**DATED 202**

**~~OXFORDSHIRE COUNTY~~ COUNCIL**

**- and –**

[

**AGREEMENT**

**relating to**

**~~Highway Electrical Assets, Maintenance,~~**

**~~Replacement and LED Conversion~~**

Anita Bradley

Director of Law & Governance and Monitoring Officer

~~Oxfordshire County Council~~

~~County Hall~~

~~New Road~~

~~Oxford OX1 1ND~~

LS/BM/51172

**Form of Agreement**

**For ~~NEC4 – Term Service~~ Contract**

**~~Option A: Priced Contract with Price List~~**

**In respect of ~~Highway Electrical Assets, Maintenance, Replacement and LED Conversion~~**

This Agreement is made on the day of 202

between

**BETWEEN**

**(1) ~~OXFORDSHIRE COUNTY COUNCIL~~** ~~of County Hall, New Road, Oxford, OX1 1ND~~ (the “**Client**”); and

**(2) [ ]** a company registered in England and Wales under company number **[ ]** whose registered office is at [ ] (the “**Contractor**”),

The Client wishes to have the following ~~service provided:~~ **~~Highway Electrical Assets, Maintenance, Replacement and LED Conversion consisting of the project management of capital replacement schemes, the delivery of routine maintenance, inspection & testing and non-routine maintenance of street lighting, illuminated signs and other powered highway apparatus within the boundaries of Oxfordshire in accordance with the Specification in the Client’s Service Information.~~**

The Contractor will Provide the ~~Service in accordance with the~~ *~~conditions of contract~~* ~~identified in the Contract Data.~~

The Client will pay the Contractor the amount due and carry out its duties in accordance with the *conditions of contract* identified in ~~the Contract Data.~~

The documents forming this agreement are:

* This Form of Agreement;
* ~~The Contract Data Part One and Two; and~~
* ~~The documents identified in the Contract Data and the Schedules 1 & 2 thereto.~~

In witness of which the parties have executed this agreement as a deed on the day and year first above written

# THE COMMON SEAL OF

**~~OXFORDSHIRE COUNTY~~ COUNCIL**

Was hereunto affixed in the presence of:

………………………………………….

Director of Law and Governance/Designated Officer

Signed as a Deed by

*[Name of Company]*

Acting by a Director and its Secretary or two Directors

#### …………………………………………… Director (signature)

…………………………………………… *Print name*

#### …………………………………………… Director/Secretary (signature)

…………………………………………… *Print name*

**~~CONTRACT DATA~~**

**~~PART ONE – DATA PROVIDED BY THE CLIENT~~**

~~1 General~~

|  |  |  |
| --- | --- | --- |
|  | ~~The~~ *~~conditions of contract~~* ~~are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017~~ |  |
|  | ~~Main Option A~~ **~~(Priced Contract with Price List)~~**  ~~Option for resolving and avoiding disputes~~ **~~W2~~** |  |
|  | ~~Secondary Options~~ **~~X1, X2, X4, X11, X17,X18, X23, X24; & Y(UK) 2~~**~~.~~ |  |
|  | ~~The service is provision of~~ **~~Highway Electrical Assets, Maintenance, Replacement and LED Conversion consisting of the project management of capital replacement schemes, the delivery of routine maintenance, inspection & testing and non-routine maintenance of street lighting, illuminated signs and other powered highway apparatus within the boundaries of Oxfordshire in accordance with the Specification in the Client’s Service Information.~~** |  |
|  | ~~The Client is~~  ~~Name~~ **~~OXFORDSHIRE COUNTY COUNCIL~~**  ~~Address for communications~~  **~~County Hall, New Road, Oxford, OX1 1ND~~** |  |
|  | ~~Address for electronic communications~~  ~~The Service Manager is~~  ~~Name~~ **~~Sean Rooney~~****~~– Head of Service -Highway Maintenance~~**  ~~Address for communications~~  **~~(Infrastructure Operations – Communities) County Hall, New Road, Oxford, OX1 1ND~~**  ~~Address for electronic communications~~  **~~sean.rooney@oxfordshire.gov.uk~~** |  |
|  | ~~The Affected Property is~~  **~~Electrical Highway Assets within Oxfordshire~~**  ~~The Scope is in~~ **~~the Client’s~~****~~Service Information (and the Appendices thereto marked 1-6 and A-J (inclusive) set out in Schedule 1.~~** |  |
|  | ~~The shared services which may be carried out outside the Service Areas are~~ **~~none~~** |  |
|  | ~~The language of the contract is~~ **~~English~~** |  |
|  | ~~The law of the contract is the law of~~ **~~England & Wales, subject to the jurisdiction of the courts of England and Wales.~~** |  |
|  | ~~The period for reply is~~ **~~two weeks~~**  **~~The period for reply for accepting the name of each proposed subcontractor (if any)~~**  **~~The period for reply for accepting the proposed subcontract documents (if any)~~** | ~~Except that~~  ~~Is~~ **~~3 weeks~~**  ~~Is~~ **~~4 weeks~~** |
|  | ~~The following matters will be included in the Early Warning Register~~  ~~[ - ]~~ |  |
|  | ~~Early warning meetings are to be held at intervals no longer than~~  **~~Two weeks~~** |  |

~~2 The Contractor’s main responsibilities –~~ **~~Not used~~**

|  |  |  |
| --- | --- | --- |
|  | ~~The Contractor prepares forecasts of the total Defined Cost for the whole for the service at intervals no longer than~~ |  |

~~3 Time~~

|  |  |  |
| --- | --- | --- |
|  | ~~The starting date is~~ **~~3 December 2021~~**  ~~The service period is~~ **~~60 months~~**  ~~The Contractor submits revised plans at intervals no longer than~~ **~~five weeks~~**  ~~The period within which the Contractor is to submit a Task Order programme for acceptance is~~ **~~two weeks~~** |  |
|  | ~~The period after the Contract Date within which the Contractor is to submit a first plan for acceptance is~~ **~~two 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~~ **~~four weeks~~** |  |

~~5 Payment~~

|  |  |  |
| --- | --- | --- |
|  | ~~The currency of the contract is the~~ **~~pound sterling~~**  ~~The assessment interval is~~ **~~monthly~~**  ~~The interest rate is~~ **~~4~~** ~~% per annum (not less than 2 above the rate of the~~ **~~Bank of England~~** |  |
|  | ~~The period within which payments are made is –~~ **~~not used~~**~~.~~ |  |
|  | ~~The period for certifying a final assessment is~~ |  |

~~6 Compensation events~~

|  |  |
| --- | --- |
|  | ~~The value engineering percentage is 50% unless another percentage is stated here, in which case it is~~ **~~40%~~** |
|  | ~~These are~~ **~~no~~** ~~additional compensation events~~ |

~~8 Liabilities and Insurance~~

|  |  |
| --- | --- |
|  | ~~These are additional Client's liabilities~~  ~~(1) none~~  ~~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 '~~**~~£10,000.000~~**  ~~The minimum amount of cover for insurance against death and 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~~ **~~£10,000,000~~** |

~~Resolving and avoiding disputes~~

|  |  |
| --- | --- |
|  | ~~The tribunal procedure is~~ **~~arbitration~~** |
|  | ~~The arbitration procedure is~~ **~~the latest version of the institution of Civil Engineers Arbitration Procedure in force when the arbitrator is appointed.~~**  ~~The place where arbitration is to be held is~~ **~~London~~**  ~~The person or organization who will choose an arbitrator if the Parties cannot agree a choice or if the arbitration procedure does not state who selects and arbitrator is~~ **~~The Institute of Civil Engineers, London.~~**  ~~The Senior Representatives of the Client are~~  ~~Name (1)~~ **~~Paul Fermer – Assistant Director Community Operations~~**  ~~Address for communications~~ **~~County Hall, New Road, Oxford, OX1 1ND~~**  ~~Address for electronic communications~~ **~~paul.fermer@oxfordshire.gov.uk~~**  ~~Name (2)~~ **~~Sean Rooney – Head of Service -Highway Maintenance~~**  ~~Address for communications~~ **~~County Hall, New Road, Oxford, OX1 1ND~~**  ~~Address for electronic communications~~**~~sean.rooney@oxfordshire.gov.uk~~**  ~~The Adjudicator is~~ **~~to be nominated by the nominating body~~**  ~~Name~~  ~~Address for communications~~  ~~Address for electronic communications~~  ~~The Adjudicator nominating body is~~ **~~The Institution of Civil Engineers~~** |
|  |  |

~~X1: Price Adjustment for inflation~~

|  |  |
| --- | --- |
|  | ~~The proportion used to calculate the Price Adjustment Factor for~~ **~~Materials, Plant and Labour~~** ~~in the Contractor’s Price List is~~   * ~~1.00 Linked to the~~ **~~Index~~**   ~~The base date for indices is 1 December 2021~~  ~~The inflation adjustment dates are~~   * ~~1 April 2023.~~ * ~~1 April 2024~~ * ~~1 April 2025~~ * ~~1 April 2026~~ * ~~And in the event of first period of extension~~ * ~~1 April 2027~~ * ~~And in the event of second period of extension~~ * ~~1 April 2028~~ * ~~And in the event of third period of extension~~ * ~~1 April 2029~~   ~~The~~ **~~Index~~** ~~is the all Items Retail Price Index excluding Mortgage Interest~~  ~~Payments (also known as the Underlying Rates of Inflation) published by the Office of National Statistics.~~ |

~~X17: Low Service damages~~

|  |  |
| --- | --- |
|  | ~~The Service level table is [to be agreed between the parties prior to starting date]~~ |

~~X18: Limitation of liability~~

|  |  |
| --- | --- |
|  | ~~The~~ *~~Contractor's~~* ~~liability to the~~ *~~Client~~* ~~'for indirect or consequential loss is limited to~~ **~~5%of the total Prices at the Contract Date.~~**  ~~The~~ *~~Contractor’s~~* ~~liability for Low Service damages is limited to 10% of the total Prices at the Contract Date.~~  ~~For any one event, the~~ *~~Contractor's~~* ~~liability to the~~ *~~Client~~* ~~for loss of or damage to the~~ *~~Client's~~* ~~property is limited to~~ **~~£500,000~~**  ~~The~~ *~~Contractor's~~* ~~liability for Defects due to its design of an item of Equipment is limited to~~ **~~£500,000~~**  ~~The~~ *~~Contractor's~~* ~~total liability to the~~ *~~Client~~* ~~for all matters arising under or in connection with the contract, other than Low Service damages and excluded matters, is limited to~~ **~~£10,000,000~~**  ~~The~~ *~~end of liability date~~* ~~is~~ **~~12~~** ~~years after the end of the Service Period~~ |

~~X23: Extending the Service Period~~

|  |  |
| --- | --- |
|  | ~~The~~ *~~maximum service period~~* ~~is~~ **~~8~~** ~~years after the~~ *~~starting date~~*  ~~The~~ *~~periods for extension~~* ~~are~~  ~~Order~~ *~~period for extension (~~*~~months)~~ *~~notice date~~*  ~~First~~  **~~12 months – 3 December 2026~~**  ~~Second~~  **~~12 months –3 December 2027~~**  ~~Third~~  **~~12 months – 3 December 2028~~**  ~~Extensions to the Contract Period are earned, released or extinguished in~~  ~~the increments, subject to the respective criterion below:~~  ~~The~~ *~~criteria~~* ~~for extensions are as follows:~~   1. ~~In the first Contract Year, the first extension period is earned for successful implementation of the Mobilisation Plan and delivery of the Services during the first Contract Year. The offer of the Contract extension is at the absolute discretion of the Client based on the Contractor’s performance.~~ 2. ~~The Second extension period is earned if, in each of second, third, fourth and fifth Contract Years, the overall score achieved by the Contractor exceeds the required overall minimum score set out in the KPI matrix. The offer of the Contract extension is at the absolute discretion of the Client based on the Contractor’s performance.~~ 3. ~~The Third extension period is earned if, in the sixth Contract Year, the overall score achieved by the Contractor exceeds the required overall minimum score set out in the KPI matrix The offer of the Contract extension is at the absolute discretion of the Client based on the Contractor’s performance.~~   ~~(If the overall score achieved by the Contractor for each of the Contract Years 2-5; and / or Contract Year 6 is equal to or less than the required minimum overall score set out in the KPI matrix the criteria for extension will not be met)~~ |
|  |  |

~~X24: The accounting periods~~

|  |  |
| --- | --- |
|  | ~~The~~ *~~accounting periods~~* ~~are~~  ~~.~~  ~~1 April 2022 – 31 March 2023~~  ~~1 April 2023 – 31 March 2024~~  ~~1 April 2024 – 31 March 2025~~  ~~1 April 2025 – 31 March 2026~~  ~~1 April 2026 – 31 March 2027~~  ~~And in the event of first period of extension~~  ~~1 April 2027 – 31 March 2028~~  ~~And in the event of second period of extension~~  ~~1 April 2028 – 31 March 2029~~  ~~And in the event of third period of extension~~  ~~1 April 2029 – 31 March 2030~~ |

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

|  |  |
| --- | --- |
|  |  |
|  | ~~The period for payment is~~ **~~30~~** ~~days after the date on which payment becomes due~~ |

**~~Z ADDITIONAL CONDITIONS OF CONTRACT~~**

**~~Z6 Disclosure of Information~~**

~~Z6.1 A Disclosure Request is a request for information relating to this contract received by the~~ *~~Client~~* ~~pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise~~

~~Z6.2 The~~ *~~Contractor~~* ~~acknowledges that the~~ *~~Client~~* ~~may receive Disclosure Requests and that the~~ *~~Client~~* ~~may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the~~ *~~Client~~* ~~shall consult with the~~ *~~Contractor~~* ~~before doing so in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000. The~~ *~~Contractor~~* ~~shall use its best endeavours to respond to any such consultation promptly and within any deadline set by the~~ *~~Client~~* ~~and acknowledges that it is for the~~ *~~Client~~* ~~to determine whether or not such information should be disclosed.~~

~~Z6.3 When requested to do so by the~~ *~~Client~~* ~~, the~~ *~~Contractor~~* ~~shall promptly provide information in its possession relating to this contract and assists and co-operates with the~~ *~~Client~~*  ~~to enable the~~ *~~Client~~*  ~~to respond to a Disclosure Request within the time limit set out in the relevant legislation.~~

~~Z6.4 The~~ *~~Contractor~~* ~~shall promptly pass any Disclosure Request~~~~which it receives to the~~ *~~Client~~*~~. The~~ *~~Contractor~~* ~~shall not respond directly to a Disclosure Request unless instructed to do so by the~~ *~~Client~~*~~.~~

**~~Z8 Data Protection~~**

~~Z8.1 In this Clause Z8, the following terms take the following meanings:~~

~~Z8.1.1~~ **~~Contractor Personnel​:~~** ~~means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement~~

~~Z8.1.2~~ **~~Controller~~** ~~takes the meaning given in the Data Protection Legislation.~~

~~Z8.1.3~~ **~~Data Loss Event~~**~~: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach~~**~~.~~**

~~Z8.1.4~~ **~~Data Protection Legislation~~**~~: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;~~

~~Z8.1.5~~ **~~Data Protection Impact Assessment:~~** ~~an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.~~

~~Z8.1.6~~ **~~Data Protection Officer~~** ~~takes the meaning given in the Data Protection Legislation.~~

~~Z8.1.7~~ **~~Data Subject~~** ~~takes the meaning given in the Data Protection Legislation.~~

~~Z8.1.8~~ **~~Data Subject Access Request~~**~~: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.~~

~~Z8.1.9~~ **~~DPA 2018:~~** ~~means the~~~~Data Protection Act 2018~~

~~Z8.1.10~~ **~~GDPR~~**~~:~~~~the General Data Protection Regulation (~~*~~Regulation (EU) 2016/679~~*~~)~~

~~Z8.1.11~~ **~~Law~~**~~​: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;~~

~~Z8.1.12~~ **~~LED:~~**~~Law Enforcement Directive (~~*~~Directive (EU) 2016/680~~*~~)~~

~~Z8.1.13~~ **~~Party~~**~~​: a Party to this Agreement;~~

~~Z81.14~~ **~~Personal Data~~** ~~takes the meaning given in the Data Protection Legislation~~

~~Z8.1.15~~ **~~Personal Data Breach~~** ~~takes the meaning given in the Data Protection Legislation.~~

~~Z8.1.16~~ **~~Processor~~** ~~takes the meaning given in the Data Protection Legislation.~~

~~Z8.1.17~~ **~~Protective Measures:~~** ~~appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.~~

~~Z8.1.8~~ **~~Sub-processor~~**~~: any third party appointed to process Personal Data on behalf of the Contractor under this Contract~~

~~Z8.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in this Clause Z8.2 by the Client and may not be determined by the Contractor~~

~~Z8.2.1 Subject matter of the processing;~~

~~Names and addresses of members of the public, Client ’s staff, who register a complaint to the Client via its Alloy system as to an operational failure of a Highway Electrical Asset, which system is used by the Client to notify the Contractor of an outage~~

~~Z8.2.2 Duration of the processing;~~

~~The duration of the processing shall be for the Service Period of this Contract.~~

~~Z8.2.3 Nature and purposes of the processing;~~

~~Provision of details of the complaint made by a member of the public or of Client ’s staff of an outage to a highway electrical asset by the Client to the Contractor via the Client ’s Alloy system.~~

~~Z8.2.4 Type of Personal Data;~~

~~Name, address, telephone number and email address.~~

~~Z8.2.5 Categories of Data Subject;~~

~~Members of the public or the Client ’s staff.~~

~~Z8.2.6 Plan for Destruction of Data;~~

~~The data will be held for the duration of the Service Period and then returned to the Client upon expiry or earlier termination of the Call Off Contract.~~

~~Z8.3 The Contractor shall notify the Client immediately if it considers that any of the Client 's instructions infringe the Data Protection Legislation.~~

~~Z8.4 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing.  Such assistance may, at the discretion of the Client, include:~~

~~Z8.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;~~

~~Z8.4.2 an assessment of the necessity and proportionality of the processing operations;~~

~~Z8.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and~~

~~Z8.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.~~

~~Z8.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:~~

~~Z8.5.1 process that Personal Data only in accordance with Clause Z8.2 unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;~~

~~Z8.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate to protect against a Data Loss Event having taken account of the:~~

* + - * 1. ~~nature of the data to be protected;~~
        2. ~~harm that might result from a Data Loss Event;~~
        3. ~~state of technological development; and~~
        4. ~~cost of implementing any measures;~~

~~Z8.5.3 ensure that :~~

* + - * 1. ~~the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Clause Z8.2);~~
        2. ~~it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:~~

1. ~~are aware of and comply with the Contractor’s duties under this clause;~~
2. ~~are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;~~
3. ~~are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and~~
4. ~~have undergone adequate training in the use, care, protection and handling of Personal Data; and~~

~~Z8.5.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:~~

* + - * 1. ~~the Client or the Contractor has provided appropriate safeguards in relation to the transfer;~~
        2. ~~the Data Subject has enforceable rights and effective legal remedies;~~
        3. ~~the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and~~
        4. ~~the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;~~

~~Z8.5.5 at the written direction of the Client delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.~~

~~Z8.6. Subject to clause Z8.7, the Contractor shall notify the Client without undue delay if it:~~

~~Z8.6.1. receives a Data Subject Access Request (or purported Data Subject Access Request);~~

~~Z8.6.2 receives a request to rectify, block or erase any Personal Data;~~

~~Z8.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;~~

~~Z8.6.4 receives any communication from the Information Commissioner or any other regulatory Client in connection with Personal Data processed under this Contract;~~

~~Z8.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or~~

~~Z8.6.6 becomes aware of a Data Loss Event.~~

~~Z8.7 The Contractor’s obligation to notify under clause Z8.6 shall include the provision of further information to the Client in phases, as details become available.~~

~~Z8.8 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause Z8.6. (and insofar as possible within the timescales reasonably required by the Client including by promptly providing:~~

~~Z8.8.1 the Client with full details and copies of the complaint, communication or request;~~

~~Z8.8.2 such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;~~

~~Z8.8.3 the Client, at its request, with any Personal Data it holds in relation to a Data Subject;~~

~~Z8.8.4 assistance as requested by the Client following any Data Loss Event;~~

~~Z8.8.5 assistance as requested by the Client with respect to any request from the Information Commissioner’s Office, or any consultation by the Client with the Information Commissioner's Office.~~

~~Z8.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:~~

~~Z8.9.1 the Client determines that the processing is not occasional;~~

~~Z8.9.2 the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and~~

~~Z8.9.3 the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.~~

~~Z8.10 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client ’s designated auditor.~~

~~Z8.11 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.~~

~~Z8.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:~~

~~Z8.12.1 notify the Client in writing of the intended Sub-processor and processing;~~

~~Z8.12.2 obtain the written consent of the Client;~~

~~Z8.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause Z8 such that they apply to the Sub-processor; and~~

~~Z8.12.4 provide the Client with such information regarding the Sub-processor as the Client may reasonably require.~~

~~Z8.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.~~

~~Z8.14 The Client may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).~~

~~Z8.15 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner’s Office publishes guidance. The Client may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Officer.~~

**~~Z10 TUPE~~**

~~Z10. The Contractor, following a request from the Client , shall fully and accurately discloses all information relating to staff engaged in providing the Service including the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of the contract (but for operation of law), their age and gender, the terms and conditions of their employment (including salary, bonus payments, pay settlements, redundancy entitlement, pension entitlement and working arrangements), their job titles and the qualifications required for each position.~~

~~Z10.1 The Contractor complies with any such requests as soon as reasonably practicable and in any event, within 21 days of being so requested, and at no cost to the Client. The Contractor agrees with the Client that the information provided shall be complete, accurate and up to date and that it shall notify the Client promptly of any changes occurring between the date of submission of the information and the end of the contract.~~

~~Z10.2 The Contractor permits the Client to use the information for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and related legislation and codes of practice and for the purposes of re-tendering.~~

~~Z10.3 The Contractor enables and assists the Client and any such persons as the Client determines to communicate with and meet staff and relevant staff representatives and the Contractor co-operates with any new contractor to ensure a smooth transition.~~

~~Z10.4 The Contractor indemnifies the Client and any replacement contractor engaged by the Client to Provide the Service or any service equivalent or similar to service and keeps them both fully indemnified in respect of any claims, losses, costs, expenses, demands and liabilities: arising from the provision of information or the failure to provide information under this clause; or which relates to any claim which is or may be brought by any employee or person claiming to be an employee on any date upon which the contract is terminated and/or transferred to any third party arising out of their employment or its termination.~~

**~~Z12 RECORDS AND AUDIT ACESS~~**

~~Z12.1 The~~ *~~Contractor~~* ~~keeps documents and information obtained or prepared by the~~ *~~Contractor~~* ~~or any subcontractor in connection with this contract for a period of 12 years after the end of the~~ *~~service period~~*~~.~~

~~Z12.2 The~~ *~~Contractor~~* ~~permits the~~ *~~Employer~~*~~, Comptroller, Auditor General and any other auditor appointed by the~~ *~~Employer~~* ~~to examine documents held or controlled by the~~ *~~Contractor~~* ~~or any subcontractor.~~

~~Z12.3 The~~ *~~Contractor~~* ~~provides such oral or written explanations as the~~ *~~Employer~~* ~~or the Comptroller and Auditor General considers necessary.~~

~~Z12.4 The~~ *~~Contractor~~* ~~acknowledges that, for the purpose of examining and certifying the~~ *~~Employer~~*~~’s accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the~~ *~~Employer~~* ~~may examine documents held or controlled by the~~ *~~Contractor~~* ~~or any subcontractor and may require the~~ *~~Contractor~~* ~~to provide such oral or written explanations as he considers necessary. The~~ *~~Contractor~~* ~~promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the~~ *~~Contractor~~* ~~and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the~~ *~~Contractor~~* ~~is not a function exercisable under this contract. The~~ *~~Contractor~~* ~~permits the Comptroller and Auditor General to examine documents held or controlled by the~~ *~~Contractor~~* ~~or any subcontractor. The~~ *~~Contractor~~* ~~provides such oral or written explanations as the Comptroller and Auditor General considers necessary.~~

**~~Z13 Subcontracting~~**

~~Z13.1 Before~~

* ~~appointing a proposed Subcontractor or~~
* ~~allowing a Subcontractor to appoint a proposed sub subcontractor~~
* ~~the~~ *~~Contractor~~* ~~submits to the~~ *~~Employer~~* ~~for acceptance~~
* ~~a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or sub subcontractor or~~
* ~~other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or sub subcontractor.~~

~~Z13.2 The~~ *~~Contractor~~* ~~does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed sub subcontractor) until the~~ *~~Employer~~* ~~has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subcontractor or sub subcontractor under regulation 57 of the Public Contracts Regulations 2015.~~

~~Z13.3 If requested by the~~ *~~Employer~~*~~, the~~ *~~Contractor~~* ~~provides further information to support, update or clarify a submission under clause Z13.1.~~

~~Z13.4 If, following the acceptance of a submission under clause Z13.2, it is found that one of the grounds for excluding the Subcontractor or sub subcontractor under regulation 57 of the Public Contracts Regulations 2015 applies, the~~ *~~Employer~~* ~~may instruct the~~ *~~Contractor~~* ~~to~~

* ~~replace the Subcontractor or~~
* ~~require the Subcontractor to replace the sub-subcontractor~~

**~~Parent Company Guarantee~~**

~~Z15.1 In this contract~~

**~~Change of Control~~** ~~is an event where a single person (or group of persons acting in concert)~~

* ~~acquires Control of the~~ *~~Contractor~~* ~~or~~

~~acquires a direct or indirect interest in the relevant share capital of the~~ *~~Contractor~~* ~~and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the~~ *~~Contractor.~~*

**~~Control~~** ~~has the meaning set out in section 1124 of the Corporation Tax Act 2010.~~

**~~Controller~~** ~~is the single person (or group of persons acting in concert) that~~

* ~~has Control of the~~ *~~Contractor~~* ~~or~~
  + ~~holds or controls the largest direct or indirect interest in the relevant share capital of the Contractor.~~

**~~Parent Company Guarantee~~** ~~is a guarantee of the~~ *~~Contractor’s~~* ~~performance in the form set out in Appendix A;~~

~~Z15.2 If required by the~~ *~~Client~~* ~~at any time, the~~ *~~Contractor~~* ~~shall within four weeks give to the~~ *~~Client~~* ~~a Parent Company Guarantee from~~

* ~~the Controller or~~
* ~~if the~~ *~~Client~~* ~~(in its discretion) agrees, a company other than the Controller.~~

~~Z15.3 The~~ *~~Contractor~~* ~~shall~~~~notify the~~ *~~Client~~* ~~immediately if a Change of Control has occurred or is expected to occur.~~

~~Z15.4 The~~ *~~Contractor~~* ~~shall notify the~~ *~~Client~~* ~~immediately of~~

* ~~any material change to the direct or indirect legal or beneficial ownership of any shareholding in the~~ *~~Contractor~~*~~. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the~~ *~~Contractor~~*~~, or~~
* ~~any material change in the composition of the~~ *~~Contractor’s~~* ~~partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this contract by the~~ *~~Contractor~~*
* ~~any change or proposed change in the name or status of the~~ *~~Contractor~~*~~.~~

~~Z15.5 The~~ *~~Client~~* ~~may treat any of the following as a substantial failure by the~~ *~~Contractor~~* ~~to comply with this contract~~

* ~~the~~ *~~Contractor~~* ~~does not give to the~~ *~~Client a~~* ~~Parent Company Guarantee within four weeks of the~~ *~~Client ’~~*~~s request,~~
* ~~the~~ *~~Contractor~~* ~~fails to notify the~~ *~~Client~~* ~~of a Change of Control or a Change of Control will not allow the~~ *~~Contractor~~* ~~to Provide the Goods.~~
* ~~the~~ *~~Contractor~~* ~~does not provide notification to the~~ *~~Client~~* ~~as required by clause Z15.4~~

**~~Clause Z28 Intellectual Property Rights~~**

~~Z28.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether registered or capable of registration.~~

~~Z28.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the~~ *~~Client~~* ~~in connection with the contract are the property of the~~ *~~Client.~~*

~~Z28.3 The~~ *~~Contractor~~* ~~hereby assigns to the~~ *~~Client~~* ~~all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the~~ *~~Contractor~~* ~~or any Subcontractor~~~~in performing its obligations under, or otherwise in connection with, the contract.  The~~ *~~Contractor~~* ~~obtains from Subcontractors equivalent rights over the documents and other materials prepared by the Subcontractors.  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.~~

~~Z28.4 Background IPR means Intellectual Property Rights owned by the~~ *~~Contractor~~*~~, a Subcontractor or a third party and which are not assigned to the~~ *~~Client~~* ~~pursuant to clause Z28.3. In respect of Background IPR, the~~ *~~Contractor~~* ~~grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the~~ *~~Client to~~* ~~use the Background IPR for all purposes of the~~ *~~Client.~~*~~Each licence granted under this clause Z28.4 by the Contractor survives the termination or expiry of this contract and cannot be terminated by the Contractor or its assignees.  The Contractor obtains from the Subcontractors or third parties equivalent rights over Background IPR owned by the Subcontractors or third parties.~~

~~Z28.5 The~~ *~~Client~~*  ~~grants to the~~ *~~Contractor,~~* ~~or procures the direct grant to the~~ *~~Contractor~~* ~~of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the~~ *~~Client~~*  ~~and reasonably required by the~~ *~~Contractor~~* ~~in order to Provide the Service.  Any such licence is granted for the duration of this contract solely to enable the~~ *~~Contractor~~* ~~to comply with its obligations under this contract~~

**~~Z31 Termination – PCRs, Regulation 73~~**

~~Z31.1 The~~ *~~Client~~* ~~may terminate the~~ *~~Contractor~~* ~~‘s obligation to Provide the Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the~~ *~~Contractor~~* ~~at the Contract Date. This is treated as a termination because the~~ *~~Contractor~~* ~~has substantially hindered the~~ *~~Client.~~*

~~Z31.2 The~~ *~~Client~~* ~~may terminate the~~ *~~Contractor~~* ~~‘s obligation to Provide the Service if~~

* ~~this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or~~
* ~~the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.~~

~~If the modification or infringement was due to a default by the~~ *~~Contractor~~*~~, this is treated as a termination because of a substantial failure of the~~ *~~Contractor~~* ~~to comply with his obligations~~

**~~Z32 Value Added Tax (VAT) Recovery~~**

~~Z32.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.~~

**~~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~~  ~~Name (1) job~~  ~~Responsibilities~~  ~~Qualifications~~  ~~Experience~~  ~~Name (2)~~  ~~Job~~  ~~Responsibilities~~  ~~Qualifications~~  ~~Experience~~  ~~The following matters will be included in the Early Warning Register~~  ~~[ ]~~ |

1. ~~The Contractor’s main responsibilities~~

|  |  |
| --- | --- |
|  | ~~The Scope provided by the~~ *~~Contractor~~* ~~for its plan is in~~ |

1. ~~Time~~

|  |  |
| --- | --- |
|  | ~~The plan identified in the Contract Data is~~ |

1. ~~Payment~~

|  |  |
| --- | --- |
| **~~Option A~~** ~~is used~~ | ~~The price list is~~ ***~~[as set out in Schedule 2~~*~~]~~** |

~~Resolving and avoiding disputes~~

|  |  |
| --- | --- |
|  | ~~The Senior Representatives of the Contractor are~~  ~~Name (1)~~  ~~Address for communications~~  ~~Address for electronic communications~~  ~~(Name (2)~~  ~~Address for communications~~  ~~Address for electronic communications~~ |

**Schedule 1**

**Client’s Service Information – ~~Specification~~**

[to be annexed]

**Schedule 2**

**Contractor’s ~~Price List~~**

**[to be annexed]**

**Appendix A;**

**Form of Parent Company Guarantee** ~~(referred to in Z15)~~

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