SS17064

Highways, Transportation and Waste



Road Asset Renewal Contract 2018

**Schedule 3**

**CONDITIONS OF CONTRACT**



**Important Notice**

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

This document shall be read in conjunction with:

* Schedule 1: Instructions to Tender
* Schedule 2: Forms for Completion
* Schedule 4: Quality Questions
* Schedule 5: Financial
* Schedule 6: Scope of Services

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

**AMENDMENT SHEET**

|  |  |  |  |
| --- | --- | --- | --- |
| **Version Number** | **Amendment** | **Initials** | **Issue Date** |
| V1 | 1st draft | DWA | 27/2/15 |
| V3 | Reformatted and Z clauses added | DWA | 31/10/17 |
| V4 | Accept V3 modifications, add inflation | DWA | 30/11/17 |
| V5 | Accept V4 changes, added signature sheet | DWA | 6/12/17 |
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**AGREEMENT**

Dated […………………………..] [20…]

|  |
| --- |
| (1) The Kent County Council  AND  (2) [*CONTRACTOR*]  **AGREEMENT**  Relating to  Services  for  The Road Asset Renewal Contract 2018 |

**THIS AGREEMENT** is made on the ……. day of ….. [2018]

**BETWEEN:**

(1) The Kent County Council (the ***Client)***  and

(2) [*CONTRACTOR*] (Company Number:…………….) whose registered office is at [………………………………………………………………………………….] (the ***Contractor***)

The *Client* has agreed to enter into this contract for the provision of service for the Road Asset Renewal Contract 2018 to the Affected Property as more particularly set out in the *conditions of contract*.

1. The *Contractor* Provides the Service in accordance with the *conditions of contract*.

2. The *Client* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract*.

3. The documents forming part of this contract are:

* Schedule 2: Documents requiring signature
* Schedule 3: the *conditions of contract*
* Schedule 4: Mandatory and quality responses
* Schedule 5:the Price List
* Schedule 6:Scope part one and part 2

And any other documents identified in the Contract Data

4. The *conditions of contract* and other documents which are incorporated into and form part of this contract contain all the terms which the *Client* and the *Contractor* have agreed in relation to the subject matter of this contract, and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

IN WITNESS WHEREOF this Contract has been duly executed as a deed on the date stated at the beginning of it.

**EXECUTED as a Deed by the Contracting Authority**

|  |  |
| --- | --- |
| The COMMON SEAL of  **THE KENT COUNTY COUNCIL**  was affixed in the presence of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorised Signatory |  |

**(Option A – by affixing the company’s common seal)**

**EXECUTED as a Deed by the Contractor**

|  |  |
| --- | --- |
| The COMMON SEAL of  **\*\*\*\*\*\*\*\*\*\*\***  was affixed in the presence of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature Director  \_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature Company Secretary/Director |  |

**(Option B – signature by Director and a second Director or Company Secretary)**

|  |  |
| --- | --- |
| Executed as a deed by **\*\*\*\*\*\*\*\*\*** acting by |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| a Director and | Signature of Director |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Its Secretary/Director | Signature of Company Secretary/Director |

Term Service Contract

This contract should be used for the appointment of a supplier for a period of time to manage and provide a service

**An NEC document**

**June 2017**

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

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

**The Development Bureau, HKSAR Government**

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

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**Main Option Clauses**

Option A: Priced contract with price list

Option C: Target contract with price list

**Resolving and Avoiding Disputes**

Option W2

**Secondary Option Clauses**

Option X1: Price adjustment for inflation (used only with Options A and C)

Option X2: Changes in the law

Option X4: Ultimate holding company guarantee

Option X11: Termination by the *Client* (not used with Option X19)

Option X13: Performance bond

Option X17: Low service damages

Option X18: Limitation of liability

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

Option X21: Whole life cost

Option X23: Extending the Service Period

Option X24: The *accounting periods*

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

Option Z: *Additional conditions of contract*

**Schedule of Cost Components**

**Short Schedule of Cost Components**

**Contract Data**

Part one – Data provided by the *Client*

Part two – Data provided by the *Contractor*

Schedule of Options

**MAIN OPTIONS** The strategy for choosing the form of contract starts with a decision between three main

Options, one of which must be chosen.

Option A Priced contract with price list Option C Target contract with price list

**RESOLVING AND AVOIDING DISPUTES**

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Option W2 Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies

**SECONDARY OPTIONS** The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X1 Price adjustment for inflation (used only with Options A and C)

Option X2 Changes in the law

Option X4 Ultimate holding company guarantee

Option X11 Termination by the *Client* (not used with Option X19)

Option X13 Performance bond

Option X17 Low service damages

Option X18 Limitation of liability

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

Option X21 Whole Life Cost

Option X23 Extending the Service Period

Option X24 The *accounting periods*

The following Options dealing with national legislation should be included if required.

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

Option Z *Additional conditions of contract*

Note Options X5–X7, X9, X14–X16 and X22 are not used

Core Clauses

|  |  |  |
| --- | --- | --- |
| 1. **GENERAL** | | |
| **Actions** | **10**  10.1 | The Parties and the *Service Manager* shall act as stated in this contract. |
|  | 10.2 | The Parties and the *Service Manager* act in a spirit of mutual trust and co-operation. |
| **Identified and defined terms** | 11  11.1 | In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials. |
|  | 12.4 | (1) The Accepted Plan is the plan identified in the Contract Data or is the latest plan accepted by the *Service Manager*. The latest plan accepted by the *Service Manager* supersedes previous Accepted Plans.  (2) Affected Property is property of the *Client* or Others which is   * affected by the work of the *Contractor* or used by the *Contractor* in Providing the   Service and   * identified in the Contract Data, unless later changed in accordance with the contract.   (3) The Contract Date is the date when the contract came into existence.  (4) A Corrupt Act is   * the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or * abusing any entrusted power for private gain   in connection with this contract or any other contract with the *Client*. This includes any commission paid as an inducement which was not declared to the *Client* before the Contract Date.  (5) A Defect is   * a part of the *service* which is not in accordance with the Scope or * a part of the *service* which is not in accordance with the applicable law or the Accepted Plan.   (6) The Early Warning Register is a register of matters which are   * listed in the Contract Data for inclusion and * notified by the *Service Manager* or the *Contractor* as early warning matters.   It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.  (7) Equipment is items provided and used by the *Contractor* to Provide the Service and which the Scope does not require the *Contractor* to include in the Affected Property.  (8) The Fee is the amount calculated by applying the *fee percentage* to the amount of  Defined Cost.  (9) Others are people or organisations who are not the *Client,* the *Service Manager*, the  *Adjudicator*, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.  (10) The Parties are the *Client* and the *Contractor.*  (11) Plant and Materials are items intended to be included in the Affected Property.  (12) The Price List is the *price list* unless later changed in accordance with the contract. The  Price List includes a statement of the method and rules used to compile it.  (13) To Provide the Service means to do the work necessary to provide the *service* in accordance with the contract and all incidental work, services and actions which the contract requires.  (14) Scope is information which   * specifies and describes the *service* or * states any constraints on how the *Contractor* Provides the Service and is either * in the documents which the Contract Data states it is in or * in an instruction given in accordance with the contract.   (15) The Service Areas are the Affected Property and those parts of the *service areas* which are   * necessary for Providing the Service and * used only to provide services in the contract unless later changed in accordance with the contract.   (16) The Service Period is the *service period* unless later changed in accordance with the contract.  (17) A Subcontractor is a person or organisation who has a contract with the *Contractor* to provide a service which is necessary to Provide the Service, except for the   * hire of Equipment or * supply of people paid for by the *Contractor* according to the time they work.   (18) A Task is work included in the *service* which the *Service Manager* instructs the  *Contractor* to carry out and for which a Task Order programme is required.  (19) Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects which would have prevented the *Client* or Others from using the Affected Property or Others from doing their work.  (20) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.  (21) A Task Order is the *Service Manager’s* instruction to carry out a Task. |

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| **Interpretation and the law** | **12**  12.1 | In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round |
|  | 12.2 | The contract is governed by the *law of the contract* |
|  | 12.3 | No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties. |
|  | 12.4 | The contract is the entire agreement between the Parties |
| **Communications** | **13**  13.1 | Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the contract* |
|  | 13.2 | If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.  If the Scope does not specify a communication system, a communication has effect when  it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data |
|  | 13.3 | If the contract requires the *Service Manager* or the *Contractor* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*. |
|  | 13.4 | The *Service Manager* replies to a communication submitted or resubmitted by the *Contractor* for acceptance. If the reply is not acceptance, the *Service Manager* states the reasons in sufficient detail to enable the *Contractor* to correct the matter. The *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor’s* submission fully. |
|  | 13.5 | The *Service Manager* may extend the period for reply to a communication if the *Service Manager* and the *Contractor* agree to the extension before the reply is due. The *Service Manager* informs the *Contractor* of the extension which has been agreed. |
|  | 13.6 | The *Service Manager* issues certificates to the *Client* and the *Contractor*. |
|  | 13.7 | A notification or certificate which the contract requires is communicated separately from other communications |
|  | 13.8 | The *Service Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event. |
| **The *Service***  ***Manager*** | **14**  14.1 | The *Service Manager’s* acceptance of a communication from the *Contractor* or acceptance of the work does not change the *Contractor’s* responsibility to Provide the Service or liability for its plan or its design. |
|  | 14.2 | The *Service Manager*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Service Manager* in the contract includes an action by their delegate. The *Service Manager* may take an action which they have delegated |
|  | 14.3 | The *Service Manager* may give an instruction to the *Contractor* which changes the Scope, a  Task or the Affected Property |
|  | 14.4 | The *Client* may replace the *Service Manager* after notifying the *Contractor* of the name of the replacement. |
|  | 14.5 | The *Service Manager* gives an instruction to correct a mistake in the Price List which is   * a departure from the method and rules stated in the Price List and used to compile it or * due to an ambiguity or inconsistency |
| **Early warning** | **15**  15.1 | The *Contractor* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could   * increase the total of the Prices, * interfere with the timing of the *service* or * impair the effectiveness of the *service*.   The *Service Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor’s* total cost. The *Service Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required |
|  | 15.2 | The *Service Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Service Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*.  Later early warning meetings are held   * if either the *Service Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case, * at no longer interval than the interval stated in the Contract Data until the end of the Service Period.   The *Service Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.  A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken |
|  | 15.3 | At an early warning meeting, those who attend co-operate in   * making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced, * seeking solutions that will bring advantage to all those who will be affected, * deciding on the actions which will be taken and who, in accordance with the contract, will take them, * deciding which matters can be removed from the Early Warning Register and * reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them. |
|  | 15.4 | The *Service Manager* revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the *Contractor* within one week of the early warning meeting. If a decision needs a change to the Scope, the *Service Manager* instructs the change at the same time as the revised Early Warning Register is issued |
| ***Contractor’s***  **proposals** | 16  16.1 | The *Contractor* may propose to the *Service Manager* that the Scope provided by the C*lient* is changed in order to reduce the amount the *Client* pays to the *Contractor* for Providing the Service. The *Service Manager* consults with the *Client* and the *Contractor* about the change. |
|  | 16.2 | Within four weeks of the *Contractor* making the proposal the *Service Manager*   * accepts the *Contractor’s* proposal and issues an instruction changing the Scope, * informs the *Contractor* that the *Client* is considering the proposal and instructs the *Contractor* to submit a quotation for a proposed instruction to change the Scope or * informs the *Contractor* that the proposal is not accepted.   The *Service Manager* may give any reason for not accepting the proposal |
|  | 16,3 | The *Contractor* may submit a proposal for adding an area to the Service Areas to the *Service Manager* for acceptance. A reason for not accepting is that the proposed area is   * not necessary for Providing the Service or * used for services not in the contract. |
| **Requirements for instructions** | **17**  17.1 | The *Service Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The *Service Manager* states how the ambiguity or inconsistency should be resolved. |
|  | **17.2** | The *Service Manager* or the *Contractor* notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the *Service Manager* gives an instruction to change the Scope appropriately |
| **Corrupt Acts** | **18**  18.1 | The *Contractor* does not do a Corrupt Act. |
|  | **18,2** | The *Contractor* takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware. |
|  | **18.3** | The *Contractor* includes equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment |
| **Task Orders** | **19**  19.1 | The *Service Manager* may issue a Task Order to the *Contractor.* Before issuing a Task Order, the *Service Manager* instructs the *Contractor* to submit a quotation for the Task. The instruction includes   * a detailed description of the work in the Task, * the Task starting date and Task Completion Date and * the amount of delay damages for the late completion of the Task. * The delay damages in a Task Order, if any, are not more than the estimated cost to the *Client* of late completion of the Task. |
|  | **19.2** | The *Contractor* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Contractor* submits details of its assessment with the quotation. The *Service Manager* replies within two weeks of the submission. The reply is   * acceptance of the quotation and the issue of the Task Order, * an instruction to submit a revised quotation, * that the *Service Manager* will be making the assessment or * a notification that the Task will not be instructed |
|  | **19.3** | The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so |
|  | **19.4** | The *Service Manager* extends the time allowed for   * the *Contractor* to submit quotations for a Task or * the *Service Manager* to reply to a quotation   if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Contractor* of the extension which has been agreed. |
|  | **19.5** | The *Service Manager* assesses the pricing for the Task if   * the *Contractor* has not submitted a quotation and details of its assessment within the time allowed or * the *Service Manager* decides that the *Contractor* has not assessed the Task correctly in a quotation and has not instructed the *Contractor* to submit a revised quotation.   The *Service Manager* notifies the *Contractor* of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the *Contractor’s* submission of its quotation for the same Task. This period starts when the need for the *Service Manager’s* assessment becomes apparent. |
|  | **19.6** | The assessment of a Task is in the form of a Task price list. Where items of work in the Task price list are covered by rates in the Price List, the items are priced using those rates. The prices for items in the Task price list which are not taken from the Price List are assessed in the same way as a compensation event is assessed. |
|  | **19.7** | If Task Completion is later than the Task Completion Date, the *Contractor* pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.  If the Task Order Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment. |
|  | **19.8** | When a Task Order is issued   * the Task price list is inserted in the Price List and * the work involved is added to the Scope. The issue of a Task is not a compensation event |

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| **2. THE CONTRACTOR’S MAIN RESPONSIBILITIES** | | |
| **Providing the Service** | **20**  20.1 | The *Contractor* Provides the Service in accordance with the Scope |
|  | 20.2 | In Providing the Service, the *Contractor* minimises the interference caused to the Affected Property and the activities taking place in it. |
| **Design of**  **Equipment** | **21**  21.1 | The *Contractor* submits particulars of the design of an item of Equipment to the *Service Manager* for acceptance if the *Service Manager* instructs the *Contractor* to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Service in accordance with   * the Scope, * the Accepted Plan or * the applicable law |
| **People** | **22**  22.1 | The *Contractor* either provides each *key person* named to do the job stated in the Contract  Data or provides a replacement person who has been accepted by the *Service Manager*.  The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced. |
|  | **22.2** | The *Service Manager* may, having stated the reasons, instruct the *Contractor* to remove a person. The *Contractor* then arranges that, after one day, the person has no further connection with the work included in the contract |
| **Working with the**  ***Client* and Others** | **23**  23.1 | The *Contractor* co-operates with Others, including in obtaining and providing information which they need in connection with the *service*. The *Contractor* shares the Affected Property with Others as stated in the Scope |
|  | 23.2 | The *Client* and the *Contractor* provide services and other things as stated in the Scope. Any cost incurred by the *Client* as a result of the *Contractor* not providing the services and other things which it is to provide is assessed by the *Service Manager* and paid by the *Contractor.* |
| **Subcontracting** | **24**  24.1 | If the *Contractor* subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. The contract applies as if a Subcontractor’s employees and equipment were the *Contractor’s.* |
|  | **24.2** | The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed Subcontractor until the *Service Manager* has   * accepted the Subcontractor and, to the extent these *conditions of contract* require, * accepted the subcontract documents. |
|  | **24.3** | The *Contractor* submits the proposed subcontract documents, except any pricing information, for each subcontract to the *Service Manager* for acceptance unless   * the proposed subcontract is an NEC contract which has not been amended other than in accordance with the *additional conditions of contract* or * the *Service Manager* has agreed that no submission is required   A reason for not accepting the subcontract documents is that   * they will not allow the *Contractor* to Provide the Service or * they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation |
| **Other responsibilities** | **25**  25.1 | The *Contractor* obtains approval from Others where necessary. |
|  | **25.2** | The *Contractor* provides access to work being done and to Plant and Materials being stored for the contract for   * the *Service Manager* and * Others as named by the *Service Manager*. |
|  | **25.3** | The *Contractor* obeys an instruction which is in accordance with the contract and is given by the *Service Manager.* |
|  | **25.4** | The *Contractor* acts in accordance with the health and safety requirements stated in the Scope. |
| **Assignment** | **26**  26.1 | Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The *Client* does not transfer a benefit or right if the party receiving the benefit or rights does not intend to act in a spirit of mutual trust and co-operation |
| **Disclosure** | **27**  27.1 | The Parties do not disclose information obtained in connection with the *service* except when necessary to carry out their duties under the contract. |
|  | **27.2** | The *Contractor* may publicise the *service* only with the *Client’s* agreement. |

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| **3. TIME** | | |
| **Starting and the**  **Service Period** | **30**  30.1 | The *Contractor* does not start work until the *starting date* and Provides the Service throughout the Service Period. |
|  | **30.2** | The *Contractor* does not start work included in a Task until the *Service Manager* has  issued the Task Order and does the work so that Task Completion is on or before the Task  Completion Date.  A Task Order is not issued after the end of the Service Period |
|  | **30.3** | If Task Completion of any Task is after the end of the Service Period, the Service Period is extended until the latest Task Completion. During this extended period   * the *Service Manager* does not issue a Task Order, * the *Contractor* only Provides the Service related to the outstanding Tasks and * the *Contractor’s* liabilities are limited to those resulting from the outstanding Tasks |
| **The *Contractor’s***  **plan** | **31**  31.1 | If a plan is not identified in the Contract Data, the *Contractor* submits a first plan to the  *Service Manager* for acceptance within the period stated in the Contract Data. |
|  | **31.2** | The *Contractor* shows on each plan submitted for acceptance   * the *starting date* and the end of the Service Period, * for each Task   + the Task starting date,   + planned Task Completion and   + the Task Completion Date, * the order and timing of the work of the *Client* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Scope, * provisions for   + time risk allowances,   + health and safety requirements and   + the procedures set out in the contract, * the dates when, in order to Provide the Service in accordance with the plan, the   *Contractor* will need   * + access to the Affected Property as stated in the Scope or required for a Task,   + acceptances,   + Plant and Materials, equipment and other things to be provided by the Client and   + information from Others, * for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used and * other information which the Scope requires the *Contractor* to show on a plan submitted for acceptance.   A plan issued for acceptance is in the form stated in Scope. |
|  | **31.3** | Within two weeks of the *Contractor* submitting a plan for acceptance, the *Service Manager* notifies the *Contractor* of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a plan is that   * the *Contractor’s* plans which it shows are not practicable, * it does not show the information which the contract requires, * it does not represent the *Contractor’s* plans realistically or * it does not comply with the Scope.   If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Contractor’s* notification, it is treated as acceptance by the *Service Manager* of the plan |
| **Revising the**  ***Contractor’s* plan** | **32**  32.1 | The *Contractor* shows on each revised plan   * the actual progress achieved and its effect upon the timing of the remaining work and services, * how the *Contractor* plans to deal with any delays and to correct notified Defects and * any other changes which the *Contractor* proposes to make to the Accepted Plan. |
|  | **32.2** | The *Contractor* submits a revised plan to the *Service Manager* for acceptance   * within the *period for reply* after the *Service Manager* has instructed the *Contractor* to, * within the *period for reply* after the *Service Manager* has instructed a change to the   Affected Property,   * when the *Contractor* chooses to and, in any case, * at no longer interval than the interval stated in the Contract Data throughout the Service Period. |
| **Task Order programme** | **33**  33.1 | The *Contractor* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the Contract Data. |
|  | **33.2** | The *Contractor* shows on each Task Order programme submitted for acceptance   * the Task starting date and the Task Completion Date, * planned Task Completion, * the order and timing of the operations which the *Contractor* plans to do in order to complete the Task, * provisions for   + float,   + time risk allowances,   + health and safety requirements and   + the procedures set out in the contract, * the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Contractor* will need   + access to the Affected Property,   + acceptances,   + Plant and Materials, equipment and other things to be provided by the Client and   + information from Others, * for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used and * other information which the Scope requires the *Contractor* to show on a Task Order programme submitted for acceptance.   A Task Order programme issued for acceptance is in the form stated in Scope. |
|  | **33.3** | Within one week of the *Contractor* submitting a Task Order programme for acceptance, the *Service Manager* notifies the *Contractor* of the acceptance of the Task Order programme or the reasons for not accepting it. A reason for not accepting the Task Order programme is that   * the *Contractor’s* plans which it shows are not practicable, * it does not show the information which the contract requires, * it does not represent the *Contractor’s* plans realistically or * it does not comply with the Scope.   If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Contractor’s* notification, it is treated as acceptance by the *Service Manager* of the Task Order programme |
| **Revising the Task**  **Order programme** | **34**  34.1 | The *Contractor* shows on each revised Task Order programme   * the actual progress achieved on each operation and its effect upon the timing of the remaining work, * how the *Contractor* plans to deal with any delays and to correct notified Defects and * any other changes which the *Contractor* proposes to make to the Task Order programme. |
|  | **34.2** | The *Contractor* submits a revised Task Order programme to the *Service Manager* for acceptance   * within the *period for reply* after the *Service Manager* has instructed the *Contractor* to and * when the *Contractor* chooses to.   The latest Task Order programme accepted by the *Service Manager* supersedes a previously accepted Task Order programme. |
| **Access** | **35**  35.1 | The *Client* provides the right of access for the *Contractor* to the Affected Property as shown on the Accepted Plan or the date for access shown on the latest accepted Task Order programme |
| **Instructions to stop or not to start work** | **36**  36.1 | The *Service Manager* may instruct the *Contractor* to stop or not to start any work. The  *Service Manager* subsequently gives an instruction to the *Contractor* to   * re-start or start the work or * remove the work from the Scope |

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| **4. QUALITY MANAGEMENT** | | |
| **Quality management system** | **40**  40.1 | The *Contractor* operates a quality management system which complies with the requirements stated in the Scope. |
|  | 40.2 | Within the period stated in the Contract Data, the *Contractor* provides the *Service Manager* with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the *Contractor* to Provide the Service.  If any changes are made to the quality plan, the *Contractor* provides the *Service Manager* with the changed quality plan for acceptance. |
|  | 40.3 | The *Service Manager* may instruct the *Contractor* to correct a failure to comply with the quality plan. This instruction is not a compensation event. |
| **Tests and inspections** | **41**  41.1 | This clause only applies to tests and inspections required by the Scope or the applicable law. |
|  | **41.2** | The *Contractor* and the *Client* provide materials, facilities and samples for tests and inspections as stated in the Scope. |
|  | **41.3** | The *Contractor* and the *Service Manager* informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results. The *Contractor* informs the *Service Manager* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Service Manager* may watch any test done by the *Contractor*. |
|  | **41.4** | If a test or inspection shows that any work has a Defect, the *Contractor* repeats the work or otherwise corrects the Defect, and the test or inspection is repeated. |
|  | **41.5** | The *Service Manager* does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Service Manager’s* test or inspection being successful becomes due at the end of the Service Period if   * the *Service Manager* has not done the test or inspection and * the delay to the test or inspection is not the *Contractor’s* fault |
|  | **41.6** | The *Service Manager* assesses the cost incurred by the *Client* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed. |
| **Testing and inspection before delivery** | **42**  42.1 | The *Contractor* does not deliver those Plant and Materials which the Scope states are to be tested or inspected before delivery until the *Service Manager* has notified the *Contractor* that they have passed the test or inspection. |
| **Notifying and correcting Defects** | **43**  43.1 | Until the end of the Service Period the *Service Manager* and the *Contractor* notifies the other as soon as they become aware of a Defect. |
|  | 43.2 | The *Contractor* corrects a Defect whether or not the *Service Manager* has notified it. |
|  | 43.3 | The *Contractor* corrects a notified Defect within a time which minimises the adverse effect on the *Client* or Others. If the *Contractor* does not correct a Defect within the time required by the contract, the *Service Manager* assesses the cost to the *Client* of having the Defect corrected by other people and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect. |
|  | 43.4 | The *Service Manager* arranges for the *Client* to allow the *Contractor* access if it is needed for correcting a Defect |
| **Accepting Defects** | **44**  44.1 | The *Contractor* and the *Service Manager* may propose to the other that the Scope should be changed so that a Defect does not have to be corrected. |
|  | **44.2** | If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Task Completion Date or both to the *Service Manager* for acceptance. If the quotation is accepted, the *Service Manager* changes the Scope, the Task, the Prices and the Task Completion Date accordingly and accepts the revised plan or Task Order programme |

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| **5. PAYMENT** | | |
| **Assessing the amount due** | **50**  **50.1** | The *Service Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Service Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until   * four weeks after the end of the Service Period or * the *Service Manager* issues a termination certificate |
|  | 50.2 | The *Contractor* submits an application for payment to the *Service Manager* before each assessment date setting out the amount the *Contractor* considers is due at the assessment date. The *Contractor’s* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.  In assessing the amount due, the *Service Manager* considers an application for payment submitted by the *Contractor* before the assessment date |
|  | 50.3 | If the *Contractor* submits an application for payment before the assessment date, the amount due at the assessment date is   * the Price for Service Provided to Date, * plus other amounts to be paid to the *Contractor*, * less amounts to be paid by or retained from the *Contractor*. |
|  | 50.4 | If the *Contractor* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of   * the amount the *Service Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application before the assessment date, and * the amount due at the previous assessment date. |
|  | 50.5 | If no plan is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Contractor* has submitted a first plan to the *Service Manager* for acceptance showing the information which the contract requires. |
|  | 50.6 | The *Service Manager* corrects any incorrectly assessed amount due in a later payment certificate. |
| **Payment** | 51  51.1 | The *Service Manager* certifies a payment within one week of each assessment date. The *Service Manager’s* certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager’s* certificate. Payments are in the *currency of the contract* unless otherwise stated in the contract. |
|  | 51.2 | Each certified payment is made by the later of   * one week after the paying Party receives an invoice from the other Party and * three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.   If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. |
|  | 51.3 | If an amount due is corrected in a later certificate   * in relation to a mistake or a compensation event, * because a payment was delayed by an unnecessary delay to a test or inspection done by the *Service Manager* or * following a decision of the *Adjudicator* or the *tribunal*,   interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount. |
|  | 51.4 | Interest is calculated on a daily basis at the *interest rate* and is compounded annually. |
|  | 51.5 | Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract |
| **Defined Cost** | **52**  52.1 | All the *Contractor’s* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. |
| **Final assessment** | **53**  53.1 | The *Service Manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than   * thirteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, or * thirteen weeks after the *Service Manager* issues a termination certificate.   The *Service Manager* gives the *Contractor* details of how the amount due has been assessed. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager’s* certificate. The final payment is made by the later of   * one week after the paying Party receives an invoice from the other Party and * three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. |
|  | **53.2** | If the *Service Manager* does not make this assessment within the time allowed, the *Contractor* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final payment is made by the later of   * one week after the paying Party receives an invoice from the other Party and * three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. |
|  | **53.3** | An assessment of the final amount due issued within the time stated in the contact is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.  If the contract includes Option W1, a Party   * refers a dispute about the assessment of the final amount due to the *Senior Representatives* within four weeks of the assessment being issued, * refers any issues not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and * refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.   If the contract includes Option W2, a Party   * refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued, * refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and * refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made. |
|  | **53.4** | The assessment of the final amount due is changed to include   * any agreement the Parties reach and * a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.   A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract. |

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| **6. COMPENSATION EVENT** | | |
| **Compensation events** | **60**  **60.1** | The following events are compensation events.  (1) The *Service Manager* gives an instruction changing the Scope, a Task or the Affected Property except   * a change made in order to accept a Defect or * a change to the Scope provided by the *Contractor* for its plan which is made   + at the *Contractor’s* request or   + in order to comply with the Scope provided by the *Client*.   (2) The *Client* does not provide the right of access to the Affected Property in accordance with the Accepted Plan or the date for access shown on the latest accepted Task Order programme.  (3) The *Client* does not provide something which it is to provide by the date shown in   * the Accepted Plan or * the latest accepted Task Order programme.   (4) The *Contractor* receives a Task Order after the starting date stated in the Task Order.  (5) The *Service Manager* gives an instruction to stop or not to start any work.  (6) The *Client* or Others do not work in accordance with   * the Accepted Plan, * the latest accepted Task Order programme or * the conditions stated in the Scope.   (7) The *Service Manager* does not reply to a communication from the *Contractor* within the period required by the contract.  (8) The *Service Manager* changes a decision which the *Service Manager* had previously communicated to the *Contractor.*  (9) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a Defect) for a reason not stated in the contract.  (10) A test or inspection done by the *Service Manager* causes unnecessary delay.  (11) A change to the Affected Property   * by the *Client* or Others or * as a result of a Task Order.   (12) An event which is a *Client’s* liability stated in these *conditions of contract*.  (13) The *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope.  (14) The *Service Manager* notifies the *Contractor* of a correction to an assumption which the *Service Manager* stated about a compensation event.  (15) A breach of contract by the *Client* which is not one of the other compensation events in the contract.  (16) The *Service Manager* gives an instruction to correct a mistake in the Price List.  (17) The *Service Manager* notifies the *Contractor* that a quotation for a proposed instruction is not accepted or that a Task will not be instructed.  (18) Additional compensation events stated in Contract Data part one. |
| **Notifying compensation events** | **61**  61.1 | For a compensation event which arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the *Service Manager* notifies the *Contractor* of the compensation event at the time of that communication. |
|  | 61.2 | The *Service Manager* includes in the notification of a compensation event an instruction to the *Contractor* to submit quotations unless   * the event arises from a fault of the *Contractor* or * the event has no effect upon Defined Cost or a Task Completion. |
|  | 61.3 | The *Contractor* notifies the *Service Manager* of an event which has happened or which is expected to happen as a compensation event if   * the *Contractor* believes that the event is a compensation event and * the *Service Manager* has not notified the event to the *Contractor*.   If the *Contractor* does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices or a Task Completion Date are not changed unless the event arises from the *Service Manager* giving an instruction or notification or changing an earlier decision. |
|  | 61.4 | The *Service Manager* replies to the *Contractor’s* notification of a compensation event within   * one week after the *Contractor’s* notification or * a longer period to which the *Contractor* has agreed.   If the event   * arises from a fault of the *Contractor*, * has not happened and is not expected to happen, * has not been notified within the timescales set out in these *conditions of contract*, * has no effect upon Defined Cost or a Task Completion or * is not one of the compensation events stated in the contract   the *Service Manager* notifies the *Contractor* that the Prices and Task Completion Date are not to be changed and states the reasons in the notification. Otherwise, the *Service Manager* notifies the *Contractor* that the event is a compensation event and includes in the notification an instruction to the *Contractor* to submit quotations.  If the *Service Manager* fails to reply to the *Contractor’s* notification of a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If that failure continues for a further two weeks after the *Contractor’s* notification it is treated as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations. |
|  | 61.5 | If the *Service Manager* decides that the *Contractor* did not give an early warning of the event which an experienced *Contractor* could have given, the *Service Manager* states this in the instruction to the *Contractor* to submit quotations. |
|  | 61.6 | If the effects of a compensation event are too uncertain to be forecast reasonably, the *Service Manager* states assumptions about the compensation event in the instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction. |
|  | 61.7 | A compensation event is not notified by the *Service Manager* or the *Contractor* later than eight weeks after the end of the Service Period. |
| **Quotations for compensation events** | **62**  62.1 | After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable. |
|  | **62.2** | Quotations for a compensation event comprise proposed changes to the Prices and any delay to a Task Completion Date assessed by the *Contractor*. The *Contractor* submits details of the assessment with each quotation. If the plan or a programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Plan or the Task Order programme in the quotation |
|  | **62.3** | The *Contractor* submits quotations within three weeks of being instructed to do so by the *Service Manager.* The *Service Manager* replies within two weeks of the submission. The reply is   * a notification of acceptance of the quotation, * an instruction to submit a revised quotation or * that the *Service Manager* will be making the assessment. |
|  | **62.4** | The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so |
|  | **62.5** | The *Service Manager* extends the time allowed for   * the *Contractor* to submit quotations for a compensation event or * the *Service Manager* to reply to a quotation   if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Contractor* of the extension which has been agreed |
|  | **62.6** | If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor’s* notification it is treated as acceptance by the *Service Manager* of the quotation |
| **Assessing compensation events** | **63**  63.1 | For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List. |
|  | **63.2** | For other compensation events, the change to the Prices is assessed as the effect of the compensation event upon   * the actual Defined Cost of the work done by the dividing date, * the forecast Defined Cost of the work not done by the dividing date and * the resulting Fee.   For a compensation event that arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the dividing date is the date of that communication.  For other compensation events, the dividing date is the date of the notification of the compensation event.  . |
|  | **63.3** | The *Service Manager* and the *Contractor* may agree rates or lump sums to assess the change to the Prices |
|  | **63.4** | If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract.* |
|  | **63.5** | If the effect of a compensation event is to reduce the total Defined Cost and the event is   * a change to the Scope other than a change to the Scope provided by the *Client,* which the *Contractor* proposed and the *Service Manager* accepted, * a change to a Task, * a change in the Affected Property, * an instruction to correct a mistake in the Price List or * a correction to an assumption stated by the *Service Manager* for assessing an earlier compensation event   the Prices are reduced |
|  | **63.6** | A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the Task Order programme current at the dividing date.  When assessing delay only those operations which the *Contractor* has not completed and which are affected by the compensation event are changed. |
|  | **63.7** | The rights of the *Client* and the *Contractor* to changes to the Prices and the Task Completion Dates are their only rights in respect of a compensation event. |
|  | **63.8** | If the *Service Manager* has stated in the instruction to submit quotations that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the *Contractor* had given the early warning |
|  | **63.9** | If the assessment of the effect of a compensation event is made using Defined Cost, it includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events |
|  | **63.10** | If the assessment of the effect of a compensation event is made using Defined Cost, it is based upon the assumptions that the *Contractor* reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred. |
|  | **63.11** | A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Task Completion Dates were for the interpretation most favourable to the Party which did not provide the Scope. |
| **The *Service Manager’s* assessments** | **64**  64.1 | The *Service Manager* assesses a compensation event   * if the *Contractor* has not submitted the quotation and details of its assessment within the time allowed, * if the *Service Manager* decides that the *Contractor* has not assessed the compensation event correctly in the quotation and has not instructed the *Contractor* to submit a revised quotation, * if, when the *Contractor* submits quotations for the compensation event, it has not submitted a plan or alterations to a plan which the contract requires it to submit, * if, when the *Contractor* submits quotations for the compensation event, the *Service Manager* has not accepted the *Contractor’s* latest plan for one of the reasons stated in the contract or * if a Task is affected by the event and the *Contractor* has not submitted alterations to a Task Order programme which the contract requires it to submit or the *Service Manager* has not accepted the programme for one of the reasons stated in the contract. |
|  | **64.2** | The *Service Manager* assesses the plan for the remaining work and uses it in the assessment of a compensation event if   * there is no Accepted Plan, * the *Contractor* has not submitted a plan or alterations to a plan for acceptance, as required by the contract or * the *Service Manager* has not accepted the *Contractor’s* latest plan for one of the reasons stated in the contract.   If a compensation event affects a Task, the *Service Manager* assesses the programme for the remaining work on the Task and uses it in the assessment of the compensation event if   * there is no Task Order programme, * the *Contractor* has not submitted a Task Order programme or alterations to a Task Order programme for acceptance, as required by the contract or * the *Service Manager* has not accepted the *Contractor’s* latest Task Order programme for one of the reasons stated in the contract. |
|  | **64.3** | The *Service Manager* notifies the *Contractor* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Contractor’s* submission of its quotation for the same compensation event. This period starts when the need for the *Service Manager’s* assessment becomes apparent. |
|  | **64.4** | If the *Service Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor’s* notification it is treated as acceptance by the *Service Manager* of the quotation. |
| **Proposed instructions** | **65**  65.1 | The *Service Manager* may instruct the *Contractor* to submit a quotation for a proposed instruction. The *Service Manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect. |
|  | **65.2** | The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Service Manager*. The quotation is assessed as a compensation event. The *Service Manager* replies to the *Contractor’s* quotation by the date when the proposed instruction may be given. The reply is   * an instruction to submit a revised quotation including the reasons for doing so, * the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or * a notification that the quotation is not accepted.   If the *Service Manager* does not reply to the quotation within the time allowed, the quotation is not accepted. |
|  | **65.3** | If the quotation is not accepted, the *Service Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Contractor* to submit a quotation. |
| **Implementing compensation events** | **66**  66.1 | A compensation event is implemented when   * the *Service Manager* notifies acceptance of the *Contractor’s* quotation, * the *Service Manager* notifies the *Contractor* of an assessment made by the *Service Manager* or * a *Contractor’s* quotation is treated as having been accepted by the *Service Manager*. |
|  | **66.2** | When a compensation event is implemented the Prices and the Task Completion Date are changed accordingly. |
|  | **66.3** | The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract.* |
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| **7. USE OF EQUIPMENT, PLANT AND MATERIALS** | | |
| **The *Client’s* title to**  **Plant and Materials** | **70**  **70.1** | Whatever title the *Contractor* has to Plant and Materials passes to the *Client* if they have been brought within the Service Areas. The title to Plant and Materials passes back to the *Contractor* if they are removed from the Service Areas with the *Service Manager’s* permission. |
| **The Parties’ use of equipment, Plant and Materials** | **71.1** | The *Contractor* has the right to use equipment, Plant and Materials provided by the *Client*  only to Provide the Service. |
|  | **71.2** | At the end of the Service Period the *Contractor*   * returns to the *Client*, equipment and surplus Plant and Materials provided by the *Client*, * provides items of Equipment for the *Client’s* use as stated in the Scope and * provides information and other things as stated in the Scope |
| **The *Contractor’s***  **use of material** | **72**  72.1 | The *Contractor* has the right to use material provided by the *Client* only to Provide the  Service. The *Contractor* may make this right available to a Subcontractor. |

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| **8. LIABILITIES AND INSURANCE** | | |
| ***Client’s* liabilities** | **80**  **80.1** | The following are *Client’s* liabilities.   * Claims and proceedings from Others and compensation and costs payable to Others which are due to   + use or occupation of the Affected Property for the purpose of the *service* which is the unavoidable result of the *service*   + negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Contractor*. * A fault of the *Client* or any person employed by or contracted to it, except the *Contractor.* * Loss of or damage to equipment and Plant and Materials supplied to the *Contractor* by the *Client*, or by Others on the *Client’s* behalf, until the *Contractor* has received and accepted them. * Loss of or damage to Plant and Materials due to   + war, civil war, rebellion, revolution, insurrection, military or usurped power,   + strikes, riots and civil commotion not confined to the *Contractor’s* employees or   + radioactive contamination. * Loss of or damage to any Equipment, Plant and Materials retained by the *Client* after a termination, except loss or damage due to the activities of the *Contractor* in the Affected Property after the termination. * Loss of or damage to Affected Property and any other property owned or occupied by the *Client,* unless the loss or damage arises from or in connection with the *Contractor* Providing the Service. * Loss of or damage to any Plant and Materials after they have been included in the Affected Propert * Additional *Client’s* liabilities stated in the Contract Data |
| ***Contractor’s***  **liabilities** | **81**  **81.1** | The following are *Contractor’s* liabilities unless they are stated as being *Client’s* liabilities.   * Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Contractor* Providing the Service. * Loss of or damage to any Plant and Materials before they are included in the Affected Property and Equipment. * Loss of or damage to the Affected Property and other property owned or occupied by the *Client,* which arises from or in connection with the *Contractor* Providing the Service. * Death or bodily injury to the employees of the *Contractor*. |
| **Recovery of costs** | **82**  82.1 | Any cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable is paid by the *Contractor*. |
|  | **82.2** | Any cost which the *Contractor* has paid or will pay to Others as a result of an event for which the *Client* is liable is paid by the *Client* |
|  | **82.3** | The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party’s responsibilities under the contract. |
| **Insurance cover** | **83**  83.1 | The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data. |
|  | **83.2** | The *Contractor* provides the insurances stated in the Insurance Table except any insurances which the *Client* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data. |
|  | **83.3** | The insurances in the Insurance Table are in the joint names of the Parties except the third insurance stated. The insurances provide cover for events which are the *Contractor’s* liability from the *starting date* until the end of the Service Period or a termination certificate has been issued. |
|  |  | |  |  | | --- | --- | | **INSURANCE TABLE** | | | **INSURANCE AGAINST MINIMUM AMOUNT OF COVER** | | | Loss of or damage to Plant and Materials and  Equipment | The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the *Client* | | 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 | The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately | | 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 | The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event | |
| **Insurance policies** | **84**  84.1 | Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Contractor* submits to the *Service Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor’s* insurer or insurance broker. The *Service Manager* accepts the certificates if the insurance complies with the contract and if the insurer’s commercial position is strong enough to carry the insured liabilities. |
|  | **84.2** | Insurance policies include a waiver by the insurers of their subrogation rights against the  Parties and the directors and other employees of every insured except where there is fraud. |
|  | **84.3** | The Parties comply with the terms and conditions of the insurance policies to which they are a party. |
| **If the *Contractor***  **does not insure** | **85**  85.1 | The *Client* may insure an event or liability which the contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Client* is paid by the *Contractor*. |
| **Insurance by the**  ***Client*** | **86**  86.1 | The *Service Manager* submits certificates for insurance provided by the *Client* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the certificates if the insurance complies with the contract and if the insurer’s commercial position is strong enough to carry the insured liabilities. |
|  | **86.2** | The *Contractor’s* acceptance of an insurance certificate provided by the *Client* does not change the responsibility of the *Client* to provide the insurances stated in the Contract Data. |
|  | **86.3** | The *Contractor* may insure an event or liability which the contract requires the *Client* to insure if the *Client* does not submit a required certificate. The cost of this insurance to the *Contractor* is paid by the *Client* |

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| **9. TERMINATION** | | |
| **Termination** | **90**  **90.1** | If either Party wishes to terminate the *Contractor’s* obligation to Provide the Service it notifies the *Service Manager* and the other Party giving details of the reason for terminating. If the reason complies with these *conditions of contract*, the *Service Manager* issues a termination certificate promptly or, if a *notice period* is required by these *conditions of contract*, at the end of the *notice period* |
|  | **90.2** | A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table. |
|  |  | |  |  |  |  | | --- | --- | --- | --- | | **TERMINATION TABLE** | | | | | **TERMINATING PARTY REASON PROCEDURE AMOUNT DUE** | | | | | The *Client* | R1–R15, R18 or R21 P1, P2 and P3  R17 or R20 P1 and P4 | | A1 and A3  A1 and A2 | | The *Contractor* | R1–R10, R16 or R19  R17 or R20 | P1, and P4  P1 and P4 | A1, A2 and A4  A1 and A2 | |
|  | **90.3** | The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.  If the *Client* terminates for one of reasons R1 to R15, R18 or R21 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise. |
|  | **90.4** | After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Service. |
| **Reasons for termination** | **91**  91.1 | Either Party may terminate if the other Party has done one of the following or its equivalent.   * If the other Party is an individual and has   + presented an application for bankruptcy (R1),   + had a bankruptcy order made against it (R2),   + had a receiver appointed over its assets (R3) or   + made an arrangement with its creditors (R4). * If the other Party is a company or partnership and has   + had a winding-up order made against it (R5),   + had a provisional liquidator appointed to it (R6),   + passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),   + had an administration order made against it or had an administrator appointed over it (R8),   + had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or   + made an arrangement with its creditors (R10 |
|  | **91.2** | The *Client* may terminate if the *Service Manager* has notified that the *Contractor* has not put one of the following defaults right within four weeks of the date when the *Service Manager* notified the *Contractor* of the default.   * Substantially failed to comply with its obligations (R11). * Not provided a bond or guarantee which the contract requires (R12). * Appointed a Subcontractor for substantial work before the *Service Manager* has accepted the Subcontractor (R13). |
|  | **91.3** | The *Client* may terminate if the *Service Manager* has notified that the *Contractor* has not stopped one of the following defaults within four weeks of the date when the *Service Manager* notified the *Contractor* of the default.   * Substantially hindered the *Client* or Others (R14). * Substantially broken a health or safety regulation (R15). |
|  | **91.4** | The *Contractor* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Contractor* should have been paid (R16). |
|  | **91.5** | Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17). |
|  | **91.6** | If the *Service Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing the work from the Scope has not been given within thirteen weeks,   * the *Client* may terminate if the instruction was due to a default by the *Contractor* (R18), * the *Contractor* may terminate if the instruction was due to a default by the *Client* (R19) and * either Party may terminate if the instruction was due to any other reason (R20). |
|  | **91.7** | The *Client* may terminate if the *Contractor* does a Corrupt Act, unless it was done by a  Subcontractor or supplier and the *Contractor*   * was not and should not have been aware of the Corrupt Act or * informed the *Service Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it (R21). |
| **Procedures on termination** | **92**  92.1 | On termination, the *Client* may complete the *service* and may use any Plant and Materials provided by the *Contractor*. The *Contractor* provides to the *Client* information and other things which are in its possession at the time of termination which the Scope states are to be provided at the end of the Service Period (P1). |
|  | **92.2** | The procedure on termination also includes one or more of the following as set out in the  Termination Table.  P2 The *Client* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of any subcontract or other contract related to performance of the contract to the *Client*.  P3 The *Client* may use any Equipment to which the *Contractor* has title to complete the *service*. The *Contractor* promptly removes the Equipment when the *Service Manager* informs the *Contractor* that the *Client* no longer requires it to complete the *service*.  P4 The *Contractor* leaves the Service Areas and removes the Equipment |
| **Payment on termination** | **93**  **93.1** | The amount due on termination includes (A1)   * an amount due assessed as for normal payments, * the Defined Cost for Plant and Materials which have been delivered and retained by the *Client,* * other Defined Cost reasonably incurred in expectation of completing the whole of the *service* and * any amounts retained by the *Client*. |
|  |  | The amount due on termination also includes one or more of the following as set out in the Termination Table.  A2 The forecast Defined Cost of removing the Equipment.  A3 A deduction of the forecast of the additional cost to the *Client* of completing the whole of the *service*.  A4 The *fee percentage* applied to   * for Options A and C, any excess of the total of the Prices at the Contract Date over the Price for Service Provided to Date or * for Option E, any excess of the first forecast of the Defined Cost for the *service* over the   Price for Service Provided to Date less the Fee. |
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**INATION**

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Main Option Clauses

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| **OPTION A: PRICED CONTRACT WITH PRICE LIST** | | |
| **Identified and defined terms** | **11**  11.2 | *(22) Defined Cost is the cost of the components in the Short Schedule of Cost*  *Components*.  (25) The Price for Service Provided to Date is the total of   * the Price for each lump sum item in the Price List which the *Contractor* has completed and * where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.   Completed work is work without notified Defects the correction of which will delay the work of the *Contractor*, the *Client* or Others.  (27) The People Rates are the *people rates* unless later changed in accordance with the contract.  (28) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |
| **The *Contractor’s***  **plan** | **31**  31.4 | The *Contractor* provides information which shows how each item description on the Price List relates to the operations on the plan and each Task Order programme submitted for acceptance. |
| **The Price List** | **55**  55.1 | Information in the Price List is not Scope. |
|  | 55.2 | If the *Contractor* changes a planned method of working at its discretion so that the item descriptions on the Price List do not relate to the operations on the Accepted Plan the *Contractor* submits a revision of the Price List to the *Service Manager* for acceptance. |
|  | 55.3 | A reason for not accepting a revision of the Price List is that   * it does not relate to the operations on the Accepted Plan or a Task Order programme, * any changed Prices are not reasonably distributed between the items in the Price List or * the total of the Prices is changed. |
| **Compensation events** | **60**  60.2 | A difference between the final total quantity and the quantity stated for an item in the Price List is a compensation event if   * the difference does not result from a change to the Scope, * the difference causes the Defined Cost per unit of quantity to change and * the rate in the Price List for the item multiplied by the final total quantity which the *Contractor* has completed is more than 0.5% of the total of the Price at the Contract Date.   If the Defined Cost per unit of quantity is reduced, the Prices are reduced |

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| **OPTION C: TARGET CONTRACT WITH PRICE LIST** | | |
| **Identified and defined terms** | **11**  11.2 | (23) Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.  (24) Disallowed Cost is cost which   * is not justified by the *Contractor’s* accounts and records, * should not have been paid to a Subcontractor or supplier in accordance with its contract, * was incurred only because the *Contractor* did not   + follow an acceptance or procurement procedure stated in the Scope*,*   + give an early warning which the contract required it to give or   + give notification to the *Service Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Contractor and a Subcontractor or supplier   and the cost of   * Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Scope, a Task or the Affected Property, * correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Service stated in the Scope, * resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away from the Service Areas when the *Service Manager* requested and * preparation for and conduct of an adjudication or proceedings of the *tribunal* between the Parties*.*   (26) The Price for Service Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.  (28) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |
| **Providing the**  **Service** | **20**  20.3 | The *Contractor* advises the *Service Manager* on the practical implications of the Accepted  Plan and on subcontracting arrangements. |
|  | **20.4** | The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until the end of the Service Period*.* An explanation of the changes made since the previous forecast is submitted with each forecast. |
| **Subcontracting** | 24  24.4 | The *Contractor* submits the pricing information in the proposed subcontract documents for each subcontract to the *Service Manager* unless the *Service Manager* has agreed that no submission is required. |
| **Tests and inspections** | **41**  41.7 | When the *Service Manager* assesses the cost incurred by the *Client* in repeating a test or inspection after a Defect is found, the *Service Manager* does not include the *Contractor’s* cost of carrying out the repeat test or inspection |
| **Assessing the amount due** | **50**  50.7 | Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of the contract* are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the *currency of the contract* in order to calculate the Fee and any *Contractor’s* share using the *exchange rates*. |
|  | **50.9** | The *Contractor* notifies the *Service Manager* when a part of Defined Cost has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Service Manager* reviews the records made available, and no later than thirteen weeks after the *Contractor’s* notification   * accepts that part of Defined Cost as correct, * notifies the *Contractor* that further records are needed or * notifies the *Contractor* of errors in its assessment.   The *Contractor* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Service Manager’s* notification. The *Service Manager* reviews the records provided, and within four weeks   * accepts the cost as correct or * notifies the *Contractor* of the correct assessment of that part of Defined Cost.   If the *Service Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Contractor’s* assessment is treated as correct. |
| **Defined Cost** | **52**  52.2 | The *Contractor* keeps these records   * accounts of payments of Defined Cost, * proof that the payments have been made, * communications about and assessments of compensation events for Subcontractors and * other records as stated in the Scope. |
|  | **52.3** | The *Contractor* allows the *Service Manager* to inspect at any time within working hours the accounts and records which it is required to keep. |
| **The *Contractor’s***  **share** | **54**  54.1 | The *Service Manager* assesses the *Contractor’s* share of the difference between the total of the Prices and the Price for Service Provided to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Service Provided to Date divided by the total of the Prices, expressed as a percentage. The *Contractor’s* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor’s share percentage.* |
|  | **54.2** | If the Price for Service Provided to Date is less than the total of the Prices, the *Contractor* is paid its share of the saving. If the Price for Service Provided to Date is greater than the total of the Prices, the *Contractor* pays its share of the excess. |
|  | **54.3** | At the dates stated in the Contract Data and when the final amount due is assessed, the *Service Manager* assesses the *Contractor’s* share. This share is included in the next amount due following each assessment. The *Service Manager* uses in the assessment the Price for Service Provided to Date and the total of the Prices for the work done, current at the date of the assessment. |
| **The Price List** | **55**  55.1 | Information in the Price List is not Scope. |
| **Compensation event** | **60**  60.2 | A difference between the final total quantity and the quantity stated for an item in the Price List is a compensation event if   * the difference does not result from a change to the Scope, * the difference causes the Defined Cost per unit of quantity to change and * the rate in the Price List for the item multiplied by the final total quantity which the *Contractor* has completed is more than 0.5% of the total of the Prices at the Contract Date.   If the Defined Cost per unit of quantity is reduced, the Prices are reduced. |
| **Assessing compensation events** | **63**  63.13 | If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the *Client,* which the *Contractor* proposed and the *Service Manager* accepted, the Prices are not reduced. |
|  | **63.14** | Assessments for changed Prices for compensation events are in the form of changes to the Price List |
| **Payment on termination** | **93**  93.3 | If there is a termination, the *Service Manager* assesses the *Contractor’s* share after certifying termination. The assessment uses as the Price for Service Provided to Date the total of the Defined Cost which the *Contractor* has paid and which it is committed to pay for work done before termination and uses as the total of the Prices   * the quantity of the work which the *Contractor* has completed for each item on the Price List multiplied by the rate and * a proportion of each lump sum which is the proportion of the work covered by the item which the *Contractor* has completed. |
|  | **93.4** | The *Service Manager’s* assessment of the *Contractor’s* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess. |

Resolving and Avoiding Disputes

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| **OPTION W2** | | |
|  |  | Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies |
| **Resolving disputes** | **W2**  W2.1 | ((1) If the Parties agree, a dispute arising under or in connection with the contract is referred to the *Senior Representatives*. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*.  (2) The Party referring a dispute notifies the *Senior Representatives*, the other Party and the *Service Manager* of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.  (3) The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Service Manager* and the *Contractor* put into effect the issues agreed.  (4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal.* |
| **The *Adjudicator*** | **W2.2** | (1) A dispute arising under or in connection with the contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time whether or not the dispute has been referred to the *Senior Representatives.*  (2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.  (3) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*.  (4) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.  (5) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act   * the Parties may choose an adjudicator jointly or * a Party may ask the *Adjudicator nominating body* to choose an adjudicator.   The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*. |
|  |  | (6) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act.  The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*. |
|  |  | (7) A Party does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been decided by the *Adjudicator*. |
|  |  | (8) The *Adjudicator,* and the *Adjudicator’s* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith. |
| **The adjudication** | W2.3 | Before a Party refers a dispute to the *Adjudicator*, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* informs the Parties that the *Adjudicator*   * is able to decide the dispute in accordance with the contract or * is unable to decide the dispute and has resigned.   If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.  (2) Within seven days of a Party giving a notice of adjudication it   * refers the dispute to the *Adjudicator*, * provides the *Adjudicator* with the information on which it relies, including any supporting documents and * provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.   Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree |
|  |  | (3) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the *Contractor* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor |
|  |  | (4) The *Adjudicator* may   * review and revise any action or inaction of the *Service Manager* related to the dispute and alter a matter which has been treated as accepted or correct, * take the initiative in ascertaining the facts and the law related to the dispute, * instruct a Party to provide further information related to the dispute within a stated time and * instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time |
|  |  | (5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received. |
|  |  | (6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time. |
|  |  | (7) If the *Adjudicator’s* decision includes assessment of additional cost or delay caused to the *Contractor,* the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator’s* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision |
|  |  | (8) The *Adjudicator* decides the dispute and informs the Parties and the *Service Manager* of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator’s* fees and expenses between the Parties |
|  |  | 9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed. |
|  |  | 10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned. |
|  |  | (11) The *Adjudicator’s* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator’s* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*. |
|  |  | (12) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission. |
| **The *tribunal*** | W2.4 | (1) A Party does not refer any dispute under or in connection with the contract to the *tribunal*  unless it has first been decided by the *Adjudicator* in accordance with the contract. |
|  |  | (2) If, after the *Adjudicator* makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputed and state that it intends to refer the disputed matter to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of being informed of the *Adjudicator’s* decision. |
|  |  | (3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Service Manager* related to the dispute. A Party is not limited in *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*. |
|  |  | (4) If the *tribunal* is arbitration, the *arbitration procedure,* the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data. |
|  |  | (5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings. |

Secondary Option Clauses

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| **OPTION X2: CHANGES IN THE LAW** | | |
| **Changes in the law** | **X2**  X2.1 | A change in the law of the country in which the Affected Property is located is a compensation event if it occurs after the Contract Date. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced |

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| **OPTION X11: TERMINATION BY THE *CLIENT* (NOT USED WITH OPTION X19)** | | |
| **Termination by the *Client*** | **X11**  X11.1 | The *Client* may terminate the *Contractor’s* obligation to Provide the Service for a reason not identified in the Termination Table by notifying the *Service Manager* and the *Contractor.* |
| **Collaboration** | **X10.2** | If the *Client* terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and P4 and the amounts due on termination are A1, A2 and A4. |

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| **OPTION X17: LOW SERVICE DAMAGES** | | |
| **Low service damages** | **X17**  X17.1 | If a part of the *service* does not meet the service level stated in the *service level table*, the  *Contractor* pays the amount of low service damages stated in the *service level table.*. |

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| **OPTION X18: LIMITATION OF LIABILITY** | | |
| **Limitation of liability** | **X18**  X18.1 | Each of the limits to the *Contractor’s* liability in this clause apply if a limit is stated in the  Contract Data. |
|  | **X18.2** | The *Contractor’s* liability to the *Client* for the *Client’s* indirect or consequential loss is limited to the amount stated in the Contract Data. |
|  | **X18.3** | For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client’s* property is limited to the amount stated in the Contract Data. |
|  | **X18.4** | The *Contractor’s* liability to the *Client* for Defects due to its design of an item of Equipment is limited to the amount stated in the Contract Data. |
|  | **X18.5** | The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract.*  The excluded matters are amounts payable by the *Contractor* as stated in the contract for   * loss of or damage to the *Client’s* property, * low service damages if Option X17 applies, * delay damages in connection with Task Orders and * *Contractor’s* share if Option C applies |
|  | **X18.6** | The *Contractor* is not liable to the *Client* for a matter unless it is notified to the *Contractor* before the *end of liability date.* |

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| **OPTION X21: WHOLE LIFE COST** | | |
| **Whole life cost** | **X21**  X21.1 | The *Contractor* may propose to the *Service Manager* that the Scope is changed in order to reduce the cost of operating and maintaining the Affected Property, other than a reduction to the amount the *Client* pays to the *Contractor* for Providing the Service. |
|  | **X21.2** | If the *Service Manager* is prepared to consider the change, the *Contractor* submits a quotation which comprises   * a detailed description, * the forecast cost reduction to the *Client* of the asset over its whole life, * an analysis of the resulting risks to the *Client*, * the proposed changes to the Prices and * a revised plan showing any changes to the timing of the *service.* |
|  | **X21.3** | The *Service Manager* consults with the *Contractor* about a quotation. The *Service Manager* replies within the *period for reply*. The reply is acceptance of the quotation or the reason for not accepting it. The *Service Manager* may give any reason for not accepting the quotation. |
|  | **X21.4** | The *Service Manager* does not change the Scope as proposed by the *Contractor* unless the  *Contractor’s* quotation is accepted. |
|  | **X21.5** | When a quotation to reduce the costs of operating and maintaining an asset is accepted the *Service Manager* changes the Scope and the Prices accordingly and accepts the revised plan. The change to the Scope is not a compensation event. |

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| **OPTION X23: EXTENDING THE SERVICE PERIOD** | | |
| **Extending the**  **Service Period** | **X23**  X23.1 | The *Client* may, with the agreement of the *Contractor*, extend the Service Period by a *period for extension* up to the *maximum service period*. The *Client* notifies the *Contractor* and the *Service Manager* of each agreed period for extension before its *notice date*. Each *period for extension* is agreed and applied separately and in the order set out in the Contract Data. |
|  | **X23.2** | If there are *criteria for extension*, the Service Period is not extended unless those *criteria for extension* are met on or before the *notice date* for the relevant *period for extension.* |

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| **OPTION X24: THE *ACCOUNTING PERIODS*** | | |
| **Accounting periods** | **X24**  X24.1 | Within thirteen weeks after the end of each *accounting period* the *Service Manager* makes an assessment of the final amount due for the *service* provided during the *accounting period* and notifies the *Contractor* of that assessment and provides details of how the assessment has been made. |
|  | **X24.2** | The *Service Manager’s* assessments at the end of each *accounting period* are conclusive evidence of the final amount due for the *service* provided during the *accounting period* unless a Party take the following actions.  If the contract includes Option W1, a Party   * refers a dispute about the assessment of the final amount due to the *Senior*   *Representatives* within four weeks of the assessment being issued,   * refers any issues not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and * refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.   If the contract includes Option W2, a Party   * refers a dispute about the assessment of the final amount due to the Senior   Representatives or to the Adjudicator within four weeks of the assessment being issued,   * refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and * refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made |

Option Y

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| **OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTIONAND REGENERATION ACT 1996** | | |
| **The Housing Grants, Construction and Regeneration ACT 1996** | **Y(UK)2** |  |
| **Definitions** | **Y2.1** | In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. |
| **Dates for payment** | **Y2.2** | The date on which a payment becomes due is seven days after the assessment date. The date on which a final payment becomes due is   * if the *Service Manager* makes an assessment after the end of an *accounting period*, fourteen weeks after the end of the *accounting period* or, if a different period is stated in the Contract Data, within the period stated, * if the *Service Manager* makes an assessment after the end of the Service Period, fourteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, * if the *Service Manager* does not make an assessment after the end of the Service Period, one week after the *Contractor* issues its assessment or * if the *Service Manager* has issued a termination certificate, fourteen weeks after the issue of the certificate.   The final date for payment is the later of   * fourteen days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data and * seven days after the receipt by the Party making payment of an invoice, issued in accordance with these *conditions of contract*.   The *Service Manager’s* certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the *Service Manager* does not make an assessment after the end of the Service Period, the *Contractor’s* assessment is the notice of payment. |
| **Notice of intention to pay less** | **Y2.3** | If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract. |
|  | **Y2.4** | If the *Client* terminates for one of reasons R1 to R15, R18 or R21 and a certified payment has not been made at the date of the termination certificate, the *Client* makes the certified payment unless   * it has notified the *Contractor* in accordance with the contract that it intends to pay less than the notified sum or * the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the *Contractor* in accordance with the contract that it intends to pay less than the notified sum. |
| **Suspension of performance** | **Y2.5** | If the *Contractor* exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event. |

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| **OPTION Z: *ADDITIONAL* *CONDITIONS OF CONTRACT*** | | |
| ***Additional conditions of contract*** | **Z1**  **Z1.1** | The *additional conditions of contract* stated in the Contract Data are part of the contract. |

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| **Part A - Kent County Council Z Clauses** | | |
| **Client’s Business** | **Z2** Z2.1 | The *Contractor* acknowledges that it:   * has sufficient information about the *Client* and the Services; and * is aware of the *Client’s* processes and business; and * has made all appropriate and necessary enquiries to enable it to Provide the Services in accordance with this Contract; and * is aware of the purposes for which the Services are required; and * acknowledges that the *Client* is reliant upon the *Contractor*’s expertise and knowledge in Providing the Services; and   shall neither be entitled to any additional payment nor excused from any obligation or liability under this Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services. |
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| **Best Value** | **Z3**  Z3.1 | The *Contractor* acknowledges that the *Client* is a best value authority for the purposes of the Local Government Act 1999 (as amended from time to time) and as such the *Client* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. |
|  | Z3.2 | The *Contractor* shall throughout the provision of the Services and in accordance with its obligations under this Contract, provide a service that represents value for money |
|  | Z3.3 | The *Contractor* assists the *Client* to discharge the *Client’s* duty where possible, and in doing so, inter alia carries out any reviews of the Services reasonably requested by the *Client* from time to time. The *Contractor* shall negotiate in good faith (acting reasonably) any changes to this Contract in order for the *Client* to achieve best value. |
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| **Compliance with Policies** | **Z6**  Z6.1 | In providing the Services, the *Contractor* shall comply with all relevant *Client’s* policies as specified and detailed in the Scope. For the avoidance of doubt, the *Client* reserves the right to amend the *Client’s* policies from time to time without seeking the *Contractor’s* consent or approval. |
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| **Conflict of Interest** | **Z8**  Z8.1 | The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the Services or the *Client*, save to the extent fully disclosed to and approved in writing by the *Client*. |
|  | **Z8.2** | The *Contractor* undertakes ongoing and regular conflict of interest checks and in any event not less than once in every six months and notifies the *Service Manager* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the Services under this Contract or the *Client* and shall work with the *Service Manager* to do whatever is necessary (including the separation of staff working or, and data relating to, the Service from the matter in question) to manage such conflict to the *Service Manager’s* satisfaction. provided that, where the *Client* is not so satisfied (in its absolute discretion) it shall be entitled to terminate this contract with immediate effect. |
|  | **Z8.3** | If the Parties are unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right (In its absolute discretion ) to terminate the contract whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11. |
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| **Disclosure and Barring** | **Z11**  Z11.1 | Before the *Contractor* engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the *Contractor* must without limitation, complete:   * the Employment Checks; and * such other checks as required by the DBS |
|  | **Z11.2** | Subject to the provision of Z11.9 the *Contractor* may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the Contract of the *Client* |
|  | **Z11.3** | Where Z11.8 applies, the *Contractor* will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:   * an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and * wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and * the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and * any other reasonable requirement of the Client. |
|  | Z11.4 | Where the *Client* has notified the *Contractor* that it intends to tender or retender any of the Services, the *Contractor* must on written request of the *Service Manager* and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the *Service Manager* with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE. |
|  | Z11**.**5 | The *Contractor* shall indemnify and keep indemnified the *Client* and any successor Contractor against any Losses incurred by the *Client* and/or the successor Contractor in connection with any claim under this Z11 or demand by any transferring employee under TUPE. |
|  | Z11.6 | Where the *Service Manager* (but not unreasonably or vexatiously) is of the opinion that any Staff are unsuitable to work with children and vulnerable adults the *Service Manager* may require their exclusion from being engaged in the Services and the *Contractor* shall immediately comply with this requirement. |
|  | Z11.7 | The *Contractor* shall undertake checks to ensure that any potential Staff who is likely to be in a position where they are providing the Service to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The *Contractor* shall not employ or engage any Staff prior to receipt of a satisfactory check. Should the check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in any work in or about the Service |
|  | Z11.8 | The *Contractor* shall ensure that the employment or involvement of young Staff complies with the law and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989 |
|  | Z11.9 | The *Contractor* shall ensure that volunteers using their own vehicles in or about the performance of the Services have informed their insurers of their volunteer driving |
|  | Z11.10 | The *Contractor* shall notify the Client in writing on the engagement of any person in a Restricted Post. |
|  | Z11.11 | The *Contractor* must have policies and procedures which acknowledge and provide for on-going monitoring of the Staff including undertaking further DBS disclosures every three years |
|  | Z11.12 | The *Contractor* must keep and must procure that the Service Manager is kept advised at all times of any Staff who subsequent to their commencement of employment receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the *Contractor* (or any employee of a sub-contractor involved in the provision of the Services). |
|  | Z11.13 | In the event that the *Contractor* enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Z11 and shall procure that the sub-contractor complies with such terms. The *Contractor* shall indemnify the *Client* and keep the *Client* indemnified in full from and against all loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the *Client* as a result of or in connection with any failure on the part of the sub-contractor to comply with such terms. |
|  | Z11.14 | Failure by the *Contractor* to comply with this Z11 may lead to the termination of this Contract at the *Client’s* sole discretion whereupon the provisions of clause 90.2 of the conditions of contract apply to the termination as though the termination had been in respect of reason R11 |
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| **Equality and Diversity Compliance** | **Z12**  Z12.1 | Without limiting the generality of any other provision of this Contract, the *Contractor*:   * does not unlawfully discriminate; * procures that its personnel do not unlawfully discriminate; and * uses reasonable endeavours to procure that its Subcontractors do not unlawfully discriminate in relation to the Services within the meaning and scope of: * the Employment Equality (Sexual Orientation) Regulations 2003; * the Employment Equality (Religion or Belief) Regulations 2003; * the Employment Equality (Age) Regulations 2006 * the Equality Act 2010; * the Commission for Race Equality’s Statutory Code of Practice on Race Equality in Employment * and any other relevant enactments in force from time to time relation to discrimination in employment (the Acts). |
|  | Z12.2 | The *Contractor* acknowledges that the *Client* is under a duty under Section 149 of the Equality Act 2010 (“the Act”) to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act, advance equality of opportunity between persons who share a relevant protected characteristic (“Characteristic”) and persons who do not share it, foster good relations between persons who share a Characteristic and persons who do not share it. |
|  |  | Characteristics are:  Age;  Disability;  Gender reassignment;  Pregnancy and maternity;  Race;  Religion or belief;  Sex;  Sexual orientation; |
|  | Z12.3 | In the performance of this Contract, the *Contractor* exercising public functions under this Contract, must, in the exercise of these functions, have due regard to the matters mentioned in Z12 and assists, cooperates and uses his reasonable endeavours to procure that his Subcontractors cooperate with the *Service Manager* where possible in complying with this duty. |
|  | Z12.4 | The *Contractor* acknowledges that the *Client* is under a duty to have due regard to the need to:   * advance equality of opportunity between persons who share a Characteristic and persons who do not share it which includes having due regard, in particular, to the need to:   (a) remove or minimise disadvantages suffered by persons who share a Characteristic that are connected to that Characteristic;  (b) take steps to meet the needs of persons who share a Characteristic that are different from the needs of persons who do not share it;  (c) encourage persons who share a Characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.   * Foster good relations between persons who share a Characteristic and persons who do not share it in particular, to the need to:   (a) tackle prejudice, and  (b) promote understanding   * and the *Contractor* assists and co-operates and uses reasonable endeavours to procure that its Subcontractors assist and co-operate with the *Service Manager* where possible to enable the Client to satisfy its duty. |
|  | Z12.5 | The *Client’s* Workplace Policy requires the *Client’s* own staff and those of its Subcontractors to comply fully with the Workplace Policy to eradicate harassment in the workplace. The *Contractor*:   * + ensures that its staff, and those of its Subcontractors who are engaged in the performance of this contract are fully conversant with the requirements of the Workplace Policy;   + fully investigates allegations of workplace harassment in accordance with the Workplace Policy; and   + • ensures that appropriate effective action is taken where harassment is found to have occurred. |
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|  | Z12.6 | The *Contractor* notifies the *Service Manager* in writing as soon as it becomes aware of any investigation of or proceedings brought against the *Contractor* under any one or more of the Acts. |
|  | Z12.7 | The *Contractor* shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its staff. For the avoidance of doubt and where applicable the *Client* reserves the right to request the *Contractor t*o comply with the National Living Wage as determined and in force from time to time in the United Kingdom. |
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| **Data Protection** | **Z13**  Z13.1 | The *Contractor* complies with all of its obligations under the Data Protection Act 1998 (DPA) and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the *Client* (“Employer Personal Data”), the *Contractor* only carries out such processing for the purpose of Providing the Services and in accordance with instructions from the *Service Manager*. |
|  | Z13.2 | When the *Contractor* receives a written request from the *Service Manager* for information about, or a copy of, Employer Personal Data, the *Contractor* supplies such information or data to the *Service Manager* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within 14 days from the date of the request. |
|  | Z13.3 | The *Employer* remains solely responsible for determining the purposes and manner in which Employer Personal Data is to be processed. The *Contractor* does not share any Employer Personal Data with any Subcontractor or third party unless there is a written agreement in place which requires the Subcontractor or third party to:   * only process Employer Personal Data in accordance with the *Service Manager’s* instructions to the *Contractor*; and * comply with the same data protection requirements that the *Contractor* is required to comply with under this contract. |
|  | Z13.4 | The *Contractor* shall ensure that Personal data, as defined under the DPA, is not transferred to a country or territory outside the European Economic Area. |
|  | Z13.5 | The *Contractor* shall keep the *Client* fully indemnified against all actions claims costs expenses and damages suffered by the *Client* arising out of any breach of this Z13 (save to the extent that such matters are not due to any act neglect or default of the *Client* its agents or employees). |
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| **Freedom of Information** | **Z14**  Z14.1 | Notwithstanding any other provision in this Contract regarding confidentiality the *Contractor* agrees and the Client reserves the right to disclose information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 1992 as amended or the DPA or the Audit Commission Act and the Accounts and Audit Regulations 2003 and the Local Government Act 2000 and Part IV of the Local Government Act 1974 as the *Client* considers appropriate and that for such purposes information that would otherwise be regarded as confidential by either Party may be disclosable under these provisions and may include information provided by the *Contractor* to the *Client* |
|  | Z14.2 | Without prejudice to any other provision in this Contract the *Contractor* shall assist and co-operate with the *Service Manager* (at the *Contractor’s* expense) to enable the *Client* to comply with its information disclosure requirements under the FOIA and the Environmental Protection Regulations (“Information Disclosure Requirements) |
|  | Z14.3 | The *Contractor* shall and shall procure that its sub-contractors shall:   * transfer any request for information received from a person seeking information under Information Disclosure Requirements to the *Service Manager* as soon as practicable after receipt and in any event within two Days of receiving it; * provide the *Service Manager* with a copy of all information in its possession or power, relating to any request for information received under 4.3.1 above, in the form that the *Service Manager* requires, within five Days (or such other period as the *Client* may specify) of the *Service Manager* requesting that information; and * provide all necessary assistance as reasonably requested by the *Service Manager* to enable the *Employer* to respond to a request for information under Information Disclosure Requirements within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations |
|  | Z14.4 | The *Employer* shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other information:   * is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; * is to be disclosed in response to a request for information under Information Disclosure Requirements and in no event shall the *Contractor* respond directly to such a request for information unless expressly authorised to do so by the *Service Manager*. |
|  | Z14.5 | The *Contractor* shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the *Service Manager* to inspect such records as requested from time to time. |
|  | Z14.6 | The *Employer* acknowledges that the *Contractor* may wish to assert that information which is subject to disclosure may be exempt from disclosure in circumstances where disclosure is likely to affect its interests. The *Employer* agrees to observe paragraph 27 of the Code of Practice |
|  | Z14.7 | Notwithstanding any other provision of this Contract, the *Contractor* hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA. |
|  | Z14.8 | In preparing a copy of this Contract for publication the *Service Manager* may consult with the *Contractor* to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the *Employer’s* absolute discretion. |
|  | Z14.9` | The *Contractor* must assist and co-operate with the *Service Manager* to enable the *Employer* to publish this Contract. |
|  | Z14.10 | In order to comply with the Government’s policy on transparency in the areas of contracts and procurement the *Employer* may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the *Contractor’s* name and the monthly Periodic Payment paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information |
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| **Local Government** | **Z15**  Z15.1 | The *Contractor* is aware that it could be subject to investigation by the Ombudsman if a complaint is made about his actions when undertaking work on behalf of the *Employer*. The *Contractor* co-operates fully in any such investigation. |
|  | Z15.2 | In the event that following any investigation the Ombudsman finds  maladministration and/or injustice as a result of fault by the *Contractor* the *Contractor* reimburses the *Employer* on demand for any payments made by the *Employer* to a complainant. |
|  | Z15.3 | Similarly the *Contractor* reimburses the *Employer* for any payments made under the terms of a settlement agreed without a formal investigation and report of a complaint made to the Ombudsman |

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| **Part B - Kent County Council Service Specific Z Clauses** | | |
| **Price Adjustment for Inflation** | **Z16** |  |
| **Defined terms** | Z16.1 | a) The Base Date Index (B) used at the first *inflation adjustment date* is the latest available before the *base date*. The Base Date Index (B) used at subsequent *inflation adjustment dates* is the index at the date of the previous *inflation adjustment date*.  (b) The Latest Index (L) is the latest index available at the *inflation adjustment date*.  (c) The Price Adjustment Factor (PAF) is the total of the products of each of the proportions stated in the Contract Data multiplied by (L – B)/B for the index linked to it. |
| **Price Adjustment**  **Factor** | Z16.2 | If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the end of the Service Period is used for calculating price adjustment after that date. |
| **Price Adjustment for Option A** | Z16.3 | On each *inflation adjustment date* until the end of the Service Period  • the rates and Prices in the Price List and  • the rates in the Contract Data for people and Equipment  are changed by multiplying the rate or Price by (1 + PAF). In calculating the Price for Service Provided to Date, the changed rates and Prices in the Price List are used for all works and services carried out from the *inflation adjustment date* until the next *inflation adjustment date* |
| **Price Adjustment for Option C** | Z16.3 | On each *inflation adjustment date* until the end of the Service Period  • the rates and Prices in the Price List and  • the rates in the Contract Data for people and Equipment  are changed by multiplying the rate or Price by (1 + PAF). In calculating the *Contractor’s share*, the changed rates and Prices in the Price List are used for all works and services carried out from the *inflation adjustment date* until the next *inflation adjustment date*. In calculating the Price for Service Provided to Date, the changed rates in the Contract Data are used for  all works and services carried out from the *inflation adjustment date* until the next *inflation adjustment date* |
| **Compensation events** | Z16.4 | Compensation events are assessed using the rates and prices current at their dividing date. |
| **Transition Arrangements** | **Z24**  Z24.1 | The *Contractor* works with the *Service Manager* and the *Client’s* existing provider between the Contract Date and the *starting date* to ensure a smooth transition of work in progress from the *Client’s* existing provider to the *Contractor*. The *Contractor* provides any reasonable assistance required by the *Service Manager* to achieve the transition. |
|  | Z24.2 | The *Contractor* agrees and warrants that it provides any reasonable assistance required by the *Service Manager* in order for any incoming provider(s) to commence the provision of the services in line with the new contract, such assistance shall include but shall not be limited to:   * The smooth transition of work in progress * Information relating to TUPE * Records and reports that may be reasonably required |
|  | Z24.3 | The *Contractor* shall not charge the *Client* or any incoming provider for any expenditure incurred howsoever in carrying out the transition arrangements as set out in this Z24. |
|  | Z24.4 | The plan for the orderly handover of the Services to the *Client* or its incoming provider following termination or expiry of this Contract shall include:   * the cessation of use of the *Client’s* Data and the handing over to the *Client* of a complete and uncorrupted version of all *Client* Data relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the *Client* (in which event the *Client* shall reimburse to the Contractor the *Client’s* reasonable data conversion expenses) whether such *Client* Data is on hard copy or on a disk or on any computer systems * the handover to the *Service Manager* of all records documentation and other information relating to the performance of the Services including without limitation:   + correspondence with end users   + correspondence with sub-contractors, the *Client’s* service departments end users and any other relevant third party. |
|  | Z24.5 | The *Client* reserves its right to assign or novate this Contract to any person or replacement contractor nominated by the *Client.* The *Contractor* shall use all reasonable endeavours to assign or novate in favour of the *Client* or to any person as may be designated for the purpose by the *Client* any equipment leases maintenance contracts and support contracts as the *Client* may designate which are relevant and necessary for the performance of the Services by the *Client* or an incoming provider on the basis that no charges are payable by the Client or the Incoming provider for entering into the assignments or novations. |
|  | Z24.6 | The *Contractor* shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by an incoming provider) relating to the Services including without limitation requests for Services to be undertaken which have not been completed. |
|  |  |  |
| ***Set off*** | Z28 | In clause 51 include clause 51.6 as follows: |
|  |  | The *Client* may deduct from any payment that is due to the *Contractor* under this contract any sum that is due to it under any other contract the *Client* has with   * the *Contractor,* or * any other company which has the same parent company as the *Contractor* |
|  |  |  |
| ***Whistleblowing*** | Z31  Z31.1 | The Contractor shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Contractor) and shall establish and where necessary update from time to time a procedure for the Contractor's personnel encouraging those personnel to report to the Contractor any incidents of malpractice within the Contractor or Client. In this context “malpractice” shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration. |
|  |  |  |

Schedule of Cost Components

|  |  |  |
| --- | --- | --- |
|  |  | This schedule is part of these *conditions of contract* only when Option C or E is used. An amount is included   * only in one cost component and * only if it is incurred in order to Provide the Service |
| People | 1 | The following components of   * the cost of people who are directly employed by the *Contractor* and whose normal place of working is within the Service Areas and * the cost of people who are directly employed by the *Contractor* and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas. |
|  | 11 | Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract. |
|  | 12 | Payments related to work on the contract and made to people for  (a) bonuses and incentives  (b) overtime  (c) working in special circumstances  (d) special allowances  (e) absence due to sickness and holidays  (f) severance. |
|  | 13 | Payments made in relation to people in accordance with their employment contract for  (a) travel  (b) subsistence and lodging  (c) relocation  (d) medical examinations  (e) passports and visas  (f) travel insurance  (g) items (a) to (f) for dependants  (h) protective clothing  (i) contributions, levies or taxes imposed by law  (j) pensions and life assurance  (k) death benefit  (l) occupational accident benefits  (m) medical aid and health insurance  (n) a vehicle  (o) safety training. |
|  | 14 | The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Service Areas.  Amounts paid by the *Contractor*. |
| Equipment |  | The following components of the cost of Equipment which is used within the Service Areas. |
|  | 21 | Payments for the hire or rent of Equipment not owned by   * the *Contractor*, * the *Contractor’s* ultimate holding company or * a company with the same ultimate holding company   at the hire or rental rate multiplied by the time for which the Equipment is required. |
|  | 22 | Payments for Equipment which is not listed in the Contract Data but is   * owned by the *Contractor*, * purchased by the *Contractor* under a hire purchase or lease agreement or * hired by the *Contractor* from the *Contractor’s* ultimate holding company or from a company with the same ultimate holding company * at open market rates, multiplied by the time for which the Equipment is required. |
|  | 23 | Payments for Equipment purchased for work included in the contract listed with a time- related on cost charge, in the Contract Data, of   * the change in value over the period for which the Equipment is required and * the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.   The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.  If the *Service Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data. |
|  | 24 | Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.  If the *Service Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data. |
|  | 25 | Payments for the purchase price of Equipment which is consumed. |
|  | 26 | Unless included in the hire or rental rates, payments for   * transporting Equipment to and from the Service Areas other than for repair and maintenance, * erecting and dismantling Equipment and * constructing, fabricating or modifying Equipment as a result of a compensation event. |
|  | 27 | Payments for purchase of materials used to construct or fabricate Equipment. |
|  | 28 | Unless included in the hire rates, the cost of operatives is included in the cost of people. |
| **Plant and Materials** | **3** | The following components of the cost of Plant and Materials. |
|  | 31 | Payments for   * purchasing Plant and Materials, * delivery to and removal from the Service Areas, * providing and removing packaging and * samples and tests. |
|  | 32 | Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed. |
| **Subcontractors** | **4** | The following components of the cost of Subcontractors. |
|  | 41 | Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Contractor*, which would result in the *Client* paying or retaining the amount twice. |
| **Charges** | **5** | The following components of the cost of charges paid by the *Contractor.* |
|  | 51 | Payments for provision and use in the Service Areas of   * water, * gas, * Electricity, * telephone and * internet. |
|  |  | Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *service*. |
|  |  | Payments for  (a) cancellation charges arising from a compensation event  (b) buying or leasing land or buildings within the Service Areas  (c) compensation for loss of crops or buildings  (d) royalties  (e) inspection certificates  (f) charges for access to the Service Areas  (g) facilities for visits to the Service Areas by Others  (h) consumables and equipment provided by the *Contractor* for the *Service Manager’s offices* |
| **Manufacture and fabrication** | 6 | The following components of the cost of manufacture and fabrication of Plant and Materials which are manufactured or fabricated by the *Contractor* outside the Service Areas. . |
|  | 61 | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas |
| ***Shared services* outside the Service Areas** | 7 | The following component of the cost of people who are providing a *shared service* outside the Service Areas. |
|  | 71 | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a *shared sevice* outside the Service Areas |
| **Insurance** | 8 | The following are deducted from cost   * the cost of events for which the contract requires the *Contractor* to insure and * other costs paid to the *Contractor* by insurers. |

Short Schedule of Cost Components

|  |  |  |
| --- | --- | --- |
|  |  | The schedule is part of these *conditions of contract* only when Option A is used. An amount is included  only in one cost component and  only if it is incurred in order to Provide the Service. |
| **People** | **1** | The following components of the cost of   * people who are directly employed by the *Contractor* and whose normal place of working is within the Service Areas, * people who are directly employed by the *Contractor* and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas and * people who are not directly employed by the *Contractor* but are paid for by it according to the time worked while they are within the Service Areas. |
|  | **11** | Amounts calculated by multiplying each of the People Rates by the total time appropriate to that rate spent within the Service Areas. |
| **Equipment** | **2** | The following components of the cost of Equipment which is used within the Service Areas. |
|  | **21** | Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required. |
|  | **22** | Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required. |
|  | **23** | The time required is expressed in hours, days, weeks or months consistent with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data. |
|  | **24** | Unless the item is in the published list and the rate includes the cost component, payments for   * transporting Equipment to and from the Service Areas other than for repair and maintenance, * erecting and dismantling Equipment and * constructing, fabricating or modifying Equipment as a result of a compensation event. |
|  | **25** | Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed. |
|  | **26** | Unless included in the rate in the published list, the cost of operatives is included in the cost of people. |
|  | **27** | Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required. |
| **Plant and Materials** | **3** | The following components of the cost of Plant and Materials. |
|  | **31** | Payments for   * purchasing Plant and Materials, * delivery to and removal from the Service Areas, * providing and removing packaging and * samples and tests. |
|  | **32** | Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed. |
| **Subcontractors** | **4** | The following components of the cost of Subcontractors. |
|  | **41** | Payments to Subcontractors for work which is subcontracted. |
| **Charges** | **5** | The following components of the cost of charges paid by the *Contractor.* |
|  | 51 | Payments for provision and use in the Service Areas of   * water, * gas, * electricity, * telephone and * internet. |
|  | 52 | Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *service.* |
|  | 53 | Payments for  (a) cancellation charges arising from a compensation event  (b) buying or leasing land or buildings within the Service Areas  (c) compensation for loss of crops or buildings  (d) royalties  (e) inspection certificates  (f) charges for access to the Service Areas  (g) facilities for visits to the Service Areas by Others  (h) consumables and equipment provided by the Contractor for the *Service Manager’s* offices |
| **Manufacture and fabrication** | 6 | The following components of the cost of manufacture and fabrication of Plant and Materials which are manufactured or fabricated by the *Contractor* outside the Service Areas. |
|  | 61 | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas. |
| ***Shared Services* outside the Service Areas** | 7 | The following component of the cost of people who are providing a *shared service* outside the Service Areas. |
|  | 71 | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a *shared sevice* outside the Service Areas |
| **Insurance** | 8 | The following are deducted from cost   * the cost of events for which the contract requires the *Contractor* to insure and * other costs paid to the *Contractor* by insurers. |

Contract Data

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PART ONE – DATA PROVIDED BY THE *CLIENT*** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | | | | | | | | | | | | | | | | | | | |
| **1 General** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *conditions of contract* are the core clauses and the clauses for the following main  Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4  Term Service Contract June 2017 | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Main Option | | | A and C | | | | | | | Option for resolving and avoiding disputes | | | | | | | | | | | | | | W2 | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Secondary Options | | | Y(UK)2 | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *service is* | | | The Road Asset Renewal of highway within the boundaries of Kent which includes major resurfacing and occasional reconstruction of the highway. | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Client* is | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | * Name | | | | | | | | | | | | | | | | | The Kent County Council | | | | | | | | |
|  |  | * Address for communications | | | | | | | | | | | | | | | | | Sessions House,  County Road,  Maidstone, Kent ME14 1XQ | | | | | | | | |
|  |  | * Address for electronic communications | | | | | | | | | | | | | | | | | David.aspinall@kent.gov.uk | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Service Manager* is | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | * Name | | | | | | | | | | | | | | | | | The Director of Highways, Transportation and Waste or otherwise notified in writing | | | | | | | | |
|  |  | * Address for communications | | | | | | | | | | | | | | | | | Sessions House,  County Road,  Maidstone, Kent ME14 1XQ | | | | | | | | |
|  |  | * Address for electronic communications | | | | | | | | | | | | | | | | | Alan.casson@kent.gov.uk | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The Affected Property is | | | | | Detailed in Schedule 6 or the Task Order | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The Scope is in | | | | | Schedule 6 | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *shared services* which may be carried out outside the Service Areas are | | | | | There are no *shared services* | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *language of the contract* is | | | | | | | | | | | | English | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *law of the contract* is the law of | | | | | | | | | | | | England and Wales | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *period for reply* is | | | | | | | two | | | | | | | | | | | | | Except that | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *period for reply* is | | | | | | |  | | | | | | | | | | | | | Is | |  | | | |
|  |  | The *period for reply* is | | | | | | |  | | | | | | | | | | | | | is | |  | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The following matters will be included in the Early Warning Register | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Early warning meetings are to be held at intervals no longer than | | | | | | | | | | | | | | | | | | | | | | Monthly or as called by one of the Parties | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **2 The *Contractor’s* main responsibilities** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option C is used |  | The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than | | | | | | | | | | | | | | | | | | | | | | monthly | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **3 Time** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *starting date* is | | | | | | | | | | | | | | | | | | | | | | 1 July 2018 | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | |  | | | |
|  |  | The *service period* is | | | | | | | | | | | | | | | | | | | | | | 30 months | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | |  | | | |
|  |  | The *Contractor* submits revised plans at intervals no longer than | | | | | | | | | | | | | | | | | | | | | | monthly | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | |  | | | |
|  |  | The period within which the *Contractor* is to submit a Task Order programme for acceptance is | | | | | | | | | | | | | | | | | | | | | | Two 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 | | | | | | | | | | | | | | | | | | | | | | Four 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 | | | | | | | | | | pounds Sterling (£) | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *assessment interval* is | | | | | | | | | | Every calendar month | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *interest rate* is | | | 2 | | | | | | | % per annum (not less than 2) above the | | | | | | | | | | | | | | | |
|  |  | Base | | | | | | | | | | Rate of the | | | | | | | Bank of England | | | | | | | | bank |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If the period for certifying a final assessment is not thirteen weeks |  | The period for certifying a final assessment is | | | | | | | | | | | | | | | | | N/A | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option C is used |  | The *Contractor’s share percentages* and the *share ranges* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | *share range* | | | | |  | | | | | |  | | | | | |  | | *Contractor’s share percentage* | | | | | | |
|  |  | less than | | | | | 90% | | | | | |  | | | | | | % | | 25% | | | | | | |
|  |  | From | | | | | 90% to | | | | | | 100 | | | | | | % | | 50% | | | | | | |
|  |  | From | | | | | 100% to | | | | | | 110 | | | | | | % | | 50% | | | | | | |
|  |  | Greater than | | | | | 110 | | | | | |  | | | | | | % | | 75% | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Contractor’s* share is assessed on | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | On completion of the Task Order and submitted on the next assessment date | | | | | | | | | | | | | | | | | | | | | | | | | |
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| **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 additional compensation events | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | There are no additional compensation events | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **8 Liabilities and insurance** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If there are additional  *Client’s* liabilities |  | These are additional *Client’s* liabilities  There are no additional *Clients’* 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 | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | Ten million pounds (£10m) | | | | | | | | | | |
|  |  | 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 | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | Ten million pounds (£10m) | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| 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 | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | The Client provides no Plant and Materials | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If the *Client* is to provide any of the insurances stated in the Insurance Table |  | The *Client* provides these insurances from the Insurance Table  The *Client* provides no insurances from the Insurance Table | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If additional insurances are to be provided |  | The *Client* provides these additional insurances  The *Client* provides no additional insurances | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Contractor* provides these additional insurances  The *Contractor* provides no additional insurances | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Resolving and avoiding disputes** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *tribunal* is | | | | | | | | | arbitration | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If the *tribunal* is arbitration |  | The *arbitration procedure* is | | | | | | | | | latest version of the Institution of Civil Engineers Arbitration Procedure or in force when the arbitrator is appointed | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The place where arbitration is to be held is | | | | | | | | | London | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The Institution of Civil Engineers | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Senior Representatives* of the *Client* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | * Name (1) | | | | | | | | | | | | | | | | | | Andrew Loosemore | | | | | | | |
|  |  | * Address for communications | | | | | | | | | | | | | | | | | | Kent County Council  Invicta House,  County Road,  Maidstone, Kent ME14 1XQ | | | | | | | |
|  |  | * Address for electronic communications | | | | | | | | | | | | | | | | | | Andrew.loosemore@kent.gov.uk | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | * Name (2) | | | | | | | | | | | | | | | | | | David Aspinall/Alan Casson | | | | | | | |
|  |  | * Address for communications | | | | | | | | | | | | | | | | | | Kent County Council  Invicta House,  County Road,  Maidstone, Kent ME14 1XQ | | | | | | | |
|  |  | * Address for electronic communications | | | | | | | | | | | | | | | | | | [David.aspinall@kent.gov.uk](mailto:David.aspinall@kent.gov.uk)  Alan.casson@kent.gov.uk | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Adjudicator* is to be agreed between the Parties | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *Adjudicator nominating body* is | | | | | | | | | | | | | | | | | | The Institution of Civil Engineers | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Z16: Price adjustment for inflation(used only with Options A and C)** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option Z16 is used |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *base date* for indices is | | | | | | | | | | December 2017 | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *inflation adjustment dates* are | | | | | | | | | | 1 April each year | | | | | | | | | | | | | | | |
|  |  | The latest index to be used is | | | | | | | | | | December preceding the *inflation adjustment date* | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | |  | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | |  | | | | | | | | | | | | | | | |
|  |  | These indices are | | | | | | | | | | Those published by BCIS under Price Adjustment Formulae Indices Series 4 - Highways Maintenance -  4/HM/WC/04 Machine Surfacing | | | | | | | | | | | | | | | |
|  |  | The prices are fixed until | | | | | | | | | | 1 April 2020 | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **X17: Low service damages** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option X17 is used |  | The *service level table* is | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Provided in Schedule 6 Part 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **X18: Limitation of liability** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option X18 is used |  | The Contractor’s liability to the Client for indirect or consequential loss is limited to | | | | | | | | | | | | | | 15% of the total value of the service | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | For any one event, the Contractor’s liability to the Client for loss of or damage to the Client’s property is limited to | | | | | | | | | | | | | | £10 million for each and every event | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The Contractor’s liability for Defects due to its design of an item of Equipment is limited to | | | | | | | | | | | | | | £50,000 | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The Contractor’s total liability to the Client for all matters arising under or in connection with the contract, other than excluded matters, is limited to | | | | | | | | | | | | | | £10 million for each and every event | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *end of liability date* is | | | | | | 12 | | | | | | | years after the end of the Service Period | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **X23: Extending the Service Period** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option X23 is used |  | The *maximum service period* is | | | | | | | | 54 | | | | | | | | months after the *starting date* | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The *periods for extension* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Order | | | | | | | | *period for extension* (months) | | | | | | | | | | | | | notice date | | | | |
|  |  | First | | | | | | | | 12 months | | | | | | | | | | | | |  | | | | |
|  |  | Second | | | | | | | | 12 months | | | | | | | | | | | | |  | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If there are *criteria for extension* |  | The *criteria for extension* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | (1) | The decision for an extension is purely at the discretion of the *Client* | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | (2) | Meeting the criteria for the performance indicators given in the Scope | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | (3) | Giving value for money and demonstration the rates are not above current market rates | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **X24: The accounting periods** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option X24 is used and Option C is not used |  | The *accounting periods* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | The certified Task Completion date or the end of the financial year (31 March) | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
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|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option X 24 is used with Option C |  | The *accounting periods* are the dates stated in the Contract Data of assessment of the  *Contractor’s* share | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **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 *accounting period* or Service Period |  | The period is | |  | | | | weeks | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| If 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 | | | | 23 | | | | | | | | | days after the date on which payment becomes due | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Z: Additional conditions of contract** | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If Option Z is used |  | The *additional conditions of contract* are | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  | Z2 Client’s business  Z3 Best Value  Z6 Compliance with Policies  Z8 Conflict of interest  Z11 Disclosure and barring  Z12 Equality and diversity compliance  Z13 Data protection  Z14 Freedom of information  Z15 Local government  Z16 Price adjustment for inflation  Z24 Transition arrangements  Z28 Set off  Z31 Whistleblowing | | | | | | | | | | | | | | | | | | | | | | | | | |
|  |  |  | | | | | | | | | | | | | | | | | | | | | | | | | |
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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PART TWO – DATA PROVIDED BY THE *CONTRACTOR*** | | | | | | | | | |
|  |  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | |
|  |  |  | | | | | | | |
| **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 | | | | | | | |
|  |  |  | | | | | | | |
|  |  |  | | | | | | | |
|  |  |  | | | | | | | |
| **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** | | | | | | | | | |
| If Option A, C or E is used |  | The *price list* is | | | | |  | | |
|  |  |  | | | | | | | |
| If Option A or C is used |  | 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 (2) | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Address for communications | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Address for electronic communications | | |  | | | | |
|  |  |  | | | | | | | |
| **X10: Information modelling** | | | | | | | | | |
| If Option X10 is used |  |  | | | | | | | |
|  |  |  | | | | | | | |
| If an *information execution plan* is to be identified in the Contract Data |  | The *information execution plan* identified in the Contract Data is | | |  | | | | |
|  |  |  | | | | | | | |
| **Y(UK)1: Project Bank Account** | | | | | | | | | |
| *If Option Y(UK)1 is used* |  | The *project bank* is | | | | | | | |
|  |  |  | | | | | | | |
|  |  |  | | | | | | | |
|  |  | *named suppliers* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  |  | | | | | | | |
|  |  |  | | | | | | | |
| **Data for the Schedule of Cost Components (used only with Options C or E)** | | | | | | | | | |
|  |  |  | | | | | | | |
|  |  | The listed items of Equipment purchased for work on this contract, with an on cost charge, are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Equipment | time-related on cost charge | | | | | per time period | |
|  |  |  | | | | | | | |
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|  |  |  | | | | | | | |
|  |  | The rates for special Equipment are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Equipment | rate | | | | |  | |
|  |  |  | | | | | | | |
|  |  |  |  | | | | |  | |
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|  |  |  |  | | | | |  | |
|  |  |  |  | | | | |  | |
|  |  |  | | | | | | | |
|  |  | The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | rate | | | | |  | |
|  |  |  | | | | | | | |
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|  |  |  |  | | | | |  | |
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|  |  |  | | | | | | | |
|  |  | The rate for people providing *shared services* outside the Service Areas are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | *shared service* | category of person | | | | | rate | |
|  |  |  | | | | | | | |
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| **Data for the Short Schedule of Cost Components (used only with Option A)** | | | | | | | | | |
|  |  |  | | | | | | | |
|  |  | The *people rates* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | unit | | | | | rate | |
|  |  |  | | | | | | | |
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|  |  |  |  | | | | |  | |
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|  |  |  | | | | | | | |
|  |  | The published list of Equipment is the edition current at the Contract Date of the list published by | | | | | |  | |
|  |  |  | | | | | | | |
|  |  | The percentage for adjustment for Equipment in the published list is | | | | | |  | % |
|  |  |  | | | | | | | |
|  |  | (state plus or minus) The rates for other Equipment are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Equipment | rate | | | | |  | |
|  |  |  | | | | | | | |
|  |  |  |  | | | | |  | |
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|  |  |  |  | | | | |  | |
|  |  |  |  | | | | |  | |
|  |  |  | | | | | | | |
|  |  | The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the Contractor are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | rate | | | | |  | |
|  |  |  | | | | | | | |
|  |  |  |  | | | | |  | |
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|  |  |  |  | | | | |  | |
|  |  |  |  | | | | |  | |
|  |  |  | | | | | | | |
|  |  | The rate for people providing shared services outside the Service Areas are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | shared service | category | | | | | rate | |
|  |  |  | | | | | | | |
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