Service Manager</i> to reply to a quotation, <p>if the <i>Service manager</i> and the <i>Contractor</i> agree to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Contractor</i> of the extension which has been agreed.</p> <p>Z12.6 The <i>Contractor</i> does not carry out any Additional Service until the <i>Service Manager</i> accepts a quotation.</p>
Z13	<p>“Technology</p> <p>Z13.1 The <i>Contractor</i> develops and maintains knowledge in respect of advances in technology and infrastructure that are relevant to the <i>service</i> and notifies the <i>Client</i>.</p> <p>Z13.2 The <i>Contractor</i>, the <i>Client</i>, the <i>Service Manager</i> and Others (as may be required by the <i>Client</i>) discuss advances in technology and infrastructure relevant to the <i>service</i>, at the reasonable request of the <i>Client</i>. The <i>Contractor</i> co-operates with and assists the <i>Client</i> in obtaining information to assist the <i>Client</i> to decide whether or not to include such technology and infrastructure in the <i>service</i>.”</p>
Z14	<p>“Data Protection</p> <p>Z14.1 The <i>Contractor</i> complies with the duties and obligations set out in Annex 8.”</p>

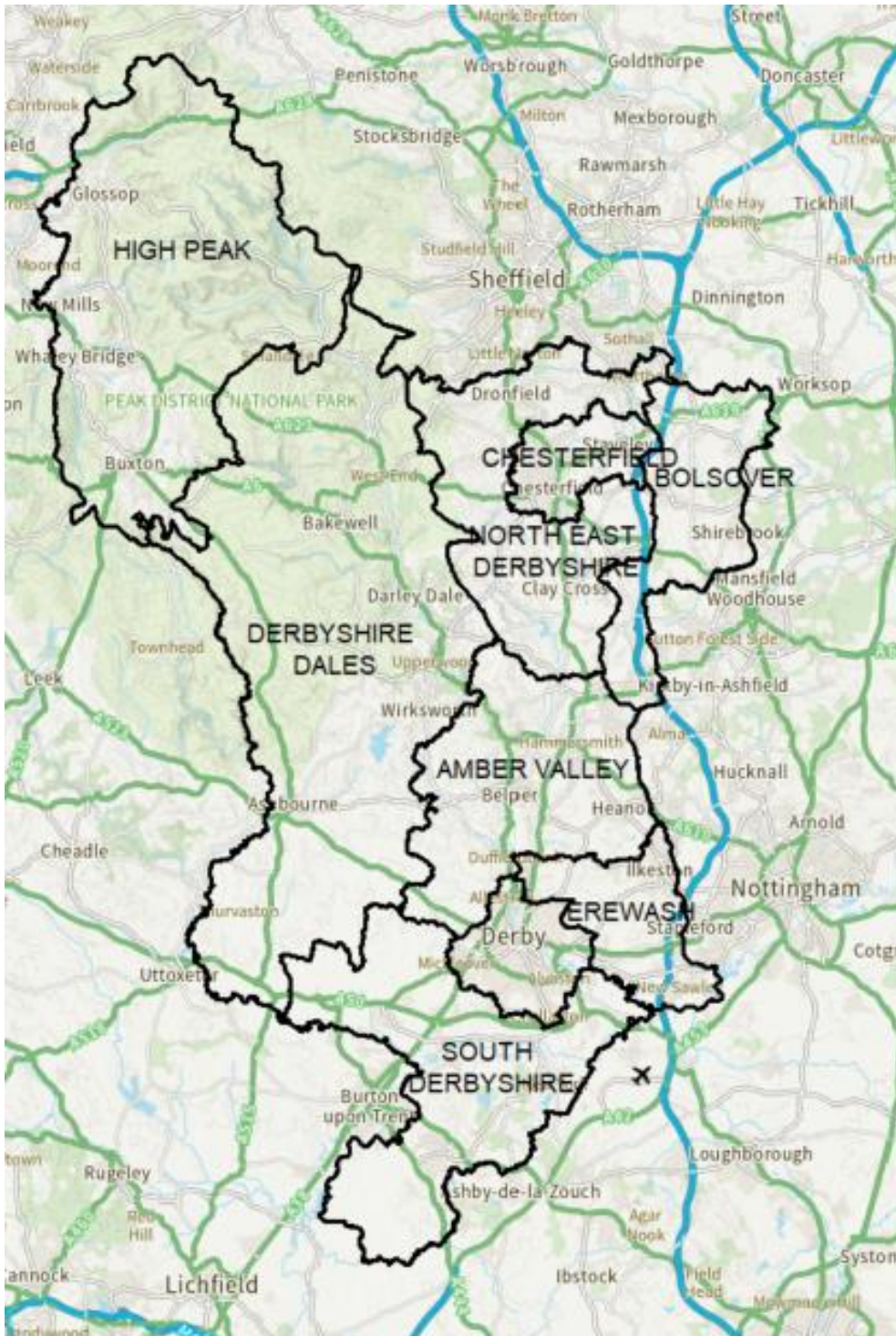
Z15	<p>“Community Benefits</p> <p>Z15.1 The <i>Contractor</i> delivers the community benefits as set out and in accordance with the provisions of Annex 9.”</p>
Z16	<p>“Severability</p> <p>Z17.1 The invalidity, illegality or unenforceability in whole or in part of any of the terms of this contract does not affect the validity of any other term or the remainder of any affected term.”</p>

Annex 3 Scope

Refer to Annex 3 Gully Cyclic Cleansing V1.6 document included in this contract pack.

Annex 4 Affected Property

The map below shows the extent of Derbyshire County Council's boundary in which the service as described will be delivered. Please note: North East Derbyshire and South Derbyshire are not included within the Scope.



Annex 5 Price List

Refer to Excel document (Annex 5 Price Schedule 2025-2030) Final included in this contract pack.

Annex 6 Access and Loan Agreement

Annex 1

ACCESS and DEVICE LOAN AGREEMENT

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ACCESS AND DEVICE LOAN AGREEMENT

BACKGROUND

- A. The Council has entered into an agreement with *Contractor* (“**Contractor**”) for the supply of certain highways drainage cleansing services as set out in this Agreement (the “**Contract**”).
- B. *Contractor* wishes to benefit from the use of certain electronic devices loaned at no additional charge to *Contractor* whereby *Contractor* shall be permitted to access the Council’s network via the devices to facilitate the Services.
- C. The Council is willing and able to provide access by *Contractor* to the Council’s network and permits *Contractor* such access subject to, and in accordance with, the terms and conditions of this Annex.

1 INTERPRETATION

- 1.1. In this Agreement, the following terms and expressions shall have the following meanings unless expressly stated otherwise:

Commencement Date	means the date when all Parties have signed the Contract.
Contract	means the Contract described in recital A above.
Council Devices	means any tablets, smartphones and other devices owned by the Council and loaned by the Council to <i>Contractor</i> pursuant to this Annex and set out in the Schedule including all substitutions, replacements or renewals of such Council Devices and all related accessories (including any charging cables), SIM Cards, protective cases, manuals and instructions provided for them. The Council shall provide the Council Devices with the functionality and software as more particularly set out in Schedule 1.
Delivery	means the transfer of physical possession of the Council Devices (whether in whole or part) to <i>Contractor</i> by the Council.
Delivery Date	means 6 th June 2022 or such other date as may be agreed by the parties in writing.
Deposit	means the deposit amount set out in the Schedule.
Device Licence Cost	means the cost of any end user licence that is required for <i>Contractor</i> to use the Council Devices.

Fees	means any fees, costs, charges or expenses payable by <i>Contractor</i> under this Annex.
Intellectual Property Rights (IPR)	means any patent, copyright, design right, registered design, database right, trade mark, service mark, know-how, utility model, unregistered design or, where relevant, any application for such right, know-how, trade or business name, domain name or other similar right or obligation whether registerable or not or other industrial or intellectual property right subsisting in any territory or jurisdiction in the world and “Intellectual Property” shall be construed accordingly.
Losses	means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract, or at common law.
Rental Period	means as described in clause 12.1.
Service(s)	means as described in clause 2.1.
Site	means <i>Contractor</i>
Working Day(s)	means Monday to Friday inclusive in any week, excluding English public and bank holidays and extra-statutory and concessionary days applicable to the Council.

2 ACCESS TO THE COUNCIL’S IT SYSTEM

- 2.1 The Council permits *Contractor*, subject to and in accordance with the terms and conditions of this Annex, to access the Council’s IT System strictly for the purposes of the Services as set out in the Contract (the “**System**”).

3 CONTRACTOR’S RESPONSIBILITIES

- 3.1 *Contractor* shall:
- 3.1.1 Assign a manager to manage the operation of the Council Devices and be the single point of contact with the Council (the “**Manager**”);
 - 3.1.2 Through the Manager, liaise with, and provide any relevant information to the Council as may be necessary for the proper performance of the Services using the Council Devices;
 - 3.1.3 Organise sufficient resources within *Contractor* to meet the requirements of the Services using the Council Devices and in particular, this Annex.
 - 3.1.4 Indemnify the Council against any Losses in accordance with Clause 3.2;
 - 3.1.5 Ensure that it has adequate insurance in place to cover all the risks associated with the Council Devices;

- 3.1.6 Ensure that any of its employees who use the Services through the Council Devices, comply with these terms and conditions;
- 3.1.7 Ensure that it has complete and accurate records of all of its employees who are to make use of the Council Devices and to make those records available to the Council upon written request;
- 3.1.8 Be responsible for any Council Device licence cost that is required by *Contractor* for *Contractor* to be able to use the Council Devices;
- 3.1.9 Store appropriately and securely all Council Devices when not in use;
- 3.1.10 Not, and shall ensure that its staff, sub-contractors, agents do not, seek to circumvent any security protections or other restrictions installed on or applied to the Council Devices;
- 3.1.11 Upon written request by the Council, reimburse the Council for any loss or damage to the Council Devices caused by *Contractor* or any third party (fair wear and tear excepted, such fair wear and tear to be determined by the Council in its sole discretion) whereupon any such loss shall be indemnified by *Contractor* to the Council pursuant to clause 3.1.4 above;
- 3.1.12 Ensure that all of its employees who have access to the Council Devices ensure that the Council Devices are connected to a Council network at least twice monthly) , or such other times as the Council may direct, for example, for critical updates and in any event, the Manager shall be responsible for liaising with the Council to facilitate any connectivity requirements with the Council Devices as may be required. *Contractor* shall use its best endeavours to ensure that the Council Devices are so updated in such reasonable time as the Council may direct. *Contractor* can connect to the Council network at any Council Depot or Office which the Council notifies *Contractor* from time to time in writing. *Contractor* shall ensure that such employees connect to the Council network as determined by the Manager as set out above in their contact with the Council;
- 3.1.13 Ensure that the Council Devices are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 3.1.14 Take such steps (including compliance with all safety and usage instructions provided by the Council) as may be necessary to ensure, so far as is reasonably practicable, that the Council Devices are at all times safe and without risk to health when they are being used or cleaned;
- 3.1.15 Make no alteration to the Council Devices and shall not remove any existing component (or components) from the Council Devices;

- 3.1.16 Keep the Council Devices at all times in the possession or control of *Contractor* and keep the Council informed of their location if so requested;
 - 3.1.17 Permit the Council or its duly authorised representative to inspect the Council Devices at all reasonable times and shall grant reasonable access and facilities for such inspection;
 - 3.1.18 Not, without the prior written consent of the Council part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Council Devices or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
 - 3.1.19 Not suffer or permit the Council Devices to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Council Devices are so confiscated, seized or taken, *Contractor* shall notify the Council and *Contractor* shall at its sole expense use its best endeavours to procure an immediate release of the Council Devices and shall indemnify the Council on demand against all Losses incurred as a result of such confiscation;
 - 3.1.20 Not use the Council Devices for any unlawful purpose;
 - 3.1.21 Ensure that at all times each Council Device remains identifiable as being the Council's property and shall ensure that the visible asset identification tag remains in place on each Council Device and is readable at all times;
 - 3.1.22 Deliver up the Council Devices at the end of the Rental Period as described in clause 13.1;
 - 3.1.23 Not do or permit to be done anything which could invalidate the insurances referred to in clause 10;
 - 3.1.24 Provide such assistance to the Council as the Council may reasonably require;
 - 3.1.25 Comply with any other reasonable requests as may be communicated by the Council from time to time; and
 - 3.1.26 Permit the Council to change the hardware or software of the Council Devices as may be required from time to time in accordance with clause 11.
- 3.2 *Contractor* acknowledges that the Council shall not be responsible for any loss of or damage, or theft, to the Council Devices arising out of or in connection with any negligence, misuse, mishandling or loss of the Council Devices or otherwise caused by *Contractor* or its officers, employees, agents and contractors, and *Contractor* shall indemnify the Council in full against all Losses (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of, or in connection with any failure by *Contractor* to comply with the terms of this Annex.

4 DATA USAGE OF THE COUNCIL DEVICES

- 4.1 *Contractor* shall pay for all data usage of the Council Devices other than reasonable use in the sole opinion of the Council.
- 4.2 The Council shall monitor the data usage of Council Devices.
- 4.3 Data usage that exceeds the amount per Council Device, as set out in clause 4.1 shall be recovered on a quarterly basis by the Council and the Council shall, if applicable, invoice *Contractor* for such charges in accordance with clause 9.

5 THE COUNCIL'S RESPONSIBILITIES

- 5.1 The Council shall supply *Contractor* with the Council Devices (which shall be held on loan from the Council during the Term) in such quantities as are set out in the Schedule and as may be varied as agreed between the Parties.

6 LOAN OF THE COUNCIL DEVICES

- 6.1 The Council shall loan the Council Devices to *Contractor* subject to the terms and conditions of this Annex.

7 REPLACEMENT OF COUNCIL DEVICES

- 7.1 In the event that a Council Device suffers a fault or is not working by reason that would amount to a breach of the warranty of the Council Device, then the Council shall use its reasonable endeavours to seek a replacement Council Device of the equivalent or similar specification to the defective device within three (3) Working Days of any request by *Contractor*. *Contractor* shall return any Council Device at its cost upon the collection of a replacement Council Device. Any decisions as to whether any fault is a warranty matter shall be determined by the Council in its sole opinion.
- 7.2 In the event that the Council Device is lost, stolen or suffers any other damage or loss that in the Council's sole opinion is not a warranty claim as described in clause 7.1 above, the Council shall use its reasonable endeavours to procure a replacement Council Device of the equivalent or similar specification to the stolen, lost or damaged device within three (3) Working Days of any notification of such loss or damage, it being acknowledged by *Contractor* that such loss or damage or value equivalent to the stolen Council Device, shall be recovered in full by the Council in accordance with clause 3.2.
- 7.3 Any Council Device that is damaged under clause 7.2 shall be returned to the Council at *Contractor's* sole cost within 3 Working Days of *Contractor* being aware of that damage.
- 7.4 Where a Council Device is lost or stolen, *Contractor* shall contact the Council immediately, and in any event, within 24 hours, and provide the relevant asset number which is lost or stolen.

This is to ensure that any potential access/use of device/s is prevented. The Council and/or

Contractor shall then, if necessary, report the incident to the police. In such circumstances, *Contractor* shall assist the Council with any such measures that may be needed following the loss or theft.

8 DELIVERY

- 8.1 Delivery shall be made by the Council to the Site. The Council shall use all reasonable endeavours to effect Delivery on or around the Delivery Date.
- 8.2 Risk shall transfer in accordance with clause 10.2 of this Annex.
- 8.3 *Contractor* shall procure that a duly authorised representative of *Contractor* shall be present at the Delivery of the Council Devices.
- 8.4 Acceptance of Delivery by such representative shall constitute conclusive evidence that *Contractor* has examined the Council Devices and has found them to be in good condition, complete and fit in every way for the purpose for which they are intended. If required by the Council, *Contractor's* duly authorised representative shall sign a receipt confirming such acceptance.
- 8.5 If *Contractor* fails to accept Delivery of the Council Devices on the Delivery Date, then, except where such failure is caused by the Council's failure to comply with its obligations under this Annex, the Council Devices shall be deemed to have been delivered at 9.00 am on the Delivery Date.

9 FEES

- 9.1 The Council shall invoice *Contractor* for any Fees, and the Partner shall pay each such invoice within 14 (fourteen) days of receipt of the invoice.
- 9.2 Invoices to the Partner must be addressed to the Invoice Address.
- 9.3 Notwithstanding any other rights of the Council under this Agreement, if the Partner fails to pay the Council any amounts due pursuant to this Agreement, the Partner shall be liable to pay interest to the Council on such sum from the due date for payment at the annual rate of 4% (four per cent) above the base lending rate of the Bank of England. Such interest shall accrue on a daily basis until payment is made, whether before or after any judgment.

10 TITLE, RISK AND INSURANCE

- 10.1 The Council Devices shall at all times remain the property of the Council, and *Contractor* shall have no right, title or interest in or to the Council Devices (save the right to possession and use of the Council Devices subject to the terms and conditions of this Annex).
- 10.2 The risk of loss, theft, damage or destruction of the Council Devices shall pass to *Contractor* on Delivery. The Council Devices shall remain at the sole risk of *Contractor* during the Rental

Period and any further term during which the Council Devices are in the possession, custody or control of *Contractor* until such time as the Council Devices are redelivered to the Council.

10.3 During the Rental Period, *Contractor* shall, at its own expense, obtain and maintain the following insurances:

10.3.1 insurance of the Council Devices to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Council may from time to time nominate in writing;

10.3.2 insurance for such amounts as a prudent owner or operator of the Council Devices would insure for, or such amount as the Council may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Council Devices; and

10.3.3 insurance against such other or further risks relating to the Council Devices as may be required by law, together with such other insurance as the Council may from time to time consider reasonably necessary and advise to *Contractor* in writing.

10.4 All insurance policies procured by *Contractor* shall be endorsed to provide the Council with at least twenty Working Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Council's request name the Council on the policies as a loss payee in relation to any claim relating to the Council Devices. *Contractor* shall be responsible for paying any deductibles due on any claims under such insurance policies.

10.5 Notwithstanding clause 7, *Contractor* shall give immediate written notice to the Council in the event of any loss, accident or damage to the Council Devices arising out of or in connection with *Contractor's* possession or use of the Council Devices.

10.6 If *Contractor* fails to effect or maintain any of the insurances required under this Annex, the Council shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from *Contractor*.

10.7 *Contractor* shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Council and proof of premium payment to the Council to confirm the insurance arrangements.

11 UPGRADES and IMPROVEMENTS

11.1 Subject to *Contractor's* compliance with connection to network obligations, the Council shall be solely responsible for undertaking any upgrades, repairs, maintenance or improvements of any kind to the Council Devices at the Council's cost, save in circumstances where *Contractor*

has breached the terms of this Annex giving rise to damage or loss to the Council Devices where the terms of this Annex shall apply.

12 TERM AND TERMINATION

- 12.1 For the avoidance of doubt, notwithstanding any other termination rights of the parties, this Annex shall commence on either the Commencement Date of the Contract, or the Delivery Date (whichever is earlier) and shall co-terminate on the termination of the Contract for any reason (the “**Rental Period**”).

13 CONSEQUENCES OF TERMINATION OR EXPIRY

- 13.1 On expiry or termination of this Annex or Contract, however caused:
- 13.1.1 the Council’s consent to *Contractor*’s possession of the Council Devices shall terminate with immediate effect; and
 - 13.1.2 *Contractor* shall return to the Council all Council Devices at its sole cost and risk within seven (7) days, or such other agreed timescales in writing and in such event that the Council Devices are not so returned, the Council may, by its authorised representatives, without notice and at *Contractor*’s expense, retake possession of the Council Devices and for this purpose may enter any premises at which the Council Devices are located.
- 13.2 Any provision of this Annex that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Annex shall remain in full force and effect.
- 13.3 Termination or expiry of this Annex shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Annex which existed at or before the date of termination or expiry.

Schedule of Council Devices

The following Council Device make, model and asset numbers and related SIM cards shall be issued to *Contractor* in accordance with this Annex, such data to be amended from time to time by the parties to reflect changes in the Council Devices and/or SIM cards:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Annex 7 Key Performance Indicators

Refer to Word document (Annex 7 Key Performance Indicators included in this contract pack

Annex 8 Data Protection

1. Definitions

1.1 The following definitions apply in this Annex 8:

Applicable Law	means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the parties from time to time;
Annex	means the Appendix to this Annex 8;
Business Purposes	means the purposes described in the Appendix;
Commissioner	means the Information Commissioner (as referred to in Article 4(A3) UK GDPR and section 114 DPA 2018);
Complaint	means any complaint, query or enquiry from a Data Subject relating to the <i>Contractor's</i> or the <i>Client's</i> relating to the processing of the Protected Data;
controller, processor, personal data, processing (or processes, processed or process) and personal data breach	have the meanings given to such terms in the UK GDPR;
Data Protection Laws	means all applicable data protection and privacy legislation in force from time to time in the UK, including without limitation, the UK GDPR, the Data Protection Act 2018 and regulations made thereunder (the ' DPA 2018 '), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and guidance and any codes of practice issued by the Commissioner and which are applicable to a party;
Data Subject	an identified or identifiable living individual to whom any of the Protected Data relates;
Data Subject Request	means a request made by a Data Subject to exercise any of their rights under Data Protection Laws in respect of the Protected Data;
Group Company	means a company within the same "group", as defined by Section 42 of the Landlord and Tenant Act 1954;

Protected Data	means any personal data which the <i>Contractor</i> processes in connection with a Contract in the capacity of a processor on behalf of the <i>Client</i> ;
UK GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

1. Data Protection

- 2.1 Both parties will comply with all applicable requirements of Data Protection Laws. This Annex 8 is in addition to and does not relieve, remove or replace a party's obligations or rights under Data Protection Laws.
- 2.2 The Appendix sets out the scope, nature and purpose of the processing which will be undertaken by the *Contractor* in connection with this contract, the duration of that processing and the types of personal data and categories of data subject concerned.
- 2.3 For the purposes of the Data Protection Laws, the *Contractor* processes the personal data set out in the Appendix as processor on behalf of the *Client* and the *Client* is the controller in respect of such personal data.
- 2.4 The *Contractor* performs its obligations under this Annex 8 at its own cost.
- 2.5 In relation to the Protected Data, the *Contractor*:
 - (a) processes the Protected Data only for the Business Purposes; and
 - (b) subject to paragraph 2.6, processes (and ensures that any person acting under its authority processes) the Protected Data only on and in accordance with the *Client's* documented instructions from time to time (which include the instructions set out in this paragraph 2) ("**Processing Instructions**").
- 2.6 If any Applicable Law requires the *Contractor* to process the Protected Data other than in accordance with the Processing Instructions, the *Contractor* notifies the *Client*, in writing, of the legal requirement (unless the relevant Applicable Law prohibits the provision of such notification to the *Client* on important grounds of public interest), prior to undertaking the relevant processing.
- 2.7 The *Contractor* immediately notifies the *Client*, in writing if, in the *Contractor's* opinion, a Processing Instruction infringes Data Protection Laws and explain the reasons for its opinion.
- 2.8 Without prejudice to the provisions relating to confidentiality in this contract, the *Contractor*:
 - (a) strictly limits access to the Protected Data to those of its Associated Persons who require access to the same for the purposes of Providing the Service; and
 - (b) ensures that its Associated Persons are subject to binding contractual obligations to keep the Protected Data confidential and comply with those obligations, are reliable

and have received adequate training on compliance with Data Protection Laws and how it relates to their handling of the Protected Data.

- 2.9 The *Contractor* implements appropriate technical and organisational measures to prevent accidental, unauthorised or unlawful processing, copying, modification, reproduction, display or distribution of the Protected Data and against accidental or unlawful loss, destruction, alteration or disclosure of or damage to the Protected Data, including but not limited to the security measures set out in the Appendix. The *Contractor* records the measures, in writing, and reviews them at appropriate intervals to ensure that they remain appropriate to the level of risk involved in the processing of the Protected Data.
- 2.8 The *Contractor*:
- (a) implements reasonable technical and organisational measures (taking into account the nature of the processing to be undertaken by the *Contractor* in relation to the Protected Data) to assist the *Client* in responding to Data Subject Requests;
 - (b) refers any Data Subject Request received to the *Client* without undue delay (and in any event within three (3) Working Days of receipt of the request);
 - (c) keeps a detailed record of all Data Subject Requests received by it; and
 - (d) within such reasonable timescales as may be specified by the *Client*, provides such information and assistance to the *Client* in connection with any Data Subject Request as the *Client* may reasonably require.
- 2.10 The *Contractor* does not respond to any Data Subject Request without the *Client's* prior written approval.
- 2.11 The *Contractor* does not appoint any third party to process the Protected Data on its behalf without the prior written consent of the *Client*. If the *Client* consents to the appointment of a third party, the *Contractor*:
- (a) carries out adequate due diligence to satisfy itself that the third party will undertake any processing of the Protected Data in accordance with Data Protection Laws, prior to engaging the third party;
 - (b) remains responsible for all acts and omissions of any third party appointed; and
 - (c) ensures that the arrangement between the appointed third party and the *Contractor* is governed by a written contract including terms which offer at least the same level of protection for the Protected Data as those set out in this Annex 8.
- 2.12 The *Contractor* gives the *Client* information and assistance, reasonably requested by the *Client*, to enable the *Client* to comply with its obligations under Data Protection Laws relating to:
- (a) the security of processing;
 - (b) data protection impact assessments, including any prior consultation which the *Client* needs to undertake with the Commissioner; and
 - (c) any remedial action which needs to be taken and/or notifications or responses which need to be made by the *Client* in response to any personal data breach relating to the Protected Data and/or any Complaint.
- 2.13 The *Contractor*:

- (a) notifies the *Client* of any personal data breach relating to the Protected Data within twelve (12) hours of the *Contractor* becoming aware of the breach; and
 - (b) gives the *Client* details of a personal data breach within twenty four (24) hours of becoming aware of the breach, including, without limitation:
 - (i) the nature of the personal data breach, including the categories and approximate numbers of Data Subjects and Protected Data records concerned;
 - (ii) the investigations being undertaken by the *Contractor* into the personal data breach;
 - (iii) the likely consequences of the personal data breach; and
 - (iv) any measures taken, or that the *Contractor* recommends are taken, to address the personal data breach, including to mitigate its possible adverse effects
- 2.14 If the *Contractor* receives a Complaint, he promptly gives the *Client* full details and co-operates with and assists the *Client* in resolving the Complaint. The *Contractor* does not respond to a Complaint directly unless authorised to do so by the *Client*.
- 2.16 The *Contractor* does not transfer any of the Protected Data outside the UK without the prior written consent of the *Client*.
- 2.17 The *Contractor*:
- (a) maintains complete, accurate and up to date records of the processing carried out on behalf of the *Client* and of the steps taken by the *Contractor* to comply with this contract and Data Protection Laws;
 - (b) promptly gives the *Client* copies of the records on request; and
 - (c) gives the *Client* any other information it reasonably requests, to demonstrate compliance with its obligations under Data Protection Laws.
- 2.18 The *Contractor*:
- (a) co-operates with and assists the *Client* in respect of any audit required by the *Client* (including inspections) to demonstrate the *Contractor's* compliance with its obligations under this contract and Data Protection Laws;
 - (b) provides (or, where necessary, procures) reasonable access for the *Client* and/or its auditors and inspectors (where practicable, during normal business hours) to:
 - (i) the facilities, equipment, premises and sites on which Protected Data and/or the records referred to in paragraph 2.17(a) are held and to any other equipment or facilities used in connection with the processing of the Protected Data (in each case whether or not owned or controlled by the *Contractor*); and
 - (ii) to the *Contractor's* Authorised Persons
- provided that, where possible, the *Client* gives the *Contractor* reasonable prior notice of such audit and/or inspection.
- 2.19 Without prejudice to any other right or remedy available to the *Client*, if any audit or inspection required by the *Client* reveals a material non-compliance by the *Contractor* with any of its obligations under this Annex 8 or under Data Protection Laws, the *Contractor* pays the

reasonable costs of the *Client* and its mandated auditors or inspectors in connection with the audit or inspection.

- 2.20 Without prejudice to any other right or remedy available to the *Client*, the *Contractor* promptly resolves any data protection non-compliance and/or security issues which come to the attention of the *Client* and are notified to the *Contractor*.
- 2.21 If the *Contractor* is in breach of any of its obligations in this Annex 8, the *Client* may, without prejudice to any other remedy available to it, suspend the transfer of Protected Data to the *Contractor* and/or the performance of any of the *service* until the breach is remedied to the *Client's* reasonable satisfaction.
- 2.22 The *Client* may share any notification, details, records or information provided by the *Contractor* pursuant to this Annex 8 with any Group Company, its professional advisors and/or the Commissioner.
- 2.23 Unless storage of any Protected Data is required by Applicable Law (in which case the *Contractor* notifies the *Client* of the requirement), once the *services* have been completed, the *Contractor* promptly, either securely deletes or destroys or returns to the *Client* (as prescribed by the *Client*) the Protected Data (including all copies of the same).
- 2.24 The *Contractor* indemnifies, keeps indemnified and defends the *Client*, at its own cost, against all costs, losses, claims, damages or expenses of whatsoever nature incurred by the *Client* or for which the *Client* may become liable due to or as a result of any failure by the *Contractor* or its Associated Persons to comply with any of its obligations under this Annex 8 and/or the Data Protection Laws.

Appendix to Annex 8

DETAILS OF PROCESSING

Subject-matter of processing: The processing of: (a) tenant personal data; and (b) personal data relating to members of staff occupying council premises, to the extent and in the manner necessary to enable the *Contractor* to Provide the Service.

Duration of the processing: The Service Period. However, the *Contractor* must securely delete or destroy personal data (as directed by the *Client*) as soon as practicable following completion of the service issued under this contract.

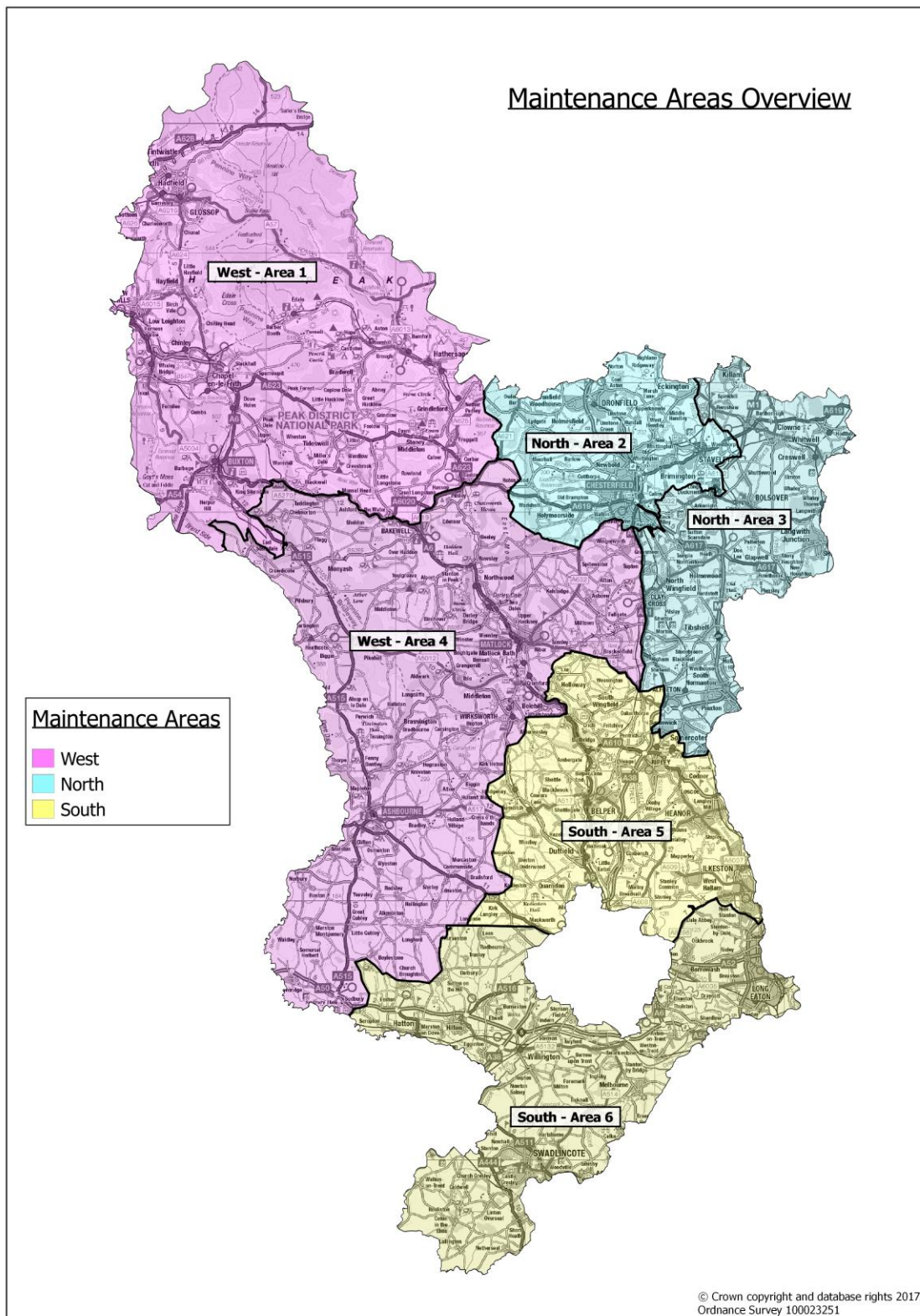
Nature and purpose of the processing: The storage, transmission and use of personal data for the sole purpose of Providing the Service. In addition, the destruction or deletion of personal data as soon as practicable following expiry of the Service Period/completion of the service contained in the last Task Order.

Type of Personal Data: (a) Tenants: Names, addresses, telephone numbers, information relating to any additional needs or requirements (for example, a mobility issue); (b) Staff members occupying council premises: Names, contact details, position.

Categories of Data Subjects: (a) Council tenants; and (b) Members of staff occupying council premises

[Security Measures: Refer to Annex 6 - Access and Loan Agreement.]

Annex 9 Highway Maintenance Area Map



Annex 10 TUPE

1. Outgoing

- 1.1 Nothing in this contract is intended to transfer any employee of the *Contractor* or the *Client* to the other, either on the Contract Date or on termination or expiry.
- 1.2 Notwithstanding clause 1.1, no later than one month prior to expiry of the Service Period, the *Contractor* (and its sub-contractors, if any,) gives to the *Client*:

- full and accurate details of the:
 - identity of;
 - age of;
 - sex of;
 - length of service of;
 - job title of;
 - terms and conditions of employment of;
 - the part of the *service* carried out by;
 - the amount of time spent on Providing the Service by;
 - locations at which the *service* is provided by

any employee or worker of the *Contractor* wholly or mainly engaged in Providing the Service (**“Contractor Assigned Employees”**), who it is expected, if they remain in the employment of the *Contractor* (or any of its sub-contractors), until immediately before the expiry or termination of this contract would be those employees and workers wholly or mainly engaged in Providing the Service (**“Retendering Information”**);

- any additional information in relation to the Retendering Information requested by the *Client*;
- notice, in writing, of any material changes to the Retendering Information as and when such changes arise;
- full and accurate details of the *Contractor's* compliance with all its obligations in respect of the Contractor Assigned Employees in respect of the period up to (and including) the expiry or termination of this contract (including, without limitation, the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions);

- 1.3 The *Contractor* does not:

- increase or decrease the number of Contractor Assigned Employees;
- transfer any of the Contractor Assigned Employees to another part of its business or move other employees from elsewhere in its business who have not previously been employed or engaged in Providing the Service;

- increase the remuneration or otherwise change the terms and conditions of employment of the Contractor Assigned Employees;
- increase the proportion of working time spent on the *service* by any of the Contractor Assigned Employees, except to complete Task Orders previously issued;
- terminate or give notice to terminate the employment or contracts of any of the Contractor Assigned Employees, except by due disciplinary process;

without the prior written consent of the *Client* (such consent not to be unreasonably withheld)

1.4 The *Client* may use and disclose the Retendering Information for the purposes of informing any retendering exercise and informing prospective replacements of the *Contractor*.

1.5 The *Contractor* indemnifies and keeps indemnified the *Client* and/or any contractor that the *Client* engages to Provide the Service or similar services following expiry or termination of this contract ("**Replacement Contractor**") against all losses arising from any claim by any party as a result of the *Contractor* failing to provide or promptly to provide the *Client* with any Retendering Information or failing to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information or failing to comply with any obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**TUPE Regulations**") in respect of any relevant transfer as defined in the TUPE Regulations (including without limitation the obligations under Regulation 10 of the TUPE Regulations).

1.6 If, on the expiry or termination of this contract, for any reason, the TUPE Regulations apply so as to transfer the employment, the contract of or any liabilities for any employees of the *Contractor* (or those of its sub-contractors if any), (the "**Transferring Employees**") to the *Client* or any Replacement Contractor the provisions of clause 1.7 will apply.

1.7 The *Contractor*:

- performs and discharges (and procure that its sub-contractors if any perform and discharge) all its obligations in respect of all the Transferring Employees arising under the TUPE in respect of the period up to (and including) the expiry of this contract;
- provides (or procure that its sub-contractors if any provide) to the *Client* and/or any Replacement Contractor, in writing, such information as is necessary to enable the *Client* and/or the Replacement Contractor to carry out their respective duties under regulation 13 of the TUPE Regulations.
- indemnifies and keeps indemnified the *Client* or any Replacement Contractor in full in relation to the *Contractor's* failure (or the failure of its sub-contractors if any) to discharge all its obligations in respect of all the Transferring Employees in respect of the period up to (and including) the date of any transfer under the TUPE Regulations (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions).
- indemnifies and keeps indemnified the *Client* or any Replacement Contractor in full from and against all and any actions, proceedings, claims, demands, costs, expenses, penalties and liabilities whatsoever which are at any time incurred

directly or indirectly by the *Client* or any Replacement Contractor and which arise in relation to any employees or workers of the *Contractor* or those of its sub-contractors (if any), whether or not under or in connection with the TUPE Regulations or any subsequent or related legislation. The indemnity shall include for the avoidance of doubt any actions, proceedings, demands, costs, expenses, penalties and liabilities whatsoever arising from the termination of service of any of the *Contractor's* employees or workers (or those of its sub-contractors) upon and/or as a result of the expiry or termination of this contract or any change to the *service*.

