

CONTRACT AGREEMENT

**relating to the provision of Facilities Management
Services in connection with DfT's Workplace and
Facilities Management Project**

**based on NEC4 Facilities Management Contract
June 2021 June 2021 version incorporating
amendments January 2023**

SECRETARY OF STATE FOR TRANSPORT (1)

and

MITIE FM LIMITED (2)

THIS CONTRACT is dated : 17 May 2024

BETWEEN

- (1) The Secretary of State for Transport of Great Minster House, 33 Horseferry Road, London, United Kingdom, SW1P 4DR acting through the Department for Transport (**DfT**) and its executive agencies ("**Client**"); and
- (2) **Mitie FM Limited** incorporated and registered in England and Wales with company number 03253304 whose registered office is at Level 12, The Shard, 32 London Bridge Street, London, England, SE1 9SG ("**Service Provider**").

BACKGROUND

- (A) The Client wishes to appoint the Service Provider to Provide the Service on its own behalf and for the benefit of the Contracting Authorities in accordance with the Contract.
- (B) The Service Provider has agreed to Provide the Service in accordance with the Contract.

AGREED TERMS

1. INTERPRETATION

Words and expressions in the Contract shall have the meanings given to them in the *conditions of contract* referred to in Clause 4 of this Contract Agreement.

2. SERVICE PROVIDER'S RESPONSIBILITIES

The Service Provider will Provide the Service for the benefit of the Client and any Contracting Authority in accordance with the Contract.

3. CLIENT'S RESPONSIBILITIES

The Client will pay the Service Provider for the *service* and to carry out its other duties in relation to them in accordance with the Contract.

4. THE CONTRACT

The Contract comprises:

- 4.1 this Contract Agreement;
- 4.2 the Core Terms of the NEC4 (as amended);
- 4.3 the Contract Data Part One;
- 4.4 the Scope (Annex 1);
- 4.5 the Price List (Annex 2);
- 4.6 Performance Table;
- 4.7 all Schedules appended to this Contract Agreement;
- 4.8 Contract Data Part Two.

5. PRIORITY OF DOCUMENTS

If there is any ambiguity or inconsistency in or between the documents comprising the Contract, the priority of the documents is in accordance with the following sequence:

- 5.1 this Contract Agreement;
- 5.2 the Core Terms of the NEC4 (as amended);
- 5.3 the Contract Data Part One;
- 5.4 the Scope;
- 5.5 the Price List;
- 5.6 Performance Table;
- 5.7 all Schedules, in equal order of priority;
- 5.8 Contract Data Part Two.

6. EXECUTION AND COUNTERPARTS

This Contract may be entered into in any number of counterparts, each executed by one or more of the Parties, all of which taken together shall constitute one and the same instrument.

This Contract shall be valid, binding and enforceable against a Party only when executed by an authorised individual on behalf of the Party by means of:

- 6.1 a DocuSign® or other electronic signature;
- 6.2 an original, manual signature or seal; or
- 6.3 a scanned or photocopied manual signature, and

each DocuSign® or other electronic, scanned or photocopied manual signature or seal shall for all purposes have the same validity, legal effect and admissibility in evidence as an original manual signature or seal and the Parties hereby waive any objection to the contrary.

7. LAW AND JURISDICTION

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject.

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

The corporate seal of

THE SECRETARY OF STATE FOR TRANSPORT

was affixed to this Contract

Signature:

Name:

Authenticated by authority of the Secretary of State for Transport

Executed as a deed by **MITIE FM LIMITED** acting by [REDACTED]
[REDACTED] a director, in the presence of:

[REDACTED]
[SIGNATURE OF DIRECTOR]
Director

[REDACTED]

[SIGNATURE OF WITNESS]

[REDACTED]

[NAME OF WITNESS [IN BLOCK CAPITALS]]

[REDACTED]

.....
[ADDRESS OF WITNESS]

CONTRACTS SERVICES MANAGER

.....
[OCCUPATION OF WITNESS]

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

SEAL REF NO. 464

The corporate seal of

THE SECRETARY OF STATE FOR TRANSPORT

was affixed to this Contract

Signature: [REDACTED]

Name: [REDACTED]

Authenticated by authority of the Secretary of State for Transport



Executed as a deed by **MITIE FM LIMITED** acting by [REDACTED] a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]

.....
[NAME OF WITNESS [IN BLOCK CAPITALS]]

.....
[ADDRESS OF WITNESS]

.....
[OCCUPATION OF WITNESS]

Core Terms

Core Clauses

MAIN OPTION CLAUSES CONTRACT DATA SECONDARY OPTION CLAUSES CORE CLAUSES COST COMPONENTS

1 General

10 Actions

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.

11 Identified and defined terms

11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) The Accepted 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) Accounting Reference Date is each year the date to which the *Service Provider* prepares its annual audited financial statements.

(3) Achieve is the issue of a Satisfaction Certificate in respect of a Milestone and "Achieved", "Achieving" and "Achievement" shall be construed accordingly.

(3A) Adjustment Date is defined in clause X1.1.

(4) Affected Property is property of the *Client* or Others which is

- affected by the work of the *Service Provider* or used by the *Service Provider* in Providing the Service and
- identified in the Contract Data, unless later changed in accordance with the contract.

(5) An Affiliate is any entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control (as defined in sections 450 and 1124 of the Corporation Tax Act 2010) of another from time to time.

(5A) Asset is any item or equipment owned by the *Client* which is maintained by the *Service Provider* as part of the *services*.

(5B) Asset Verification is the process that the *Service Provider* undertakes to verify the Assets as detailed in the Scope.

(5C) Asset Verification Audit is an audit on the due diligence data provided by the *Client* to ensure potential errors, inaccuracies or omissions in the Asset Data are identified and included in the Asset Verification Report.

(5D) Asset Verification Report is the report that the *Service Provider* will produce to detail the findings and remedial action required to address any errors, inaccuracies or omissions identified in the "Asset Verification Audit" where revisions to the "Asset" information may, where agreed with the *Client*, necessitate revisions to the *services* and/or the Prices to ensure compliance with the *Client's* statutory and/or insurance obligations.

(6) Auditor is

- the *Client's* internal and external auditors;
- the *Client's* statutory or regulatory auditors;
- the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- HM Treasury or the Cabinet Office;
- any party formally appointed by the Client to carry out audit or similar review functions; and
- successors or assigns of any of the above.

(6A) Baseline Monthly Payment is defined at Clause 63.1A.

(6B) Baseline Monthly Payment Works are defined at Clause 63.1A.

(6C) Bid Date means the date on which the *Service Provider* submitted its final bid to the *Client* to Provide the Service.

(7) Not used.

(8) Board Confirmation means written confirmation from the *Service Provider's* board of directors in accordance with clauses Z24.19 to Z24.21.

(8A) BTP means the British Transport Police, an executive non-departmental body of the *Client*.

(9) Business Unit is named as such in the Contract Data.

(10) Cabinet Office Markets and Suppliers Team means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

(11) Carbon Reduction Plan means a costed and funded plan which contains the *Service Provider's* strategy and key measurable targets with key dates, to manage and reduce carbon emissions to meet Net Zero commitments in compliance with PPN 06/21 and the *Client's* carbon targets as detailed in the *Client's* policy included in the Scope

(12) CCS is the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

(12A) CDM Regulations means the Construction Design and Management Regulations 2015 as amended from time to time.

(13) A Central Government Body is a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a) Government Department;
- b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

- c) Non-Ministerial Department; or
- d) Executive Agency.

(14) Change of Control is defined in Clause X28.1.

(14A) Client Premises are premises owned, controlled or occupied by the *Client* which are made available for use by the *Service Provider* or its Subcontractors for the provision of the *service* (or any part of it);

(14B) Climate Change Partners are defined in Clause X29.1(3).

(14C) Climate Change Plan is defined in Clause X29.1(2).

(14D) Climate Change Requirements are defined in Clause X29.1(1).

(15) Commercially Sensitive Information means the *Service Provider's* Confidential Information explicitly detailed in contract schedule 1 (Commercially Sensitive Information).

(16) Comparable Supply means in relation to each of the services, goods and works included in a service provided to a third party by a supplier independent from the *Service Provider* and Subcontractors which is comparable with *service* provided by the *Service Provider*, including (without limitation) in terms of the nature, quality, technical complexity and quantity of the services and the commercial terms (including the service levels and other performance obligations);

(17) Completed Work is work without notified Service Failures the correction of which will delay the work of the *Service Provider* or Others.

(18) Compliance Officer - the person(s) appointed by the *Service Provider* who is responsible for ensuring that the *Service Provider* complies with its legal obligations.

(18A) Confidential Information - means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the *Client*, Business Units or the *Service Provider*, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

(18B) Conflict of Interest means a conflict between the financial or personal duties of the *Service Provider*, Subcontractors or the *Service Provider* Staff and the duties owed to the *Client* and/or Business Units under the contract, in the reasonable opinion of the *Client*;

(18C) Contract Data means the contract data document forming part of the contract.

(19) Contract Date is the date when the contract came into existence.

(19A) Contract Date Baseline Monthly Payment is defined at Clause 63.1A.

(19B) Contract Standard is defined in Clause X15.6.

(20) Contract Year means twelve (12) consecutive calendar months starting on the Contract Date and each subsequent twelve (12) consecutive calendar month period.

(21) Contracts Finder means the Government's publishing portal for public sector procurement opportunities;

(22) Control means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly.

(22A) Controller - has the meaning given to it in the UK GDPR;

(23) Core Labour Standards means the 'Core Labour Standards' set out by the International Labour Organisation International Labour Standards which are detailed at www.ilo.org.

(24) Credit Rating Threshold is the minimum credit rating level for each entity in the FDE Group as set out in the Contract Data;

(25) Crown Body means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

(26) CRP Information – the corporate resolution planning information described in Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function;

(26A) Data Protection Impact Assessment - an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;

(27) Data Protection Legislation - (i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all Law about the Processing of Personal Data and privacy;

(28) Data Protection Officer - has the meaning given to it in the UK GDPR;

(29) Data Subject Access Request - a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

(30) Data Subjects - has the meaning given to it in the UK GDPR;

(30A) Data Validation Audit is an audit on the Due Diligence Information to ensure that potential errors, inaccuracies or omissions are identified.

(31) Defined Cost is the cost of the components in the Short Schedule of Cost Components.

(32) Deleterious Materials are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the *Service Provider's* trade and/or the construction industry:

- to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person
- to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the works or any part thereof and/or to other structures, finishes, plant and/or machinery

- to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works
- to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works
- not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices and/or
- to be supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC)

(33) Disclosing Party - the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 27 (Disclosure);

(33A) Discrimination Acts are defined in Clause Z14.1.

(34) Documents means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the Service Provider in relation to this contract.

(35) Documentation - descriptions of the Services and service levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the *Service Provider* to the *Client* under the contract as:

- a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *service*
- b) is required by the Service Provider in order to Provide the Service; and/or
- c) has been or shall be generated in order to Provide the Service;

(36) DOTAS is the Disclosure of tax avoidance schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

(37) Due Diligence Information means any information supplied to the *Service Provider* by or on behalf of the *Client* prior to the Contract Date;

(38) 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 *Service Provider* 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.

(38A) EDI means Equality, Diversity and Inclusion.

(39) EIR - the Environmental Information Regulations 2004;

(40) Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

(41) Environmental Near Miss means an incident that could have caused harm to people or the environment from which lessons can be learnt and shared.

(42) Equipment is items provided and used by the *Service Provider* to Provide the Service and which the Scope does not require the *Service Provider* to include in the Affected Property.

(43) FDE Group means the *Service Provider*, and Key Subcontractors.

(43A) FGas means fluorinated gas.

(44) The Fee is the amount calculated by applying the following formula: Defined Cost * (1 + Corporate Overhead %) * (1 * Profit%) (the Corporate Overhead and Profit percentages are identified and defined in the Price List);

(45) Financial Distress Event any of the events listed in clause Z24.6;

(46) Financial Distress Remediation Plan a plan setting out how the *Service Provider* will ensure the continued performance and delivery of the *service* in accordance with the contract in the event that a Financial Distress Event occurs including at the request of the *Client* any mitigations identified as a result of the output of the most recently completed FVRA Tool;

(47) Financial Indicators in respect of the *Service Provider* and Key Subcontractor, means each of the financial indicators set out at clause Z24.15;

(48) Financial Target Thresholds means the target thresholds for each of the Financial Indicators set out at clause Z24.15;

(49) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

(49A) Framework Award Form is the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, executed by the *Service Provider* and CCS.

(49B) Framework Contract is the framework agreement established between CCS and the *Service Provider* in accordance with Regulation 33 by the Framework Award Form for the provision of goods and services to clients by the *Service Provider* pursuant to the notice published on the Find a Tender Service.

(49C) Framework Incorporated Terms are the contractual terms applicable to the Framework Contract specified in the Framework Award Form.

(49D) Framework Quarterly Performance Indicator Submission Form is the form the *Service Provider* will complete on a quarterly basis reporting on social value activities as set out in Table B in clause Z25.

(50) FVRA Tool means the latest version of the Government 'Commercial Function Financial Viability Risk Assessment Tool';

(51) Full Service Commencement Date is the first day following the end of the Mobilisation Period

(52) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid National Insurance.

(53) Good Industry Practice - standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

(54) Government - the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

(55) Government Data - the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the *Client* or a Business Units' Confidential Information, and which:

- i) are supplied to the *Service Provider* by or on behalf of the *Client* and/or a Business Unit; or
- ii) the *Service Provider* is required to generate, process, store or transmit pursuant to the contract;

(56) Not used.

(57) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

(57A) HS2 means High Speed Two (HS2) Limited, an executive non-departmental body of the *Client*.

(58) Independent Controller - where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and "Independent Controller" shall be construed accordingly;

(58A) Indexation means the adjustment of an amount or sum in accordance with clause X1.

(59) Information Commissioner - the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

(59A) Installation Works means all works which the *Service Provider* is to carry out during the Service Period to install the Plant and Materials in accordance with the Scope;

(59B) Insurance Table means the table set out in Clause 83.

(60) Intellectual Property Rights or "IPRs" means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, Know-How, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

(61) Intellectual Property Rights or 'IPR'

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

(62) Joint Controller - where two or more Controllers jointly determine the purposes and means of Processing and Joint Control shall be construed accordingly;

(62A) Key Sub-contract means a subcontract between the *Service Provider* and a Key Subcontractor;

(63) Key Subcontractor is any person or organisation who has a contract with the *Service Provider* to provide a service which is necessary to Provide the Service:

- a) which is relied upon to deliver any Work Package within the Scope in their entirety; and/or
- b) which, in the opinion of the *Client* performs (or would perform if appointed) a critical role in the provision of all or any part of the *service*; and/or
- c) with a subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the total of the Prices under the contract,

and all such Key Subcontractors shall be listed in contract schedule 13 (Key Subcontractors);

(64) Know-How - all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the *service* but excluding know-how already in the other Party's possession before the Contract Date;

(64A) KPI Credits means any KPI credits specified in contract schedule 10 (Key Performance Indicators) as being payable by the *Service Provider* to the *Client* in respect of any failure by the *Service Provider* to meet one or more KPIs;

(64B) KPIs are any key performance indicator applicable to the provision of the *service* under the contract (as referred to in contract schedule 10 (Key Performance Indicators));

(65) Law is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory

guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Service Provider* is bound to comply under the *law of the contract*.

(66) Losses - all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;

(66A) Management Overhead means the percentage specified in the Price List to cover the Service Provider's management costs in respect of the *service*

(66B) Management Overhead Threshold is defined in clause 61.3.B.

(66C) Management Overhead Threshold Reset is defined in clause 61.3.B.

(67) Milestone is an event or task described as such in the Mobilisation Plan ;

(67A) Milestone Date is the target date set out against the relevant Milestone in the Mobilisation Plan by which the Milestone must be Achieved.

(68) Milestone Payment is a payment identified in the Mobilisation Plan to be made by the *Client* to the *Service Provider* following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

(68A) Mobilisation Period is a nine (9) month period, following the Contract Date, prior to the Full Service Commencement Date .

(69) Mobilisation Plan is the plan for provision of the *Services* set out in the Scope as amended from time to time in accordance with the contract;

(70) Modern Slavery Assessment Tool means the modern slavery risk identification and management tool which can be found online at:
<https://supplierregistration.cabinetoffice.gov.uk/msat>

(70A) National Insurance means contributions required by the Social Security Contributions and Benefits Act 1992 as amended from time to time and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004) as amended from time to time;

(71) Net Zero means a target of completely negating the net amount of greenhouse gases produced by human activity to be achieved by reducing emissions and implementing methods of absorbing carbon dioxide from the atmosphere, or offsetting carbon emissions through other carbon reduction activity.

(72) An Occasion of Tax Non-Compliance is where any tax return of the *Service Provider* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of

- a Relevant Tax Authority successfully challenging the *Service Provider* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
- the failure of an avoidance scheme which the *Service Provider* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime and
- where any tax return of the *Service Provider* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April

2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

(73) Others are people or organisations who are not the *Client*, the *Service Manager*, the *Adjudicator*, the *Service Provider* or any employee, Subcontractor or supplier of the *Service Provider*.

(74) Parliament - takes its natural meaning as interpreted by Law and Parliamentary shall be construed accordingly;

(74A) The Payment Index is the Consumer Price Index, as most recently published by the Office for National Statistics;

(75) Party is the *Client* or the *Service Provider* and "Parties" shall mean both of them where the context permits;

(76) The People Rates are the *people rates* unless later changed in accordance with the contract.

(77) The Performance Table states the targets the *Service Provider* is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the *performance table* unless later changed in accordance with the contract.

(78) Personal Data has the meaning given to it in the UK GDPR.

(79) Personal Data Breach has the meaning given to it in the UK GDPR.

(80) Personnel - all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of that Party's obligations under the contract;

(81) Plant and Materials are items intended to be included in the Affected Property and materials consumed by the *Client*.

(82) Prescribed Person means a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', available online at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>, as updated from time to time.

(83) The Price for Service Provided to Date is the total of the Price for Completed Work and any other amounts for Completed Work calculated in accordance with contract schedule 2 (Pricing Details).

(84) 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.

(85) 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.

(86) Processing - has the meaning given to it in the UK GDPR and Process and Processed shall be construed accordingly;

(87) Processor - has the meaning given to it in the UK GDPR;

(88) Processor Personnel - all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the contract;

(89) A Prohibited Act is:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* and/or a Business Unit and/or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
 - (ii) under legislation or common law concerning fraudulent acts or anti-competitive behaviour; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the *Client* and/or a Business Unit or other public body; or
 - (iv) any activity, practice or conduct which would constitute one of the offences or breaches of law listed under (c) above if such activity, practice or conduct had been carried out in the UK.

(90) Prohibited Items means those items which are not permissible under this contract as set out at Table A in clause Z25.

(90A) Project is defined at clause X27.1(1).

(90B) Project Completion is defined at clause X27.1(2).

(90C) Project Completion Date is defined at clause X27.1(3).

(90D) Project Order is defined at clause X27.1(4).

(91) Protective Measures - appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in contract schedule 6 (Security), if applicable;

(92) 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 and "Providing the Service" shall be construed accordingly.

(93) Rating Agencies means the rating agencies listed in the Contract Data.

(93A) Reactive Maintenance Works means works arising as a result of a failure of an Asset or a service forming part of the Scope (and for the avoidance of doubt are not Small Works (as defined in the Scope) or Project Orders) as further detailed in the 'Reactive Works' tab in Annex B of the Scope.

(94) Real Living Wage means the real living wage as published yearly by the Living Wage Foundation.

(95) Recipient Party - the Party which receives or obtains directly or indirectly Confidential Information;

(96A) The Regulations are the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);

(97) Relevant Requirements are all Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

(98) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Service Provider* is established.

(99) Request for Information is a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

(99A) Request Recipient is defined in clause Z18.4.8.

(100) Satisfaction Certificate - a certificate (materially in the form contained in Annex A of the Scope) granted by the *Service Manager* when the *Service Provider* has Achieved a Milestone;

(101) Scope is information which

- specifies and describes the *service* or
- states any constraints on how the *Service Provider* 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.

(102) Security Management Plan - the *Service Provider's* security management plan prepared pursuant to contract schedule 6 (Security) (if applicable);

(103) Security Policy - the *Client's* security policy, referred to in the Scope, in force as at the Contract Date (a copy of which has been supplied to the *Service Provider*), as updated from time to time and notified to the *Service Provider*;

(104) 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.

(105) A Service Failure is a part of the service which is not in accordance with

- the Scope,

- the Law,
- the Accepted Plan,
- the mobilisation plan, or
- the demobilisation plan.

(106) A Service Order is an instruction to carry out work identified in the Service Order Requirements.

(107) Service Order Requirements is information which forms part of the Scope and

- specifies and describes the part of the service for which a Service Order is required,
- details the order process for a Service Order and
- states any constraints on the issue of a Service Order.

(108) The Service Period is the *service period* unless later changed in accordance with the contract.

(109) Service Provider Staff are all directors, officers, employees, agents, consultants and contractors of the *Service Provider* and/or of any subcontractor engaged in the performance of *the Service Provider's* obligations under the contract;

(110) SME means an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises.

(111) Storage Media - the part of any device that is capable of storing and retrieving data;

(112) Strategic Supplier means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

(113) A Subcontractor is a person or organisation who has a contract with the *Service Provider* 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 *Service Provider* according to the time they work.

For the avoidance of doubt, all Key Subcontractors are Subcontractors.

(114) Subprocessor - any third party appointed to process Personal Data on behalf of that Processor related to a contract;

(115) A Subsubcontractor is a person or organisation who has a contract with a Subcontractor 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 Subcontractor according to the time they work.

(116) Supply Chain Information Report Template means the document at contract schedule 12 (Supply Chain Information Report Template).

(117) Supply Chain Map means details of (i) the *Service Provider*, (ii) all Subcontractors and (iii) any other entity that the *Service Provider* is aware is in its supply chain that is not a Subcontractor, setting out at least:

- (a) the name, registered office and company registration number of each entity in the supply chain;
- (b) the function of each entity in the supply chain, and;
- (c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain;

(117A) Sustainability Report is a written report to be completed by the *Service Provider* and provided to the *Client* in respect of the *Service Provider's* provision of the *service* in the form set out in clauses Z25.40-Z25.45 and on the date and frequency outlined in Table A of Part B to clause Z25.

(118) Sustainability Requirements means any relevant social or environmental strategies, policies, commitments, targets, plans or requirements that apply to and are set out in the contract.

(118A) Systematic Service Failure means a Service Failure or repeated Service Failure in each case where such failure has an adverse, material impact on the business of the *Client* or a Business Unit or causes a material interruption in the provision of one or more of the Work Packages.

(118B) Tax means:

- a) all forms of taxation whether direct or indirect;
- b) National Insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

(118C) Termination Assistance Period has the meaning given to it in the 'Exit Management' section of the Scope.

(118D) Termination Table is the table set out in Clause 90.

(119) Timber and Wood-Derived Products means any product that contains wood or wood fibre. Such products range from solid wood construction to those where the manufacturing processes obscure the amount of wood the product contains.

(119A) Transferring Contract has the meaning given to it in the 'Exit Management' section of the Scope.

(120) Transparency Information - the Transparency Reports and the content of the contract, including any changes to this contract agreed from time to time, except for

- (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the *Client*; and

(ii) Commercially Sensitive Information;

(120A) Transparency Reports are reports providing the information relating to the *service* and performance of the contract which the *Service Provider* is required to provide to the *Client* in accordance with the reporting requirements in Annex F (Shared Savings and Continuous Improvement) of Attachment 3 (Specification) of the Scope.

(121) UK GDPR is the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679).

(122) VCSE means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

(123) Waste Hierarchy means the prioritisation of waste management in the following order of preference:

- (a) Prevention – by using less material in design and manufacture. Keeping products for longer;
- (b) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
- (c) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;

(123A) Worker means any one of the *Service Provider Staff* which the *Client*, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the *service*;

(124) Working Days are a day (other than a Saturday or Sunday) when banks in London, United Kingdom are open for business.

(124A) Work Package means one of the work packages A-R as set out in the Scope.

(125) Zero Hours Contract means a contract between a business and a casual worker where the worker is engaged on an ad hoc basis with no guarantee of work from the business and no minimum contracted hours.

12 Interpretation and the law

- 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.

13 Communications

- 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 *Service Provider* 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 *Service Provider* for acceptance. If the reply is not acceptance, the *Service Manager* states the reasons in sufficient detail to enable the *Service Provider* to correct the matter. The *Service Provider* 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 *Service Provider's* submission fully.
- 13.5 The *Service Manager* may extend the *period for reply* to a communication if the *Service Manager* and the *Service Provider* agree to the extension before the reply is due. The *Service Manager* informs the *Service Provider* of the extension which has been agreed.
- 13.6 The *Service Manager* issues certificates to the *Client* and the *Service Provider*.
- 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 *Service Provider*. Withholding acceptance for a reason stated in these conditions of contract is not a compensation event.

14 The Service Manager

- 14.1 The *Service Manager's* acceptance of a communication from the *Service Provider* or acceptance of the work does not change the *Service Provider's* responsibility to Provide the Service or liability for its plan or its design.
- 14.2 The *Service Manager*, after notifying the *Service Provider*, may delegate any of its 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 its delegate and the action will be in respect of the relevant *Business Unit* where appropriate. The *Service Manager* may take an action which it has delegated.
- 14.3 The *Service Manager* may give an instruction to the *Service Provider* which changes the Scope or the Affected Property.
- 14.4 The *Client* may replace the *Service Manager* after notifying the *Service Provider* 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.
- 14.6 If the *Service Manager* gives an instruction to the *Service Provider* which changes the Scope or the Affected Property the *Client* is entitled to award any such part of the *service* to another supplier or carry out that part of the *service* itself.

15 Early warning

15.1 The *Service Provider* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- interfere with the timing of the *service*,
- impair the effectiveness of the *service* or
- cause any part of the *service* to extend beyond the end of the Service Period.

The *Service Manager* or the *Service Provider* may give an early warning by notifying the other of any other matter which could increase the *Service Provider'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 *Service Provider* within one week of the *starting date*. The *Service Manager* instructs the *Service Provider* 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 *Service Provider* 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 *Service Provider* 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 *Service Provider* 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.

16 Service Provider's proposals

16.1 The *Service Provider* may propose to the *Service Manager* that the Scope provided by the *Client* is changed in order to reduce the amount the *Client* pays to the *Service Provider* for Providing the Service. The *Service Manager* consults with the *Client* and the *Service Provider* about the change.

- 16.2 Within four weeks of the *Service Provider* making the proposal the *Service Manager*
- accepts the *Service Provider's* proposal and issues an instruction changing the Scope,
 - informs the *Service Provider* that the *Client* is considering the proposal and instructs the *Service Provider* to submit a quotation for a proposed instruction to change the Scope or
 - informs the *Service Provider* that the proposal is not accepted.

The *Service Manager* may give any reason for not accepting the proposal.

- 16.3 The *Service Provider* 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.

17 Requirements for instructions

- 17.1 The *Service Manager* or the *Service Provider* 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 *Service Provider* 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.

18 Prevention of Fraud and Bribery

18.1 The *Service Provider* represents and warrants that neither it, the *Service Provider's* Affiliates, nor to the best of its knowledge any of the Service Provider Staff, have at any time prior to the Contract Date:

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

18.2 During the Service Period neither the *Service Provider* nor the *Service Provider's* Affiliates:

- commit a Prohibited Act or any other criminal offence in regulations 57(1) and/or 57(2) of the Regulations; and/or
- do or suffer anything to be done which would cause the *Client* and/or a Business Unit or any of the *Client's* and/or a Business Unit's employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

18.3 During the Service Period the *Service Provider*:

- establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- keeps appropriate and full records of its compliance with this contract and make such records available to the *Service Manager* and/or a Business Unit on request;
 - provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Service Manager* and/or a Business Unit on request) to prevent it and any Service Provider Staff from committing a Prohibited Act;
 - if required by the *Service Manager*, within 20 Working Days of the Contract Date, and then annually, certify in writing to the *Service Manager* that it has complied with this clause 18, including compliance of all Service Provider Staff and *Service Provider* Affiliates, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 18.4 The *Service Provider* immediately notifies the *Service Manager* in writing if it becomes aware of any breach of clauses 18.1-18.3 or has reason to believe that it has or any of the Service Provider Staff or *Service Provider's* Affiliates have:
- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract; or
 - otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.
- 18.5 If the *Service Provider* makes a notification to the *Service Manager* pursuant to clause 18.4 the *Service Provider* responds promptly to the *Service Manager's* enquiries, co-operates with any investigation, and allows the *Service Manager* and/or a Business Unit to audit any books, records and/or any other relevant documentation.
- 18.6 Any notice the *Service Provider* gives under clause 18.4 above specifies:
- The Prohibited Act;
 - The identity of the Party who it thinks has committed the Prohibited Act; and
 - The action it has decided to take.
- 18.7 The *Service Provider* immediately notifies the *Service Manager* in writing if a foreign public official becomes an officer or employee of the *Service Provider* or acquires a direct or indirect interest in the *Service Provider*, and the *Service Provider* warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this contract.

19 Service Orders

- 19.1 The *Service Manager* may issue a Service Order to the *Service Provider*.
- 19.2 A Service Order is in the form stated in the Service Order Requirements and includes
- a detailed description of the work to be done,
 - unless stated in the contract, the time period within which the work is to be done and
 - any other information which the Service Order Requirements states is required.

The Price for a Service Order is assessed using rates and Prices in the Price List.

The issue of a Service Order is not a compensation event.

- 19.3 A Service Order is not issued if the work in the Service Order will not be complete before the end of the Service Period.
- 19.4 The *Service Manager* maintains a record of Service Orders unless stated otherwise in the Service Order Requirements.

2. THE SERVICE PROVIDER'S MAIN RESPONSIBILITIES

20 Providing the Service

- 20.1 The *Service Provider* Provides the Service in accordance with the Scope and Laws.
- 20.2 In Providing the Service, the *Service Provider* minimises the interference caused to the Affected Property and the activities taking place in it and Provides the Service in a manner which does not cause damage to the Affected Property. The *Service Provider* reports any damage caused to Affected Property to the *Service Manager* immediately. The cost of repair or replacement of any damaged Affected Property arising from Providing the Service is borne by the *Service Provider*.
- 20.3 The *Service Provider* keeps records of the work done and provides them to the *Client* as stated in the Scope. The *Service Provider* provides access for the *Service Manager* to inspect the records.

The *Client* owns the *Service Provider's* rights over these records except as stated in the Scope.

21 Design of Equipment

- 21.1 The *Service Provider* submits particulars of the design of an item of Equipment to the Service Manager for acceptance if the *Service Manager* instructs the *Service Provider* to. A reason for not accepting is that the design of the item will not allow the *Service Provider* to Provide the Service in accordance with
- the Scope,
 - the Accepted Plan,
 - the Law,
 - necessary consents, or
 - this contract.

22 People

- 22.1 The *Service Provider* 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 *Service Provider* 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 *Service Provider* to remove a person. The *Service Provider* then arranges that, after one day, the person has no further connection with the work included in the contract.
- 22.3 Subject to clause 22.4, the *Service Provider* shall not and shall procure that any Subcontractor shall not remove or replace any *key person* unless:
- 22.3.1 requested to do so by the *Service Manager* or the *Service Manager* agrees in writing to the removal or replacement;
 - 22.3.2 the *key person* resigns, retires or dies or is on maternity or long-term sick leave; or
 - 22.3.3 the *key person's* employment or contractual arrangement with the *Service Provider* or Subcontractor is terminated for material breach of contract by the employee.

22.4 The *Service Provider* shall:

- 22.4.1 notify the *Service Manager* promptly of the absence of any *key person* (other than for short-term sickness or holidays of two (2) weeks or less, in which case the *Service Provider* shall ensure appropriate temporary cover for that *key person*);
- 22.4.2 ensure that any *key person* role is not vacant for any longer than ten (10) Working Days;
- 22.4.3 give as much notice as is reasonably practicable of its intention to remove or replace any *key person* and, except in the cases of death, unexpected ill health or a material breach of the *key person's* employment contract, this will mean at least three (3) months' notice; and
- 22.5.4 ensure that all arrangements for planned changes in the *key person* roles provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the *service*.

23 Working with the *Client* and Others

- 23.1 The *Service Provider* co-operates with Others, including in obtaining and providing information which they need in connection with the *service*. The *Service Provider* shares the Affected Property with Others as stated in the Scope.
- 23.2 The *Client* and the *Service Provider* provide *services* and other things as stated in the Scope. Any cost incurred by the *Client* as a result of the *Service Provider* not providing the *services* and other things which it is to provide is assessed by the *Service Manager* and paid by the *Service Provider*.

24 Subcontracting

- 24.1 If the *Service Provider* 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 *Service Provider's*.
- 24.2 The *Service Provider* 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 *Service Provider* to Provide the Service,
 - the appointment may prejudice the provision of the *service* or may be contrary to the interests of the *Client*,
 - in the reasonable view of the *Service Manager*, the proposed Subcontractor is considered to be unreliable and/or has not provided reliable goods and/or reasonable services to its other clients, or
 - the appointment would create a conflict of interest.The *Service Provider* 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 *Service Provider* submits the proposed subcontract documents, except any pricing information, for each subcontract to the *Service Manager* for acceptance unless 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 *Service Provider* to Provide the Service,
 - they are unduly disadvantageous to the Subcontractor,
 - they do not include the requirements stated in the contract to be included in a subcontract or
 - they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.
- 24.4 The *Service Provider* ensures that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract.
- 24.5 The *Service Provider* does not engage a Key Subcontractor other than those listed in contract schedule 13 (Key Subcontractors). The *Client* will update the contract schedule 13 (Key Subcontractors) periodically to record any Key Subcontractors the *Service Provider* is entitled to subcontract its obligations to. For the avoidance of doubt, the provisions of the contract applying to Subcontractors apply to Key Subcontractors unless otherwise stated.

25 Other responsibilities

- 25.1 The *Service Provider* obtains approval from Others where necessary.
- 25.2 The *Service Provider* 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 *Service Provider* obeys an instruction which is in accordance with the contract and is given by the *Service Manager*.
- 25.4 The *Service Provider* acts in accordance with the health and safety requirements stated in the Scope.
- 25.5
- (1) The *Service Provider* takes full responsibility for the adequacy, stability and safety of all site operations and methods of operation and complies fully with the requirements of the CDM Regulations.
 - (2) The *Service Provider* warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations.
 - (3) The *Service Provider* throughout the progress of the *service* and while the *Service Provider* has access to the Affected Property in accordance with this contract has full regard for the safety of all persons entitled to be upon the Affected Property and keeps the Affected Property (so far as the same is under its control) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the *service*, provides and maintains at its own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the *service* or for the safety and convenience of the public or Others.
 - (4) The *Service Provider* performs all the functions and duties of and exercises the powers of the "principal contractor", the "principal designer" and a "contractor" and "designer" as defined in the CDM Regulations.

- (5) The *Service Provider* warrants to the *Client* that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "principal contractor", "principal designer", "contractor" and "designer" as defined in the CDM Regulations.
- (6) The *Service Provider* at all times co-operates, so far as is reasonably practicable, with all Parties having health and safety responsibilities on or adjacent to the Affected Property for the effective discharge of those responsibilities.
- (7) The *Service Provider* procures that each Subcontractor complies fully with the requirements of the CDM Regulations.
- (8) Before the commencement of the *service* the *Service Provider* provides the *Service Manager* with a copy of its health and safety policy, and that of any Subcontractor prior to such Subcontractor commencing the *service*.
- (9) The *Service Provider* to the extent that he is in control of the Affected Property or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Affected Property, its access and egress, safe and without risk to the health of persons using it.

26 Assignment

- 26.1 The *Client* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:
 - any Central Government Body; or
 - any other public or private sector body which substantially performs any of the functions that previously had been performed by the *Client*.
- 26.2 The *Service Provider* does not, without the prior written consent of the *Client*, assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this contract. In the absence of the *Client's* written consent no sum of money becoming due under this contract is payable to any person other than the *Service Provider*.
- 26.3 The *Client* is entitled to, and the *Service Provider* gives consent to, novate this contract or any part thereof to:
 - any Central Government Body; or
 - any other public or private sector body which substantially performs any of the functions that previously had been performed by the *Client*, upon such terms as the *Client* specifies.
- 26.4 Any change in the legal status of the *Client* such that it ceases to be a Central Government Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Client*.
- 26.5 If this contract is novated to a body which is not a Central Government Body or if a successor body which is not a Central Government Body becomes the *Client* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee only assigns, novates or otherwise disposes of its rights and obligations under this contract or any part thereof with the written consent of the *Service Provider*.

27 Disclosure

- 27.1 The *Parties* comply with the provisions set out at clauses Z12 (Confidentiality and Information Sharing) and Z16 (Publicity and Branding).

3 TIME

30 Starting and the Service Period

30.1 The *Service Provider* does not start work until the *starting date* and Provides the Service throughout the Service Period.

31 The Service Provider's plan

31.1 If a plan is not identified in the Contract Data, the *Service Provider* submits a first plan to the *Service Manager* for acceptance within the period stated in the Contract Data.

31.2 The *Service Provider* shows on each plan submitted for acceptance

- the *starting date* and the end of the Service Period,
- the order and timing of the work of the *Client* and Others as last agreed with them by the *Service Provider* 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 *Service Provider* will need – access to the Affected Property as stated in the Scope, – acceptances, – Plant and Materials, equipment and other things to be provided by the *Client* and – information from Others,
- a statement of how the *Service Provider* plans to do the work identifying the principal Equipment and other resources which will be used,
- a statement of how the *Service Provider* plans to provide business continuity to continue to Provide the Service following an incident which disrupts its normal operations and
- other information which the Scope requires the *Service Provider* to show on a plan submitted for acceptance. A plan issued for acceptance is in the form stated in the Scope.

31.3 Within two weeks of the *Service Provider* submitting a plan for acceptance, the *Service Manager* notifies the *Service Provider* of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a plan is that

- the *Service Provider's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Service Provider'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 *Service Provider* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Service Provider's* notification, it is treated as acceptance by the *Service Manager* of the plan.

31.4 The *Service Provider* provides information which shows how each item description on the Price List relates to the plan submitted for acceptance.

32 Revising the Service Provider's plan

32.1 The *Service Provider* shows on each revised plan

- the actual progress achieved and its effect upon the timing of the remaining work and services,
- how the *Service Provider* plans to deal with any delays and to correct notified Service Failures and
- any other changes which the *Service Provider* proposes to make to the Accepted Plan.

32.2 The *Service Provider* submits a revised plan to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed the *Service Provider* to,
- within the *period for reply* after the *Service Manager* has instructed a change to the Affected Property,
- when the *Service Provider* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data throughout the Service Period.

33 Mobilisation plan

33.1 If a mobilisation plan is required and is not identified in the Contract Data, the Service Provider submits a mobilisation plan to the *Service Manager* for acceptance within the period stated in the Contract Data.

33.2 The *Service Provider* shows on the mobilisation plan submitted for acceptance the information which the Scope requires the *Service Provider* to show.

33.3 Within one week of the *Service Provider* submitting a mobilisation plan for acceptance, the *Service Manager* notifies the *Service Provider* of the acceptance of the mobilisation plan or the reasons for not accepting it. A reason for not accepting a mobilisation plan is that

- the *Service Provider's* plans which it shows are not practicable or
- it does not comply with the Scope.

If the *Service Manager* does not accept the mobilisation plan, the *Service Provider* submits a revised mobilisation plan.

33.4 The *Service Provider* submits a revised mobilisation plan to the *Service Manager* for acceptance:

- and
- within the *period for reply* after the *Service Manager* has instructed the *Service Provider* to;
 - when the *Service Provider* chooses to.

The *Service Provider* shows on any revised mobilisation plan submitted for acceptance the information which the Scope requires the *Service Provider* to show.

33.5 The *Service Manager* shall have the right to require the *Service Provider* to include any reasonable changes or provisions in each version of the mobilisation plan and changes to any Milestones and Milestone Payments shall be by way of instruction by the *Service Manager*.

33.6 The *Service Provider* shall provide each of the items identified in the mobilisation plan by the date assigned to that item in the mobilisation plan so as to ensure that each Milestone identified in the mobilisation plan is Achieved on or before its Milestone Date.

33.7 The *Service Provider* shall monitor its performance against the mobilisation plan and Milestones (if any) and report to the *Service Manager* on such performance in the format agreed by the Parties.

34 Demobilisation plan

34.1 The *Service Provider* prepares a demobilisation plan and submits it to the *Service Manager* for acceptance within the period stated in the Contract Data.

34.2 The *Service Provider* shows on the demobilisation plan submitted for acceptance the information which the Scope requires the *Service Provider* to show.

34.3 Within ten (10) days of the *Service Provider* submitting a demobilisation plan for acceptance, the *Service Manager* notifies the *Service Provider* of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a demobilisation plan includes but is not limited to:

- it does not allow the *Service Provider* to Provide the Service; and/or
- it does not comply with the Scope.

If the *Service Manager* does not accept the demobilisation plan, the *Service Provider* submits a revised demobilisation plan.

34.4 The *Service Provider* submits a revised demobilisation plan to the *Service Manager* for acceptance

- within five (5) days after the *Service Manager* has instructed the *Service Provider* to and
- when the *Service Provider* chooses to.

35 Access

35.1 The *Client* provides the right of access for the *Service Provider* to the Affected Property as shown on the Accepted Plan.

35.2 The *Client* shall have the right, upon reasonable grounds to:

35.2.1. Refuse access to any individual(s) to any Client Premises; and

35.2.2. Have any member of the *Service Provider's* or any Subcontractor's staff removed from Client Premises without notice.

36 Instructions to stop or not to start work

36.1 The *Service Manager* may instruct the *Service Provider* to stop or not to start any work. The *Service Manager* subsequently gives an instruction to the *Service Provider* to

- re-start or start the work or
- remove the work from the Scope.

4 QUALITY MANAGEMENT

40 Quality management system

- 40.1 The *Service Provider* 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 *Service Provider* 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 *Service Provider* to Provide the Service.
- If any changes are made to the quality plan, the *Service Provider* provides the *Service Manager* with the changed quality plan for acceptance.
- 40.3 The *Service Manager* may instruct the *Service Provider* to correct a failure to comply with the quality plan. This instruction is not a compensation event.

41 Tests and inspections of the service

- 41.1 This clause only applies to tests and inspections of the *service* required by the Scope or the Law.
- 41.2 The *Service Provider* and the *Client* provide materials, facilities and samples for tests and inspections of the *service* as stated in the Scope.
- 41.3 The *Service Provider* 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 *Service Provider* 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 *Service Provider*.
- 41.4 If a test or inspection shows that any work has a Service Failure, the *Service Provider* repeats the work or otherwise corrects the Service Failure, 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 *Service Provider's* fault.
- 41.6 The *Service Manager* assesses the cost incurred by the *Client* in repeating a test or inspection after a Service Failure is found. The *Service Provider* pays the amount assessed.

42 Testing and inspection before delivery

- 42.1 The *Service Provider* 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 *Service Provider* that they have passed the test or inspection.

43 Notifying and correcting Service Failures

- 43.1 Until the end of the Service Period the *Service Manager* and the *Service Provider* notifies the other as soon as they become aware of a Service Failure.
- 43.2 The *Service Provider* corrects a Service Failure whether or not the *Service Manager* has notified it.

43.3 The *Service Provider* corrects a notified Service Failure within a time which minimises the adverse effect on the *Client* or Others and in any event within the Service Failure Timescales set out in Annex H of the Scope.

43.4 If a notified Service Failure can be corrected, because that part of the *service* can still be provided within the times stated in the Scope, but the *Service Provider* does not correct it within a time which minimises the adverse effect on the *Client* or Others, the Service Manager assesses the cost to the *Client* of having the Service Failure corrected by other people and the *Service Provider* pays this amount. The Scope is treated as having been changed to accept the Service Failure.

43.5 If a notified Service Failure cannot be corrected, because that part of the *service* was not provided within the times stated in the Scope, the *Service Manager* assesses the cost the *Service Provider* would have incurred in providing that part of the *service* and the *Service Provider* pays this amount. The Scope is treated as having been changed to accept the Service Failure.

43.6 In assessing the

- cost to the *Client* of having the Service Failure corrected or
 - cost the *Service Provider* would have incurred in providing that part of the *service*,
- the *Service Manager* takes into account any amounts in the Price for Service Provided to Date which would result in the *Client* paying or retaining the same amount twice.

43.7 The *Service Manager* arranges for the *Client* to allow the *Service Provider* access if it is needed for correcting a Service Failure.

43.8 Without prejudice to any other remedy that the *Client* may have (whether under this contract or otherwise) and without prejudice to the other terms of the contract, in the event of a Systematic Service Failure the *Service Manager* may instruct the *Service Provider* not to correct that Systematic Service Failure (the “Step-In Services”) and the *Client* may carry out the Step-In Services itself or engage others (the “Step-In Third Party”) to carry out the Step-In Services (the “Step-In Right”).

- 43.9 In the event that the *Client* opts to exercise its Step-In Right the *Service Manager* may:
1. require by written notice, the *Service Provider* to immediately take the steps specified by the *Service Manager*; and/or
 2. require a Subcontractor to immediately take the steps specified by the *Service Manager*,

in each case such steps to be taken within the time period stated in the notice, or in a reasonable time period if none is stated.

43.10 In the event and to the extent that the *Client* exercises its Step-In Right the *Service Provider* shall and shall procure that the Subcontractors shall:

- i. grant and procure that relevant third parties grant the *Client* such licences as are reasonably required (for itself or a Step-In Third Party) for the purposes of carrying out the Step-In Services; and
- ii. afford to the *Client* such co-operation and access to any Intellectual Property, Rights, employees, premises, equipment, documents, information or other items as are reasonably required for the purposes of carrying out the Step-In Services.

The exercise of the Step-In Right shall not excuse the *Service Provider* from its obligation to Provide the *Service* (excluding the Step-In Services for the period only of exercise of the

Step-In Right) in accordance with this contract or be deemed to frustrate or waive performance of that obligation.

- 43.11 In the event and to the extent that the Client exercises its Step-In Rights pursuant to this clause 43 the Service Manager assesses the cost the Service Provider would have incurred in providing that part of the service plus the forecast of the additional cost to the Client of carrying out the Step-In Services and the Service Provider pays this amount.

44 Accepting Service Failures

- 44.1 The *Service Provider* and the *Service Manager* may propose to the other that the Scope should be changed so that a Service Failure does not have to be corrected.
- 44.2 If the *Service Provider* and the *Service Manager* are prepared to consider the change, the *Service Provider* submits a quotation for reduced Prices or changes to the Performance Table or both to the *Service Manager* for acceptance. If the quotation is accepted, the *Service Manager* changes the Scope, the Prices and the Performance Table accordingly and accepts the revised plan.

5. PAYMENT

50 Assessing the amount due

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 *Service Provider* submits an application for payment to the *Service Manager* and (where required by clause Z22) to the relevant Business Unit before each assessment date setting out the amount the *Service Provider* considers is due at the assessment date. The *Service Provider'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 *Service Provider* before the assessment date.

50.3 If the *Service Provider* 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 *Service Provider*,
- less amounts to be paid by or retained from the *Service Provider*.

50.4 If the *Service Provider* 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 *Service Provider* 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 *Service Provider* 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.

51 Payment

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. A payment is made by the *Service Provider* to the *Client* if the amount due is to the *Client*. Other payments are made by the *Client* or relevant Business Unit in accordance with clause Z22 to the *Service Provider*. The Party to which payment is due submits an invoice to the other Party or Business Unit (as appropriate) for the amount to be paid within one week of the *Service Manager's* certificate. Where an amount is due from a Business Unit under clause Z22, the *Client* procures that such Business Unit complies with this clause 51 with respect to such amount due. 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 or paying Business Unit receives an invoice from the other Party or Business Unit (as appropriate) 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*, the *tribunal*, or the arbitrator,
- 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 or paying Business Unit to pay to the other Party or Business Unit (as appropriate) is added to any payment made under the contract.

52 Defined Cost

- 52.1 All the *Service Provider'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.

53 Performance measurements

- 53.1 From the *starting date* until the end of the Service Period, the *Service Provider* reports to the *Service Manager* its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
- 53.2 If the *Service Provider's* performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the *Service Manager* for acceptance its proposals for improving performance.
- A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.
- 53.3 At the dates stated in the Performance Table,
- if a part of the *service* does not meet the target stated in the Performance Table, the *Service Provider* pays the amount stated in the Performance Table,
 - if a part of the *service* exceeds or meets the target stated in the Performance Table, the *Service Provider* is paid the amount stated in the Performance Table.

53.4 Information in the Performance Table is not Scope.

54 Final assessment

54.1 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 *Service Provider* details of how the amount due has been assessed. The Party or relevant Business Unit to which payment is due submits an invoice to the other Party or relevant Business Unit (as appropriate) 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 or paying Business Unit receives an invoice from the other Party or relevant Business Unit (as appropriate) and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

54.2 If the *Service Manager* does not make this assessment within the time allowed, the *Service Provider* 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 or relevant Business Unit 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 or paying Business Unit receives an invoice from the other Party or relevant Business Unit (as appropriate) and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

54.3 An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.

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 *Level 1 Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers a dispute about the assessment of the final amount due referred to but not resolved by the *Level 1 Representatives* to the *Senior Representatives* within two weeks of the referral to the *Level 1 Representatives*,

- 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*, or, in the case of the *Client*, to arbitration, 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.

54.4 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* or to arbitration within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

55 The Price List

55.1 Information in the Price List is not Scope.

6. COMPENSATION EVENTS

60 Compensation events

60.1 The following events are compensation events.

(1) The *Service Manager* gives an instruction changing the Scope or the Affected Property except

- a change made in order to accept a Service Failure or
- a change to the Scope provided by the *Service Provider* for its plan which is made
 - at the *Service Provider'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.

(3) The *Client* does not provide something which it is to provide by the date shown on the Accepted Plan.

(4) The *Service Manager* gives an instruction to stop or not to start any work.

(5) The *Client* or Others do not work in accordance with

- the Accepted Plan or
- the conditions stated in the Scope.

(6) The *Service Manager* does not reply to a communication from the *Service Provider* within the period required by the contract.

(7) The *Service Manager* changes a decision which the *Service Manager* had previously communicated to the *Service Provider*.

(8) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a Service Failure) for a reason not stated in the contract.

(9) A test or inspection done by the *Service Manager* causes unnecessary delay.

(10) A change to the Affected Property by the *Client* or Others.

(11) An event which is a *Client's* liability stated in these conditions of contract.

(12) The *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope.

(13) The *Service Manager* notifies the *Service Provider* of a correction to an assumption which the *Service Manager* stated about a compensation event.

(14) A breach of contract by the *Client* which is not one of the other compensation events in the contract.

(15) The *Service Manager* gives an instruction to correct a mistake in the Price List.

(16) The *Service Manager* notifies the *Service Provider* that a quotation for a proposed instruction is not accepted provided that for the avoidance of doubt it is not a compensation event if the quotation relates to a Service Order.

(17) Additional compensation events stated in Contract Data part one.

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 *Service Provider* 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.

61 Notifying compensation events

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 *Service Provider* 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 *Service Provider* to submit quotations unless

- the event arises from a fault of the *Service Provider* or
- the event has no effect upon Defined Cost, the Performance Table or, if the contract includes Option X27, a Project Completion.

61.3 The *Service Provider* notifies the *Service Manager* of an event which has happened or which is expected to happen as a compensation event if

- the *Service Provider* believes that the event is a compensation event and
- the *Service Manager* has not notified the event to the *Service Provider*.

If the *Service Provider* does not notify a compensation event within eight weeks of becoming aware that the event has happened or of the date when the *Service Provider* ought to have become aware of the event, the Prices, the Performance Table or, if the contract includes Option X27, the Project Completion Dates 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 *Service Provider's* notification of a compensation event within

- the *period for reply* after the *Service Provider's* notification or
- a longer period to which the *Service Provider* has agreed.

If the event

- arises from any act, error, omission, negligence, breach or default of the *Service Provider* or Subcontractors or any of their employees or agents,
- 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, the Performance Table or, if the contract includes Option

X27, a Project Completion or

- is not one of the compensation events stated in the contract

the *Service Manager* notifies the *Service Provider* that the Prices, the Performance Table and, if the contract includes Option X27, the Project Completion Dates are not to be changed and states the reasons in the notification. Otherwise, the *Service Manager* notifies the *Service Provider* that the event is a compensation event and includes in the notification an instruction to the *Service Provider* to submit quotations.

If the *Service Manager* fails to reply to the *Service Provider's* notification of a compensation event within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If that failure continues for a further two weeks after the *Service Provider'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 *Service Provider* did not give an early warning of the event which an experienced service provider could have given, the *Service Manager* states this in the instruction to the *Service Provider* 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 *Service Provider* 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 *Service Provider* later than eight weeks after the end of the Service Period.

62 Quotations for compensation events

62.1 After discussing with the *Service Provider* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Service Provider* to submit alternative quotations. The *Service Provider* 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 the Performance Table assessed by the *Service Provider*. The *Service Provider* submits details of the assessment with each quotation. If the plan for remaining work is altered by the compensation event, the *Service Provider* includes the alterations to the Accepted Plan in the quotation.

62.3 The *Service Provider* 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 *Service Provider* to submit a revised quotation only after explaining the reasons for doing so to the *Service Provider*. The *Service Provider* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Service Manager* extends the time allowed for

- the *Service Provider* to submit quotations for a compensation event or

- the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Service Provider* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Service Provider* of the extension which has been agreed.

62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If the *Service Provider* submitted more than one quotation for the compensation event, the notification states which quotation the *Service Provider* proposes is to be used. If the failure continues for a further two weeks after the *Service Provider's* notification it is treated as acceptance by the *Service Manager* of the quotation.

63 Assessing compensation events

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.

63.1A For the purposes of this clause 63.1A, the Parties acknowledge and agree that at the Contract Date the fixed monthly fee "Baseline Monthly Payment" referred to in contract schedule 2 (Pricing Details) assuming all work has been completed is [REDACTED] "the Contract Date Baseline Monthly Payment".

In this clause 63.1A:

"Threshold" means 75% of the Contract Date Baseline Monthly Payment;

"Baseline Monthly Payment Works" means all works included in the calculation of the Baseline Monthly Payment as identified in the Price List.

Where and to the extent a compensation event described in clause 60.1(1) occurs which instruction is to omit any part of the Baseline Monthly Payment Works ("Omission Instruction") the following provisions of this clause 63.1A shall apply to the exclusion of clause 63.2:

63.1A.1 subject to clause 63.1B the change to the Prices is assessed by a deduction of the Prices for the omitted Baseline Monthly Payment Works from the Baseline Monthly Payment and subject to 63.1A.2 below and paragraph 4 of Schedule 8 (Call-Off Schedule 29 (Redundancy Surcharge)) the *Service Provider* is not entitled to any part of the Fee or any other costs, losses or expenses whatsoever arising as a result;

63.1A.2 where following the calculation pursuant to 63.1A.1 above the compensation event results, either individually or cumulatively together with other Omission Instructions, in the Baseline Monthly Payment being less than the Threshold the *Service Provider* shall be entitled to a profit payment in each subsequent monthly assessment calculated by applying the profit percentage stated in the Price List to every £1 of the Baseline Monthly Payment below the Threshold provided that

63.1A.3 the profit payment referred to in 63.1A.2 shall cease to be payable where any subsequent compensation event results in the Baseline Monthly Payment being more than or equal to the Threshold.

For the purposes of calculating any individual or cumulative Omission Instruction contributing to the Threshold any omission in Baseline Monthly Payment Works resulting from a change to the Scope provided by the *Client* which the *Service Provider* proposed and the *Service Manager* accepted does not count towards the calculation.

63.1.B In this clause 63.1B:

"Management Overhead Threshold" means 10% of the Baseline Monthly Payment at the date of the previous Management Overhead Threshold Reset save that if there has been no Management Overhead Threshold Reset the relevant date is the Contract Date; and

"Management Overhead Threshold Reset" means the date that the Baseline Monthly Payment was previously reset for the purpose of recalculating the Management Overhead as a result of the Management Overhead Threshold being exceeded.

Where and to the extent a compensation event described in clause 60.1(1) occurs which instruction is to add to or omit any part of the Baseline Monthly Payment Works ("Change of Scope Instruction") the following provisions of this clause 63.1B shall apply to the exclusion of clause 63.2:

63.1.B.1 where the compensation event results, either individually or cumulatively together with other Change of Scope Instructions, in a change to the Baseline Monthly Payment being that is less than the Management Overhead Threshold the change to the Prices does not include any change to the management fee included in the Price List;

63.1.B.2 where the compensation event results, either individually or cumulatively together with other Change of Scope Instructions, in a change to the Baseline Monthly Payment being that is more than the Management Overhead Threshold there shall be a recalculation of the management fee included in the Price List calculated on the Baseline Monthly Payment at the date of the compensation event.

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 *Service Provider* 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 *Service Provider* proposed and the *Service Manager* accepted,
- 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 change to the Performance Table is assessed as the effect of the compensation event upon the targets, amounts and dates stated in the Performance Table.
- 63.7 The rights of the *Client* and the *Service Provider* to changes to the Prices, the Performance Table and, if the contract includes Option X27, the Project 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 *Service Provider* did not give an early warning of the event which an experienced service provider could have given, the compensation event is assessed as if the *Service Provider* 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 *Service Provider* 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 Performance Table were for the interpretation most favourable to the Party which did not provide the Scope.
- 63.12 Not used.
- 63.14 Assessments for changed Prices for compensation events are in the form of changes to the Price List.
- 63.15 If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the *Service Manager* and *Service Provider* may agree a new rate. If they do not agree the *Service Manager* assesses the rate based on the People Rates.

The agreed or assessed rate becomes the People Rate for that category of person.

64 The Service Manager's assessments

64.1 The *Service Manager* assesses a compensation event

- if the *Service Provider* has not submitted the quotation and details of its assessment within the time allowed,
- if the *Service Manager* decides that the *Service Provider* has not assessed the compensation event correctly in the quotation and has not instructed the *Service Provider* to submit a revised quotation,
- if, when the *Service Provider* submits quotations for the compensation event, it has not submitted a plan or alterations to a plan which the contract requires it to submit or
- if, when the *Service Provider* submits quotations for the compensation event, the *Service Manager* has not accepted the *Service Provider's* latest plan 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 *Service Provider* 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 *Service Provider's* latest plan for one of the reasons stated in the contract.

64.3 The *Service Manager* notifies the *Service Provider* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Service Provider'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 *Service Provider* may notify the *Service Manager* of that failure. If the *Service Provider* submitted more than one quotation for the compensation event, the notification states which quotation the *Service Provider* proposes is to be used. If the failure continues for a further two weeks after the *Service Provider's* notification it is treated as acceptance by the *Service Manager* of the quotation.

65 Proposed instructions

65.1 The *Service Manager* may instruct the *Service Provider* 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 *Service Provider* does not put a proposed instruction into effect.

65.2 The *Service Provider* 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 *Service Provider'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 *Service Provider* to submit a quotation. Implementing compensation events.

65.4 For the avoidance of doubt, the preparation of a quotation for a Service Order is not a compensation event.

66 Implementing compensation events

66.1 A compensation event is implemented when

- the *Service Manager* notifies acceptance of the *Service Provider's* quotation,
- the *Service Manager* notifies the *Service Provider* of an assessment made by the Service Manager or
- a *Service Provider's* quotation is treated as having been accepted by the Service Manager.

66.2 When a compensation event is implemented the Prices and the Performance Table are changed accordingly.

66.3 The assessment of an implemented compensation event is not revised except as stated in these conditions of contract.

7. USE OF EQUIPMENT, PLANT AND MATERIALS

70 The *Client's* title to Plant and Materials

70.1 Whatever title the *Service Provider* 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 *Service Provider* if they are removed from the Service Areas with the *Service Manager's* permission.

71 The Parties' use of equipment, Plant and Materials

71.1 The *Service Provider* has the right to use equipment, Plant and Materials and other materials provided by the *Client* only to Provide the Service. The *Service Provider* may make this right available to a Subcontractor.

71.2 At the end of the Service Period or on termination the *Service Provider* provides to the *Client*

- equipment and surplus Plant and Materials provided by the *Client*, in the condition stated in the Scope,
- items of Equipment for the *Client's* use as stated in the Scope,
- any warranties given to the *Service Provider* by its Subcontractors or suppliers and
- information and other things as stated in the Scope and the demobilisation plan.

72 Installation Works

72.1 Where the *Service Provider* reasonably believes it has completed the Installation Works it notifies the *Service Manager* in writing. Following receipt of such notice, the *Service Manager* inspects the Installation Works and, by giving written notice to the *Service Provider*:

- a) accepts the Installation Works, or
- b) rejects the Installation Works and provides reasons to the *Service Provider* if, in the *Service Manager's* reasonable opinion, the Installation Works do not meet the requirements set out in the Scope (or elsewhere in the contract).

72.2 If the *Service Manager* rejects the Installation Works in accordance with Clause 72.1(b), the *Service Provider* immediately rectifies or remedies any defects and if, in the *Service Manager's* reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Scope (or elsewhere in the contract), the *Client* may terminate the contract for reason R11 (and for the avoidance of doubt, the four week period in clause 91.2 is replaced with five (5) Working Days).

72.3 The Installation Works are deemed complete when the *Service Provider* receives a notice issued by the *Service Manager* in accordance with Clause 72.1(a). Notwithstanding the acceptance of any Installation Works in accordance with Clause 72.1, the *Service Provider* remains solely responsible for ensuring that the Plant and Materials and the Installation Works conform to the specification in the Scope (or elsewhere in the contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the *Service Manager* of the Installation Works.

8. LIABILITIES AND INSURANCE

80 *Client's liabilities*

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* or
 - negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Service Provider*.
- A fault of the *Client* or any person employed by or contracted to it, except the Service Provider.
- Loss of or damage to equipment and Plant and Materials supplied to the *Service Provider* by the *Client*, or by Others on the *Client's* behalf, until the *Service Provider* 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 *Service Provider'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 *Service Provider* in the Affected Property after the termination.
- Loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, unless the loss of or damage arises from or in connection with the *Service Provider* Providing the Service and the Contract Data states this as being a *Service Provider's* liability.
- Loss of or damage to the Affected Property unless the loss of or damage arises from or in connection with the *Service Provider* Providing the Service and the Contract Data states this as being a *Service Provider's* liability.
- Loss of or damage to any Plant and Materials after they have been included in the Affected Property.
- Additional *Client's* liabilities stated in the Contract Data.

81 *Service Provider's liabilities*

81.1 The following are *Service Provider'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 *Service Provider* Providing the Service.
- Loss of or damage to any
 - Plant and Materials before they are included in the Affected Property,

- Equipment and
- equipment provided by the *Client* to the *Service Provider*.

- Loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, which arises from or in connection with the *Service Provider* Providing the Service, if stated as being a *Service Provider's* liability in the Contract Data.
- Loss of or damage to the Affected Property which arises from or in connection with the *Service Provider* Providing the Service, if stated as being a *Service Provider's* liability in the Contract Data.
- Death or bodily injury to the employees of the *Service Provider*.

82 Recovery of costs

82.1 Any cost which the *Client* has paid or will pay as a result of an event for which the Service Provider is liable is paid by the *Service Provider*.

82.2 Any cost which the *Service Provider* 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.

83 Insurance cover

83.1 The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.

83.2 The *Service Provider* provides the insurances stated in the Insurance Table except any insurances which the *Client* is to provide as stated in the Contract Data. The *Service Provider* provides additional insurances as stated in the Contract Data.

83.3 The *Service Provider* ensures that insurances in the Insurance Table except the third insurance stated contain an indemnity to principals clause under which the *Client* shall be indemnified in respect of claims made against the *Client* in respect of death or bodily injury or third-party property damage arising out of or in connection with the *service* and for which the *Service Provider* is legally liable. The insurances provide cover for events which are the *Service Provider'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

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER
Loss of or damage to <ul style="list-style-type: none"> • Plant and Materials, • Equipment and equipment provided by the <i>Client</i> to the <i>Service Provider</i> 	The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials and equipment provided by the <i>Client</i>
Loss of or damage to property (except Plant and Materials, Equipment and equipment provided by the <i>Client</i> to the <i>Service Provider</i>) and liability for bodily injury to or death of a person (not an	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately

employee of the *Service Provider*) arising from or in connection with the *Service Provider* Providing the Service

Death of or bodily injury to employees of the *Service Provider* arising out of and in the course of their employment in connection with the contract

The greater of the amount required by the Law and the amount stated in the Contract Data for any one event

- 83.4 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other Party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 83.5 Nothing in this clause relieves the *Service Provider* from any of its obligations and liabilities under this contract.

Professional Indemnity Insurance

- 83.6 If required to obtain professional indemnity insurance, the *Service Provider* obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Service Provider* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 83.7 The *Service Provider* informs the *Service Manager* as soon as reasonably practicable of any claim under the professional indemnity insurance in respect of the *service* or a Project Order in excess of one million pounds (£1,000,000) and provides such information to the *Service Manager* as the *Service Manager* may reasonably require in relation to such claim.
- 83.8 The *Service Provider* immediately informs the *Service Manager* if the professional indemnity insurance ceases to be available at rates and on terms that the *Service Provider* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Service Provider's* own claims record or other acts, omissions, matters or things particular to the *Service Provider* is deemed to be within commercially reasonable rates.
- 83.9 The *Service Provider* co-operates fully with any measures reasonably required by the *Service Manager* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Client* and/or Business Unit undertakes in writing to reimburse the *Service Provider* in respect of the net cost of such insurance to the *Service Provider* above commercially reasonable rates or, if the *Client* and/or Business Unit effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Client* and/or Business Unit in respect of what the net cost of such insurance to the *Client* and/or Business Unit would have been at commercially reasonable rates.

84 Insurance policies

- 84.1 Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Service Provider* 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 *Service Provider'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 The Parties comply with the terms and conditions of the insurance policies to which they are a party.

85 If the Service Provider does not insure

85.1 The *Client* may insure an event or liability which the contract requires the *Service Provider* to insure if the *Service Provider* does not submit a required certificate. The cost of this insurance to the *Client* is paid by the *Service Provider*.

86 Insurance by the Client

86.1 The *Service Manager* submits certificates for insurance provided by the *Client* to the *Service Provider* for acceptance before the *starting date* and afterwards as the *Service Provider* instructs. The *Service Provider* 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 *Service Provider'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 *Service Provider* 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 *Service Provider* is paid by the *Client*.

90. TERMINATION

90. Termination

90.1 If either Party wishes to terminate the *Service Provider'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 <i>Client</i>	R1–R15, R18, R10A, R21, R22, R23, R24, R25, R28-R32	P1, P2 and P3	A1 and A3
	R17, R20, R26 or R27	P1 and P4	A1 and A2
The <i>Service Provider</i>	R1–R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	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 *Service Provider* does no further work necessary to Provide the Service.

90.5 After a termination certificate has been issued and during the Termination Assistance Period, the *Service Provider* shall, as soon as reasonably practicable, assign or procure the novation of the Transferring Contracts to the *Client* and/or the replacement service provider. The *Service Provider* shall execute such documents and provide such other assistance as the *Client* reasonably requires to affect this novation or assignment. The *Service Provider* shall indemnify the *Client* (and/or the replacement service provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the *Client* (and/or replacement service provider) pursuant to this clause 90.5 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause Y(UK)3 shall not apply to this clause 90.5, so that replacement service providers are entitled to enforce this clause 90.5.

91 Reasons for termination

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),
 - made an arrangement with its creditors (R10) or
 - applied to court for, or obtains, a moratorium under Part a1 of the Insolvency Act 1986 (R10A).

91.2 The *Client* may terminate if the *Service Manager* has notified that the *Service Provider* has not put one of the following defaults right within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default

- Without prejudice to the *Client's* right to immediately terminate in the circumstances set out elsewhere in this contract, 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 *Service Provider* has not stopped one of the following defaults within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default

- Substantially hindered the *Client* or Others (R14).
- Substantially broken a health or safety regulation (R15).

91.4 The *Service Provider* may terminate if the *Client* and/or the relevant Business Unit has not paid an amount due under the contract within thirteen weeks of the date that the *Service Provider* 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 *Service Provider* 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 *Service Provider* (R18),
- the *Service Provider* 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 *Service Provider* does a Prohibited Act, unless it was done by a Subcontractor or Subsubcontractor or supplier and the *Service Provider*

- was not and should not have been aware of the Prohibited Act or
- informed the *Service Manager* of the Prohibited Act and took action to stop it as soon as the *Service Provider* became aware of it (R21).

91.8 The *Client* may terminate the *Service Provider's* obligation to Provide the Service:

- if the *Service Provider* incorrectly warrants or represents that all statements made and documents submitted as part of the procurement of the Service were and remain true and accurate (R22)
- if the *Client* discovers that the *Service Provider* was in one of the situations in regulations 57 (1) or 57(2) of the Regulations at the time the contract was awarded (R23)
- if the *Service Provider* or its Affiliates embarrass or bring the *Client* or the CCS into disrepute or diminish the public trust in them (R24) or
- where the events in 73(1)(a) of the Regulations happen (i.e. where: there has been a substantial modification to the contract which would have required a new procurement procedure) (R25).

91.9 The *Client* may terminate the *Service Provider's* obligation to Provide the Service on the 5th anniversary of the Contract Date by giving no less than 90 days' prior written notice to the *Service Manager* and *Service Provider* of its intention to do so (R26).

91.10 The *Client* may terminate the *Service Provider's* obligation to Provide the Service on the 6th anniversary of the Contract Date by giving no less than 90 days' prior written notice to the *Service Manager* and *Service Provider* of its intention to do so (R27).

91.11 The *Client* may terminate the *Service Provider's* obligation to Provide the Service if the *Service Provider* is required to provide CRP Information under the Scope and *Service Provider* fails to provide the CRP Information within four (4) months of the Contract Date or obtain an assurance from the *Service Manager* within four (4) months of the Contract Date in accordance with the Scope (R29).

92 Procedures on termination

92.1 On termination, the *Client* may complete the *service* and may use any Plant and Materials provided by the *Service Provider*. The *Service Provider* 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. The *Service Provider* must promptly delete or return the Government Data except where required to retain copies by Law. The *Service Provider* must, at no cost to the *Client*, co-operate fully in the handover and re-procurement (including to a replacement service provider) in accordance with the Scope (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 *Service Provider* 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 *Service Provider* has title to complete the *service*. The *Service Provider* promptly removes the Equipment when the *Service Manager* informs the *Service Provider* that the *Client* no longer requires it to complete the *service*.

P4 The *Service Provider* leaves the Service Areas and removes the Equipment.

93 Payment on termination

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*.

93.2 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 Equipment and any other reasonable demobilisation costs.

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.

RESOLVING AND AVOIDING DISPUTES

OPTION W2

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

W2.1 Resolving disputes

- (1) Without prejudice to either Party's right to refer a dispute to the *Adjudicator* at any time, the Parties address any dispute or difference between the Parties arising out of or relating to this contract in accordance with this clause W2.
- (2) Upon any such dispute or difference arising, either Party logs such dispute or difference using such contract management software as the *Client* notifies the *Service Provider* is to be used with respect to the contract. The Parties refer such dispute or difference to the *Level 1 Representatives* upon such dispute or difference arising). A Party may replace a *Level 1 Representative* after notifying the other Party of the name of the replacement.
- (3) The Party referring a dispute notifies the *Level 1 Representatives* and 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.
- (4) If the dispute is not resolved within ten Working Days after it has been referred to the *Level 1 Representatives* (or such longer period as the Parties may agree), it is referred to the *Senior Representatives*. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*. A Party may replace a *Senior Representative* after notifying the other Party of the name of the replacement.
- (5) 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 Service Provider put into effect the issues agreed.
- (6) If the *Senior Representatives* decide to use mediation to try to resolve the dispute, the Parties will enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. Unless otherwise agreed by the Parties within fourteen (14) Working Days of notice of the *Senior Representatives'* agreement to use mediation, the mediator will be nominated by CEDR.
- (7) No evidence of the statements of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator*, the *tribunal* or the arbitrator.

W2.2 The *Adjudicator*

- (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.

W2.3 The adjudication

(1) Before a Party refers a dispute to the *Adjudicator*, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* informs the Parties that the *Adjudicator*

- is able to decide the dispute in accordance with the contract or
- is unable to decide the dispute and has resigned.

If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.

(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.

(3) If a matter disputed by the *Service Provider* under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the *Service Provider* 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* decides the procedure and timetable to be followed in the adjudication. In doing so the *Adjudicator* may

- take the initiative in ascertaining the facts and the law related to the dispute and

- instruct a Party to take any other action within a stated time which is necessary to reach a decision.

(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 *Service Provider*, 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

- review and revise any action or inaction of the *Service Manager* related to the dispute,
- alter a matter which has been treated as accepted or correct and
- allocate the *Adjudicator's* fees and expenses between the Parties.

(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* or the arbitrator and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.

(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.

W2.4 The *tribunal* and arbitration

(1) A Party does not refer any dispute under or in connection with the contract to the *tribunal* or to arbitration unless it has first been decided by the *Adjudicator* in accordance with the contract.

(2) The Parties agree that, subject to the provisions of clause W2.4(5) and the Parties' right to adjudicate at any time, the *tribunal* has exclusive jurisdiction to settle any dispute under or in connection with the contract.

(3) 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*, or, in the case of the *Client*, to arbitration. The dispute may not be referred to the *tribunal* or arbitration unless this notification is given within four weeks of being informed of the *Adjudicator's* decision.

(4) The *tribunal* or arbitrator settles the dispute referred to it. The *tribunal* or the arbitrator 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* or arbitration proceedings to the information, evidence or arguments put to the *Adjudicator*.

(5) Notwithstanding clause W2.4(2), the Parties agree that the *Client* may, at its sole option (and regardless of whether the *Client* is claimant or respondent), refer a dispute under or in connection with the contract, for final resolution, to arbitration administered by the London Court of International Arbitration under the London Court of International Arbitration Rules current at the time of the dispute, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators will be one. The seat, or legal place, of arbitration will be London, England and the language of the arbitral proceedings will be English. The governing law of this arbitration agreement will be the substantive law of England and Wales. Nothing in this clause will affect any right either party may have to seek interim relief from a national court.

(6) If the *Service Provider* has already initiated court proceedings in relation to a dispute under or in connection with the contract before the *Client* has commenced arbitration proceedings, it is agreed that, on the demand of the *Client*, those court proceedings are to be discontinued by the *Service Provider* within five (5) days after the *Client* has commenced arbitration proceedings in respect of the dispute. The *Client* must deliver the demand for discontinuance within five (5) Working Days of service of the court proceedings by the *Service Provider* on the *Client* and must commence the arbitration proceedings within ten (10) Working Days of the demand for discontinuance. Each party will bear its own costs in connection with the discontinued court proceedings.

(7) Where the *Client* has commenced arbitration proceedings in accordance with this clause W2.4, the method of choosing the arbitrator is stated in the Contract Data.

(8) A Party does not call the *Adjudicator* as a witness in *tribunal* or arbitration proceedings.

SECONDARY OPTION CLAUSES

OPTION X1: PRICE ADJUSTMENT FOR INFLATION (USED ONLY WITH OPTIONS A AND C)

Indexation

X1.1 Any amounts or sums in this contract which are expressed in the Contract Data to be "subject to Indexation" shall be adjusted in accordance with the provisions of this Clause X1.1 to reflect the effects of inflation.

Where Indexation applies, the relevant adjustment shall be:

- Applied on the date of publication of the Payment Index immediately following the relevant date set out in the Contract Data (each such date an "**Adjustment Date**") and applied retrospectively from the relevant Adjustment Date; and
- determined by multiplying the relevant amount or sum by the percentage increase between the Payment Index and the Payment Index applied at the previous Adjustment Date provided that, where the percentage increase between the Payment Index and the Payment Index applied at previous Adjustment Date (and where the Adjustment Date is the Full Service Commencement Date the previous Adjustment Date shall be the Bid Date) exceeds 3%, the *Service Provider* makes recommendations to the *Client* as to how the effects of the increase on the *Client* may be mitigated and the Parties work collaboratively to agree as soon as reasonably practicable reductions in service levels and/or create contract efficiencies to reduce inflationary cost (any such action to be agreed in writing by the *Client* prior to being implemented). If following completion of this process, the increase in any amounts or sums that are subject to Indexation as a result of an increase in the Payment Index since the previous Adjustment Date remain in excess of 3% such increase is shared equally between the Parties (e.g. following a 4% increase in the Payment Index, the *Client* approves the increase in amounts determined by multiplying the relevant amounts by 3.5% and the *Service Provider* bears the cost of the increase in amounts determined by multiplying the relevant amounts by 0.5% (half of 1% each)).

For the avoidance of doubt, this Clause X1 does not apply to applications for an increase in People Rates as a result of an increase in the Real Living Wage pursuant to Clause Z21.

Except as set out in this Clause X1.1 and subject to Clause Z21, neither the Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to *exchange rate*, change to *interest rate* or any other factor or element which might otherwise increase the cost to the *Service Provider* or Subcontractors of the performance of their obligations.

Where the Payment Index is no longer published, the Client and the Service Provider shall agree a fair and reasonable replacement that will have substantially the same effect.

Where the Payment Index is no longer published, the *Client* and the *Service Provider* shall agree a fair and reasonable replacement that will have substantially the same effect.

OPTION X2: CHANGES IN THE LAW

X2 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;
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for them to have allowed for it;
- it relates specifically to the business of the *Client* and would not affect a Comparable Supply; and
- it is not one of the other compensation events stated in this contract.

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.

OPTION X11: TERMINATION BY THE *CLIENT* (NOT USED WITH OPTION X19)

X11 Termination by the *Client*

X11.1 Upon giving at least 90 days' prior notice, the *Client* may terminate the *Service Provider's* obligation to Provide the Service for a reason not identified in the Termination Table by notifying the *Service Manager* and the *Service Provider*.

X11.2 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.

OPTION X15: THE SERVICE PROVIDER'S DESIGN

X15 The Service Provider's design

X15.1 The *Service Provider* designs the parts of the *service* which the Scope states the *Service Provider* is to design. Subject always to the Contract Standard referred to in X15.6, the *Service Provider* warrants to the *Client* that to the extent it either is obliged to specify or approve materials, products or goods for use in the *service* or does so specify or approve, it shall not specify or approve any Deleterious Materials.

X15.2 The *Service Provider* submits the particulars of its design as the Scope requires to the *Service Manager* for acceptance. A reason for not accepting the *Service Provider's* design is that it does not comply with either the Scope or the Law.

The *Service Provider* does not proceed with the relevant work until the *Service Manager* has accepted its design.

X15.3The *Service Provider* may submit its design for acceptance in parts if the design of each part can be assessed fully.

X15.4A part of the *service* designed by the *Service Provider* which is not in accordance with the Law or the *Service Provider's* design which the *Service Manager* has accepted is a Service Failure.

X15.5The *Client* may use and copy the *Service Provider's* design for any purpose connected with the Affected Property unless otherwise stated in the Scope and for other purposes as stated in the contract. The *Service Provider* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor.

X15.6The *Service Provider's* obligation in respect of design is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Service Provider's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope, character, and complexity as the *service*, herein referred to as the "Contract Standard". The *Service Provider* is not liable for a Service Failure which arose from its design unless it failed to carry out that design using the Contract Standard.

X15.7If the *Service Provider* corrects a Service Failure for which it is not liable under the contract it is a compensation event.

X15.8The *Service Provider* may use the material provided by it under the contract for other work unless

- the ownership of the material has been given to the *Client* or
- it is stated otherwise in the Scope.

X15.9The *Service Provider* retains copies of drawings, specifications, reports and other documents which record the *Service Provider's* design for the *period for retention*. The copies are retained in the form stated in the Scope.

X15.10The *Service Provider* provides insurance for claims made against it arising out of its failure to meet the Contract Standard. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the *starting date* until the end of the period stated in the Contract Data.

X15.11Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Service Provider* submits to the *Service Manager* for acceptance a certificate which states that the insurance required by this clause is in force.

After the end of the Service Period and on each renewal of the insurance policy until the end of the period stated in the Contract Data for which insurance is to be maintained, the *Service Provider* submits to the *Client* for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the *Service Provider's* insurer or insurance broker.

The *Service Manager* or the *Client* accepts the certificate if the insurance complies with this clause and if the insurer's commercial position is strong enough to carry the insured liability. The *Client's* acceptance of an insurance certificate provided by the *Service Provider* does not change the responsibility of the *Service Provider* to provide the insurance.

OPTION X18: LIMITATION OF LIABILITY

X18 Limitation of liability

X18.1 Each of the limits to the *Service Provider's* liability in this clause apply if a limit is stated in the Contract Data.

X18.2 The Parties shall not be liable for any of the following types of loss or damage even if, in each case, that Party has been advised of the possibility of such loss or damage:

- (a)special, indirect or consequential loss;
- (b)indirect loss of profits (and anticipated profit) or loss of revenue;

- (c) indirect loss of business or contracts;
- (d) indirect loss of anticipated savings; or
- (e) indirect loss of goodwill

except in relation to delay damages if Option X27 applies and payments stated in the Performance Table.

X18.3 If the *Service Provider* is liable for loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, the liability is limited to the amount stated in the Contract Data.

X18.4 If the *Service Provider* is liable for loss of or damage to the Affected Property, the liability is limited to the amount stated in the Contract Data.

X18.5 If Option X15 applies, the *Service Provider's* liability to the *Client* for any claims made during a Contract Year in respect of a failure to achieve the Contract Standard specified in clause X15.6 is limited to the amount stated in the Contract Data.

X18.6 The *Service Provider's* total liability to the *Client* for all claims made by the *Client* in respect of matters arising under or in connection with the contract in each Contract Year, 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 *Service Provider* as stated in the contract for

- delay damages if Option X27 applies,
- payments stated in the Performance Table,
- cases of fraud, deliberate default or reckless misconduct by the *Service Provider*, any liability in respect of death or personal injury resulting from negligence of the *Service Provider* or any person for whom the *Service Provider* is responsible,
- indemnities given by the *Service Provider* to the *Client* under the contract,
- claims for any costs and expenses incurred by the *Client* associated with the *Service Provider's* failure to remedy Service Failures in accordance with the terms of this contract; and
- loss of or damage to
 - any property owned or occupied by the *Client* and
 - the Affected Property, which are subject to separate limitations on liability in accordance with clauses X18.3 and X18.4 above.

X18.7 The *Service Provider* is not liable to the *Client* for a matter unless it is notified to the *Service Provider* before the *end of liability date*.

X18.8 The *Client's* total liability to the *Service Provider* for all matters arising under or in connection with the contract is limited to the greater of £5,000,000 (five million pounds) or the total of the Prices payable under the contract.

OPTION X27: PROJECT ORDERS

X27 Identified and defined terms

X27.1 (1) A Project is work included in the *service* which the *Service Manager* instructs the *Service Provider* to carry out and for which a Project Order programme is required.

(2) Project Completion is when the *Service Provider* has done all the work in the Project and corrected Service Failures which would have prevented the *Client* or Others from using the Affected Property or Others from doing their work.

(3) Project Completion Date is the date for completion stated in the Project Order unless later changed in accordance with the contract.

(4) A Project Order is the *Service Manager's* instruction to carry out a Project.

Project Orders

X27.2 The *Service Manager* may issue a Project Order to the *Service Provider*. Before issuing a Project Order, the *Service Manager* instructs the *Service Provider* to submit a quotation for the Project. The instruction includes

- a detailed description of the work in the Project and
- the Project starting date and Project Completion Date

and may also include

- a bonus rate for early Project Completion and
- an amount of delay damages for late Project Completion.

The delay damages in a Project Order, if any, are not more than the estimated cost to the *Client* of late Project Completion.

X27.3 The *Service Provider* submits a quotation for a Project within three weeks of being instructed to do so by the *Service Manager*. The *Service Provider* 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 Project Order,
- an instruction to submit a revised quotation,
- that the *Service Manager* will be making the assessment or
- a notification that the Project will not be instructed.

X27.4 The *Service Manager* instructs the *Service Provider* to submit a revised quotation only after explaining the reasons for doing so to the *Service Provider*. The *Service Provider* submits the revised quotation within three weeks of being instructed to do so.

X27.5 The *Service Manager* extends the time allowed for

- the *Service Provider* to submit quotations for a Project or
- the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Service Provider* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Service Provider* of the extension which has been agreed.

X27.6 The *Service Manager* assesses the pricing for the Project if

- the *Service Provider* has not submitted a quotation and details of its assessment within the time allowed or
- the *Service Manager* decides that the *Service Provider* has not assessed the Project correctly in a quotation and has not instructed the *Service Provider* to submit a revised quotation.

The *Service Manager* notifies the *Service Provider* of the assessment of the pricing for a Project, gives details of the assessment and issues the Project Order within the period allowed for the *Service Provider's* submission of its quotation for the same Project. This period starts when the need for the *Service Manager's* assessment becomes apparent.

X27.7 The assessment of a Project is in the form of a Project price list. Where items of work in

the Project price list are covered by rates in the Price List, the items are priced using those rates. The Prices for items in the Project price list which are not taken from the Price List are assessed in the same way as a compensation event is assessed.

X27.8 If Project Completion is later than the Project Completion Date, the *Service Provider* pays delay damages at the rate stated in the Project Order from the Project Completion Date until the earlier of

- Project Completion and the
- the date on which the *Service Manager* issues a termination certificate.

If the Project 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.

X27.9 If Project Completion is earlier than the Project Completion Date, the *Service Provider* is paid a bonus calculated at the rate stated in the Project Order for each day from Project Completion until the Project Completion Date.

X27.10 When a Project Order is issued

- the Project price list is inserted in the Price List and
- the work involved is added to the Scope.

A Project is not a compensation event

Starting and completion

X27.11 The *Service Provider* does not start work included in a Project until the *Service Manager* has issued the Project Order and does the work so that Project Completion is on or before the Project Completion Date.

A Project Order is not issued after the end of the Service Period.

X27.12 If Project Completion of any Project is after the end of the Service Period, the Service Period is extended until the latest Project Completion. During this extended period

- the *Service Manager* does not issue a Project Order,
- the *Service Provider* only Provides the Service related to the outstanding Projects and
- the *Service Provider's* liabilities are limited to those resulting from the outstanding Projects.

Project Order programme

X27.13 The *Service Provider* submits a Project Order programme to the *Service Manager* for acceptance within the period stated in the Contract Data.

X27.14 The *Service Provider* shows on each Project Order programme submitted for acceptance

- the Project starting date and the Project Completion Date,
- planned Project Completion,
- the order and timing of the work of the *Client* and Others as last agreed with them by the *Service Provider* or, if not so agreed, as stated in the Scope,

- the order and timing of the operations which the *Service Provider* plans to do in order to complete the Project,
- 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 Project Order programme, the *Service Provider* 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 *Service Provider* plans to do the work identifying the principal Equipment and other resources which will be used and
- other information which the Scope requires the *Service Provider* to show on a Project Order programme submitted for acceptance.

A Project Order programme issued for acceptance is in the form stated in Scope.

X27.15 Within five Working Days of the *Service Provider* submitting a Project Order programme for acceptance, the *Service Manager* notifies the *Service Provider* of the acceptance of the Project Order programme or the reasons for not accepting it. A reason for not accepting the Project Order programme is that

- the *Service Provider's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Service Provider'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 *Service Provider* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Service Provider's* notification, it is treated as acceptance by the *Service Manager* of the Project Order programme.

Revising the Project Order programme

X27.16 The *Service Provider* shows on each revised Project Order programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- how the *Service Provider* plans to deal with any delays and to correct notified Service Failures and

- any other changes which the *Service Provider* proposes to make to the Project Order programme.

X27.17 The *Service Provider* submits a revised Project Order programme to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed the *Service Provider* to and
- when the *Service Provider* chooses to.

The latest Project Order programme accepted by the *Service Manager* supersedes a previously accepted Project Order programme.

Access

X27.18 The *Client* provides the right of access for the *Service Provider* to the Affected Property as shown on the latest accepted Project Order programme.

Compensation events

X27.19 The following events are compensation events.

- (1) The *Client* does not provide the right of access to the Affected Property in accordance with the date for access shown on the latest accepted Project Order programme.
- (2) The *Client* does not provide something which it is to provide by the date shown on the latest accepted Project Order programme.
- (3) The *Service Provider* receives a Project Order after the starting date stated in the Project Order.
- (4) The *Client* or Others do not work in accordance with the latest accepted Project Order programme.
- (5) A change to the Affected Property as a result of a Project Order.
- (6) The *Service Manager* notifies the *Service Provider* that a Project will not be instructed.

Quotations for compensation events

X27.20 Quotations for a compensation event assessed by the *Service Provider* include any delay to a Project Completion Date. If the programme for remaining work is altered by the compensation event, the *Service Provider* includes the alterations to the Project Order programme in the quotation.

Assessing compensation events

X27.21 A delay to a Project Completion Date is assessed as the length of time that, due the compensation event, planned Project Completion is later than planned Project Completion as shown on the Project Order programme current at the dividing date.

The assessment takes into account

- any delay caused by the compensation event already in the Project Order programme and
- events which have happened between the date of the Project Order programme and the

dividing date.

X27.22 Assessment of the effect of a compensation event on a planned Project Completion includes time risk allowances for matters which have a significant chance of occurring and are not compensation events.

X27.23 Assessment of the effect of a compensation event on a planned Project Completion is based upon the assumptions that the *Service Provider* reacts competently and promptly to the event and that any time due to the event is reasonably incurred.

X27.24 A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if a Project Completion Date was for the interpretation most favourable to the Party which did not provide the Scope.

The Service Manager's assessment

X27.25 The *Service Manager* assesses a compensation event if

- the compensation event affects planned Project Completion and
- the *Service Provider* has not submitted a Project Order programme or alterations to a Project 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.

X27.26 The *Service Manager* assesses the programme for the remaining work on the Project and uses it in the assessment of the compensation event if

- there is no Project Order programme,
- the *Service Provider* has not submitted a Project Order programme or alterations to a Project Order programme for acceptance as required by the contract or
- the *Service Manager* has not accepted the *Service Provider's* latest Project Order programme for one of the reasons stated in the contract.

Implementing compensation events

X27.27 When a compensation event is implemented the Project Completion Date is changed accordingly.

OPTION X28: CHANGE OF CONTROL

X28 Defined terms

X28.1 A Change of Control is where an individual, company or partnership, other than the *Service Provider*, has taken control of the *Service Provider* after the Contract Date so that the individual, company or partnership

- exercises,
- is able to exercise or
- is entitled to acquire

direct or indirect control over the *Service Provider's* affairs.

Change of Control

X28.2 The *Service Provider* notifies the *Service Manager* and the *Client* if a Change of Control is expected to occur, unless if it is prevented from doing so by a regulatory authority. The *Service Provider* notifies the *Service Manager* and the *Client* immediately if a Change of Control has occurred.

Termination

X28.3 The *Client* may terminate within eight weeks of becoming aware of a Change of Control if

- the financial position of the individual, company or partnership which has taken control of the *Service Provider* does not meet the financial position stated in the Contract Data,
- the Change of Control contravenes the *ethical principles* of the *Client* or
- there is a Conflict of Interest that cannot be resolved.

X28.4 If the *Client* terminates for a Change of Control the termination procedures followed are P1 and P4 and the amount due on termination is A1 and A2.

OPTION X29: CLIMATE CHANGE

X29 Defined terms

X29.1

(1) The Climate Change Requirements are the requirements relating to climate change stated in the Scope.

(2) The Climate Change Plan is the *climate change plan* or is the latest climate change plan accepted by the *Service Manager*. The latest climate change plan accepted by the *Service Manager* supersedes previous Climate Change Plans.

(3) The Climate Change Partners are the people or organisations who contribute to the achievement of the Climate Change Requirements and are identified in the Climate Change Requirements.

Collaboration

X29.2 The *Service Provider* collaborates with other Climate Change Partners as stated in the Climate Change Requirements.

Early warning

X29.3 The *Service Provider* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the achievement of the Climate Change Requirements.

Climate change plan

X29.4(1) If a climate change plan is not identified in the Contract Data, the *Service Provider* submits a first climate change plan to the *Service Manager* for acceptance within the period stated in the Contract Data.

(2) The Climate Change Plan shows how the *Service Provider* plans to meet the Climate Change Requirements.

(3) Within four weeks of the *Service Provider* submitting a climate change plan for acceptance, the *Service Manager* notifies the *Service Provider* of the acceptance of the

climate change plan or the reasons for not accepting it. A reason for not accepting a climate change plan is that

- it does not comply with the Climate Change Requirements or
- it will not allow the *Service Provider* to Provide the Service.

(4) The *Service Provider* submits a revised climate change plan to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed it to and
- when the *Service Provider* chooses to.

Disclosure

X29.5 The Parties may use, disclose and publicise information relating to climate change as stated in and for the purposes stated in the Climate Change Requirements.

Service Provider's proposals

X29.6(1) The *Service Provider* may propose to the *Service Manager* that the Scope is changed in order to reduce the impact of the operation, maintenance or demolition of the Affected Property on climate change.

(2) If the *Service Manager* is prepared to consider the change, the *Service Provider* submits a quotation which comprises

- a detailed description,
- an analysis of the reduction in the impact of the operation, maintenance or demolition of the Affected Property on climate change,
- an analysis of the resulting risks to the *Client*,
- any changes to the Prices and Performance Table,
- a revised plan showing any changes to the timing of the *service*.

(3) The *Service Manager* consults with the *Service Provider* about a quotation. The *Service Manager* replies within the *period for reply*. The reply is acceptance of the quotation or the reasons for not accepting it. The *Service Manager* may give any reason for not accepting the quotation.

(4) The *Service Manager* does not change the Scope as proposed by the *Service Provider* unless the *Service Provider's* quotation is accepted.

(5) When a quotation to reduce the impact of the operation, maintenance or demolition of the Affected Property on climate is accepted the *Service Manager* changes the Scope, the Prices and the Performance Table accordingly and accepts the revised plan. The change to the Scope is not a compensation event.

OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND 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 the later of

- the date of receipt by the Party making payment of an invoice, issued in accordance with these conditions of contract and
- fourteen days after the assessment date.

The date on which the final payment becomes due is the later of

- the date of receipt by the Party making payment of an invoice, issued in accordance with these conditions of contract and
 - if the *Service Manager* makes an assessment after the end of the Service Period, fifteen 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, two weeks after the *Service Provider* issues its assessment or
 - if the *Service Manager* has issued a termination certificate, fifteen weeks after the issue of the certificate.

The final date for payment is seven days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data.

The *Service Manager's* certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the *Service Manager* does not make an assessment at the end of the Service Period, the *Service Provider'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 *Service Provider* 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 *Service Provider* in accordance with the contract that it intends to pay less than the notified sum.

Suspension of performance

Y2.5 If the *Service Provider* 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.

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

Third party rights Y(UK)3

Y3.1 A beneficiary may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.

Y3.2 Other than the Parties or a beneficiary, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.

Y3.3 If a beneficiary is identified by class or description and not as a named person or organisation, the *Client* notifies the *Service Provider* of the name of the beneficiary once it has been identified.

OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions of contract

Z1.1 The *additional conditions of contract* stated in the Contract Data and set out below are part of the contract.

Z2 – TAX COMPLIANCE

Z2.1 The *Service Provider* represents and warrants that at the Contract Date, it has notified the *Service Manager* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

Z2.2 The *Service Provider* must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. Without prejudice to the provisions set out elsewhere in this contract, the *Client* cannot terminate the contract where the *Service Provider* has not paid a minor Tax or social security contribution.

Z2.3 Where the total of the Prices is or is likely to exceed £5 million at any point during the Service Period, and an Occasion of Tax Non-Compliance occurs, the *Service Provider* must notify CCS and the *Service Manager* of it within 5 Working Days including:

- i. the steps that the *Service Provider* is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring and any mitigating factors that it considers relevant; and
- ii. other information relating to the Occasion of Tax Non-Compliance that CCS and the *Service Manager* may reasonably need.

Z2.4 Where the *Service Provider* or any Service Provider Staff are liable to be taxed or to pay National Insurance in the UK relating to payment received under the contract, the *Service Provider* must both:

- i. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance; and
- ii. indemnify the *Client* against any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Service Period in connection with the provision of the *service* by the *Service Provider* or any of the Service Provider Staff.

Z2.5 If any of the Service Provider Staff are Workers who receive payment relating to the *service*, then the *Service Provider* must ensure that its contract with the Worker contains the following requirements:

- i. the *Service Manager* may, at any time during the Service Period, request that the Worker provides information which demonstrates they comply with clause Z2.4, or why those requirements do not apply, the *Service Manager* can specify the information the Worker must provide and the deadline for responding; and
- ii. the *Service Manager* may supply any information they receive from the Worker to HMRC for revenue collection and management.

Z3 – COLLATERAL WARRANTY AGREEMENTS

Z3.1 Where the *Client* has provided reasonable evidence that a collateral warranty is required in favour of the parties identified in the Contract Data, the *Service Provider* enters into the collateral

warranty agreements in the formats appended in contract schedule 9 (Collateral Warranty Agreements) and delivers executed copies in duplicate to the *Service Manager* no later than the *period for reply* after the *Service Manager* has provided the *Service Provider* with appropriate collateral warranty agreements suitable for execution.

Z3.2 The *Service Provider* procures from Key Subcontractors collateral warranty agreements in the formats appended in contract schedule 9 (Collateral Warranty Agreements) in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Service Manager* no later than fifteen Working Days after the *Service Manager* has provided the *Service Provider* with appropriate collateral warranty agreements suitable for execution.

Z3.3 If the *Service Provider* fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Service Provider* has remedied the failure.

Z4 – SMALL AND MEDIUM SIZED ENTERPRISES (SMEs)

Z4.1 The *Service Provider* takes all reasonable steps to engage SMEs as Subcontractors and seeks to ensure that no less of the *service* representing 35% of the total of the Prices is subcontracted to SMEs.

Z4.2 The *Service Provider* reports to the *Service Manager* in the contract management monthly reporting cycle and as part of its transparency reporting obligations the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the service that has been undertaken by SMEs.

Z5 – INTELLECTUAL PROPERTY

Z5.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Service Provider* in relation to the contract and the work executed from them remains the property of the *Service Provider*. The *Service Provider* hereby grants to the *Client* and relevant Business Unit an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the Affected Property. Such licence entitles the *Client* and/or Business Unit to grant sub-licences to third parties in the same terms as this licence provided always that the *Service Provider* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Service Provider*.

Z5.2 In the event that the *Service Provider* does not own the copyright or any Intellectual Property Rights in any Document, the *Service Provider* uses all reasonable endeavours to procure the right to grant such rights to the *Client* and relevant Business Unit to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Service Provider* is unable to procure the right to grant such rights to the *Client* and/or Business Unit in accordance with the foregoing the *Service Provider* procures that the third party grants a direct licence to the *Client* and/or Business Unit on industry acceptable terms.

Z5.3 The *Service Provider* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* and/or Business Unit or any licensee or assignee of the *Client* and/or Business Unit.

Z5.4 In the event that any act unauthorised by the *Client* and/or Business Unit infringes a moral right of the *Service Provider* in relation to the Documents the *Service Provider* undertakes, if the *Service Manager* and/or Business Unit so requests and at the *Client's* and/or Business Unit's expense, to institute proceedings for infringement of the moral rights.

Z5.5 The *Service Provider* warrants to the *Client* and/or Business Unit that he has not granted and shall not (unless authorised by the *Service Manager* and/or Business Unit) grant any rights to any third party to use or otherwise exploit the Documents.

Z5.6 The *Service Provider* supplies copies of the Documents to the *Service Manager* and to the *Client's* and/or Business Unit's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.

Z5.7 After the termination or conclusion of the *Service Provider's* employment hereunder, the *Service Provider* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Client* and/or Business Unit pays the *Service Provider's* reasonable costs for producing such copies or discs.

Z5.8 In Providing the Service the *Service Provider* does not infringe any Intellectual Property Rights of any third party. The *Service Provider* indemnifies the *Client* (and any assignees or licencees) against claims, damages, losses, proceedings, compensation and costs suffered by the *Client* (or its assignees or licencees) as a result of the *Client's* exercise of such Intellectual Property Rights or for which the *Client* is otherwise liable arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty or for any purpose connected with the Scope.

Z5.9 The *Client* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to Z5.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

Z6 – ACCURACY OF INFORMATION

Z6.1 The *Service Provider* acknowledges it has all the information required to perform its obligations under the contract. The *Client* gives no warranty of the Due Diligence Information.

Z6.2 The *Service Provider* will not be excused from any obligation, or be entitled to additional costs or charges because it failed to either:

- (a) verify the accuracy of the Due Diligence Information during mobilisation pursuant to clause 6.3 (inclusive) of Schedule 2 (Pricing Details); or
- (b) properly perform its own adequate checks.

Z6.3 The *Client* is not be liable for errors, omissions or misrepresentation of the Due Diligence Information.

Z7 – CONTRACTUAL RIGHT OF SET OFF

Z7.1 The *Client* and/or a Business Unit may set off any liability of the *Service Provider* to:

- (a) the *Client* and/or a Business Unit; or
- (b) any Crown Body

against any liability of the *Client* and/or a Business Unit or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this contract. Where a Business Unit seeks to set off any liability, this must be with the prior written approval of the *Client*.

Z8 – LEGISLATION AND OFFICIAL SECRETS

Z8.1 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to the contract.

Z8.2 The *Service Provider* notifies its employees and its Subcontractors of their duties under these Acts.

Z9 – FREEDOM OF INFORMATION

Z9.1 The *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Service Provider* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

Z9.2 The *Service Provider*

- transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
- provides the *Service Manager* with a copy of all information in its possession, or power in the form that the *Service Manager* requires within five working days (or such other period as the *Service Manager* may specify) of the *Service Manager's* request,
- provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
- procures that its Subcontractors do likewise.

Z9.3 The *Service Manager* is responsible for determining whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

Z9.4 The *Service Provider* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.

Z9.5 The *Service Provider* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose information without consulting or obtaining consent from the *Service Provider* or despite the *Service Provider* having expressed negative views when consulted.

Z9.6 The *Service Provider* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

Z10 – APPRENTICESHIPS

Z10.1 The *Service Provider* shall employ apprentices, and reports to the *Service Manager* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *service*.

Z10.2 The *Service Provider* demonstrates to the *Service Manager* how the *Service Provider* ensures its opportunities to recruit and employ apprentices attract and are inclusive to candidates from all backgrounds including those who face barriers to employment (e.g. those from deprived or underrepresented backgrounds). The *Service Provider* demonstrates evidence of how this approach is applied to wider training opportunities.

Z10.3 The *Service Provider* shall ensure that no less than 3% of Service Provider employees engaged on this contract are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Service are provided by Service Provider employees on formal apprenticeship programmes.

Z10.4 The *Service Provider* makes available to its people and Subcontractors working on the contract, information about the Government's apprenticeship programme and wider skills opportunities.

Z10.5 The *Service Provider* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Service.

Z10.6 The *Service Provider* provides a report to the *Service Manager* detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Service Manager*

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,
- the percentage of all people taking part in an apprenticeship programme,
- if applicable, an explanation from the *Service Provider* as to why it is not managing to meet the specified percentage target,
- the number of people hours/weeks invested to support apprentices working on the contract by UK region,
- the number of people hours supporting training opportunities with educational facilities e.g. schools by UK region,
- demonstration of the value added to individuals involved in the contract engaged in apprentice or wider training opportunity e.g. qualifications achieved, skills and confidence improved, permanent employment secured,
- actions being taken to improve the take up of apprenticeships and other training opportunities including in relation to those facing barriers to employment and those from underrepresented backgrounds, and
- other training/skills development being undertaken by people in relation to the contract, including:
 - a. work experience placements for 14 to 16 year olds,
 - b. work experience/work trial placements for other ages,
 - c. student sandwich/gap year placements,
 - d. graduate placements,
 - e. vocational training,
 - f. basic skills training,
 - g. on site training provision/facilities, and
 - h. training opportunities undertaken with schools or other educational facilities.

Z11 – NON-EXCLUSIVITY

Z11.1 The *Service Provider* agrees and acknowledges that it is appointed by the *Client* to Provide the Service under this contract on the basis of a non-exclusive arrangement with no guarantee of any minimum award of Service Orders or Project Orders and further that the *Client* may procure any services similar in nature to those specified in the Scope from any other person without the consent of or any liability whatsoever toward the *Service Provider*. Save in respect of Service Orders or Project Orders that are entered into by the *Client* and the *Service Provider* pursuant to this contract, nothing in this contract shall impose any obligation or duty on the *Client* to place any Service Orders or Project Orders, or make any payments to the *Service Provider*, and the *Service Provider* shall have no claims or rights against the *Client* in respect of the same.

Z12 – CONFIDENTIALITY AND INFORMATION SHARING

Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall

- treat the other Party's Confidential Information as confidential and safeguard it accordingly,
- not disclose the other Party's Confidential Information to any other person without prior written consent,

- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

Z12.2 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z9 (Freedom of Information), or required by a court with the relevant jurisdiction if in each case, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure,
- such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information is disclosed on a confidential basis to the Disclosing Party's auditors or, on a confidential and need-to-know basis, to its professional advisors. Reference to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this clause Z12,
- such information is disclosed to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010,
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the other Party's Confidential Information.

Z12.3 The *Service Provider* may only disclose the *Client's* Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

The *Service Provider* shall not, and shall procure that the *Service Provider's* people do not, use any of the *Client's* Confidential Information received otherwise than for the purposes of this contract.

Z12.4 The *Service Provider* may only disclose the *Client's* Confidential Information to *Service Provider's* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Service Provider's* people causes or contributes (or could cause or contribute) to the *Service Provider* breaching its obligations as to confidentiality under or in connection with this contract, the *Service Provider* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Service Provider's* people, the *Service Provider* shall provide such evidence to the *Service Manager* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Service Provider* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Service Provider's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Service Provider's* people in connection with obligations as to confidentiality.

Z12.5 At the written request of the *Service Manager*, the *Service Provider* shall procure that those members of the *Service Provider's* people identified in the *Service Manager's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.6 Nothing in this contract shall prevent the *Client* from disclosing the *Service Provider's* Confidential Information

- to any Crown Body, Central Government Body, or any other Contracting Bodies. All Crown Bodies, Central Government Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential

- Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body, or Central Government Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
- for the purpose of the examination and certification of the *Client's* accounts,
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- for the purpose of the exercise of its rights under this contract or
- to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,
- and for the purposes of the foregoing, disclosure of the *Service Provider's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause Z12.

Z12.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Central Government Body, Crown Body, people, third party or subcontractor to whom the *Service Provider's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

Z12.8 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

Z12.9 The *Client* may disclose the Confidential Information of the *Service Provider*

- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
- to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

Z12.10 Transparency Information is not Confidential Information.

Z13 – RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

Z13.1 The *Service Provider* keeps and maintains for the *period for retention* full and accurate records and accounts of the operation of this contract including the *service* provided under it, any subcontracts and the amounts paid by the *Client*.

Z13.2 The *Service Provider*

- keeps the records and accounts referred to in clause Z13.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause Z13.1 at the *Service Provider's* premises and/or provides records and accounts (including copies of the *Service Provider's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Service Provider* Providing the Service and the liability period under the contract, but subject to allowing such access only in respect of one such audit per year from the Contract Date unless the Parties are engaged in a dispute, in order that the Auditor may carry out an inspection to assess compliance by the *Service Provider* and/or its Subcontractors of any of the *Service Provider's* obligations under the contract including in order to:
 - verify the accuracy of any amounts payable by the *Client* under the contract (and proposed or actual variations to them in accordance with the contract)
 - verify the costs of the *Service Provider* (including the costs of all Subcontractors and any third party suppliers) in connection with Providing the Service

- identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Service Provider* of the purpose or objective of its investigations
 - obtain such information as is necessary to fulfil the *Client's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
 - enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources
- subject to the *Service Provider's* rights in respect of *Service Provider's* Confidential Information, the *Service Provider* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
- all reasonable information requested by the *Service Manager* within the scope of the audit
 - reasonable access to sites controlled by the *Service Provider* and to any *Service Provider's* equipment used to Provide the Service
 - access to the Consultant's personnel.

Z13.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause Z13 unless the audit reveals a default by the Service Provider in which case the *Service Provider* reimburses the *Client* for the *Client's* reasonable costs incurred in relation to the audit.

Z13.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Service Provider* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Service Provider* is not a function exercisable under this contract.

Z14 – DISCRIMINATION

Z14.1 In this clause Z14, references to the “Discrimination Acts” are references to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 and/or the Equality Act 2010 as applicable.

Z14.2 Where possible in Providing the Service, the *Service Provider* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people. The *Service Provider* complies with any other requirements and instructions which the *Service Manager* may reasonably impose related to equality Law when they perform their obligations under the contract. The *Service Provider* takes all necessary steps, and informs the *Service Manager* of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the contract.

Z14.3 Where an employee or Subcontractor employed by the *Service Provider* is required to carry out any activity alongside the *Client's* employees in any premises, the *Service Provider* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z14.4 The *Service Provider* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Service Provider* under the Discrimination Acts in connection with the contract and

- a)provides any information requested by the investigating body, court or tribunal in the timescale allotted;
- b)attends (and permits a representative from the *Client* to attend) any associated meetings;

- c) promptly allows access to any relevant documents and information; and
- d) co-operates fully and promptly with the investigatory body, court or tribunal.

Z14.5 The *Service Provider* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Service Provider*.

Z14.6 The *Service Provider* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Z15 – ADMITTANCE TO AFFECTED PROPERTY

Z15.1 The *Service Provider* submits to the Service Manager details of people who are to be employed by it and its Subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Service Manager*.

Z15.2 The *Service Manager* may instruct the *Service Provider* to take measures to prevent unauthorised persons being admitted to the Affected Property.

Z15.3 Employees of the *Service Provider* and its Subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Affected Property identified in the Scope.

Z15.4 The *Service Provider* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Service Manager* issues the passes to the *Service Provider*. Each pass is returned to the *Service Manager* when the person no longer requires access to that part of the Affected Property or after the *Service Manager* has given notice that the person is not to be admitted to the Affected Property.

Z15.5 The *Service Provider* does not take photographs of the Affected Property or of work carried out in connection with the service unless it has obtained the acceptance of the *Service Manager*.

Z15.6 The *Service Provider* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs.

Z16 – PUBLICITY AND BRANDING

Z16.1 The *Service Provider* does not

- make any press announcements or publicise this contract in any way
- use the *Client's* name or brand in any promotion or marketing or announcement of the contract

without acceptance of the *Service Manager* and takes all reasonable steps to ensure that the Service Provider Staff do not either.

Z16.2 The *Client* is entitled to publicise the contract in accordance with any legal obligation upon the *Client*, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

Z17 – VISIBILITY OF SUBCONTRACT OPPORTUNITIES IN THE SUPPLY CHAIN

Z17.1 The *Service Provider* shall:

- Z17.1.1 subject to clause Z17.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the *service* above a minimum threshold of

£25,000 that arise during the Service Period. For the avoidance of doubt, the total value of the Prices under a subcontract is used to determine whether such threshold has been exceeded;

Z17.1.2 within 90 days of awarding a subcontract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;

Z17.1.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Service Period;

Z17.1.4 provide reports to the *Service Manager* on the information at clause Z17.1.3 in the format and frequency as reasonably specified by the *Service Manager*; and

Z17.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

Z17.2 Each advert referred to at clause Z17.1.1 shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Service Provider*.

Z17.3 The obligation on the *Service Provider* set out at clause Z17.1 shall only apply in respect of subcontract opportunities arising after the Contract Date.

Z17.4 Notwithstanding clause Z17.1, the *Client* may, by giving its prior approval, agree that a subcontract opportunity is not required to be advertised by the *Service Provider* on Contracts Finder.

Z18 – DATA PROTECTION

Z18.1.1 (A) – Data protection – General

(a)The *Service Provider* processes Personal Data and ensures that Service Provider Staff process Personal Data only in accordance with this clause Z18.

(b)The *Service Provider* does not remove any ownership or security notices in or relating to the Government Data.

(c)The *Service Provider* makes accessible back-ups of all Government Data, stored in an agreed off-site location and send the *Service Manager* copies every 6 months.

(d)The *Service Provider* ensures that any *Service Provider* system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

(e)If at any time the *Service Provider* suspects or has reason to believe that the Government Data provided under the contract is corrupted, lost or sufficiently degraded, then the *Service Provider* notifies the *Service Manager* and immediately suggests remedial action.

(f)If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the *Client* may either or both:

(i)tell the *Service Provider* to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the *Service Manager* receives notice, or the *Service Provider* finds out about the issue, whichever is earlier; and/or

(ii)restore the Government Data itself or using a third party.

(g)The *Service Provider* must pay each Party's reasonable costs of complying with sub-clause Z18.1(f) unless the *Client* is at fault.

(h)The *Service Provider*:

(i)provides the *Service Manager* with all Government Data in an agreed open format within 10 Working Days of a written request;

(ii)must have documented processes to guarantee prompt availability of Government Data if the *Service Provider* stops trading;

(iii)securely destroys all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;

- (iv) securely erases all Government Data and any copies it holds when asked to do so by the *Service Manager* unless required by Law to retain it; and
- (v) indemnifies the *Client* against any and all Losses incurred by the *Client* where such Losses have been caused by the *Service Provider* or otherwise to the extent that such Losses have been contributed to by the *Service Provider*.

Z18.1.1 (B) – Data protection – Treatment of HS2 and BTP

The Parties acknowledge and agree that where the *Service Provider* provides works to BTP or HS2 pursuant to this contract, BTP or HS2 (as applicable) is the Controller of Personal Data processed by the *Service Provider* as Processor. Where the *Service Provider* provides works to BTP or HS2 which requires the processing of Personal Data, Schedule 15 shall apply to the processing of Personal Data (and, other than this clause Z18.1.1(B), this clause Z18 and Schedule 14 shall only apply to the extent referred to in Schedule 15).

Z18.2 Status of the Controller

The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the contract dictates the status of each Party under the DPA 2018. A Party may act as:

- (a) Controller in respect of the other Party who is Processor;
- (b) Processor in respect of the other Party who is Controller;
- (c) Joint Controller with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also Controller, in respect of certain Personal Data under the contract.

Z18.3 Where one Party is Controller and the other Party its Processor

Z18.3.1 Where a Party is a Processor, it only undertakes Processing to the extent it is authorised to do so as set out in Schedule 14.

Z18.3.2 A Processor complies with any written instructions with respect to Processing issued by the Controller.

Z18.3.3 The Processor notifies the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

Z18.3.4 The Processor provides all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged Processing and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the Processing in relation to the *service*;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z18.3.5 The Processor, in relation to any Personal Data Processed in connection with its obligations under the contract:

- (a) Processes that Personal Data only in accordance with the *Processing Personal Data Requirements*, unless the Processor is required to do otherwise by Law. If it is so required the Processor promptly notifies the Controller before Processing the Personal Data unless prohibited by Law;
- (b) ensures that it has in place Protective Measures, including in the case of the *Service Provider* the measures set out at sub-clause Z18.1(c), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensures that:

(i) the Processor Personnel do not Process Personal Data except in accordance with the contract (and in particular the *Processing Personal Data Requirements*);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor's duties under this clause Z18, sub-clause Z18.1, clause 27 (Disclosure) and Z9 (Freedom of Information);

(B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data;

(d) does not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by Law to retain the Personal Data.

Z18.3.6 Subject to sub-clause Z18.3.7, the Processor notifies the Controller immediately if in relation to it Processing Personal Data under or in connection with the contract it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the contract;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Personal Data Breach.

Z18.3.7 The Processor's obligation to notify under sub-clause Z18.3.6 includes the provision of further information to the Controller, as details become available.

Z18.3.8 Taking into account the nature of the Processing, the Processor provides the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under sub-clause Z18.3.6 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Personal Data Breach; and/or

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

Z18.3.9 The Processor maintains complete and accurate records and information to demonstrate its compliance with this clause Z18. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the Processing is not occasional;
- (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
- (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z18.3.10 The Processor allows for audits of its data Processing activity by the Controller or the Controller's designated auditor.

Z18.3.11 The Parties designate a Data Protection Officer if required by the Data Protection Legislation.

Z18.3.12 Before allowing any Subprocessor to Process any Personal Data related to the contract, the Processor must:

- (a) notify the Controller in writing of the intended Subprocessor and Processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Subprocessor which gives effect to the terms set out in this clause Z18 such that they apply to the Subprocessor; and
- (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.

Z18.3.13 The Processor remains fully liable for all acts or omissions of any of its Subprocessors.

Z18.3.14 The *Client* may, at any time on not less than thirty (30) Working Days' notice, revise this clause Z18 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the contract).

Z18.3.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than thirty (30) Working Days' notice to the *Service Provider* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Z18.4 Independent Controllers of Personal Data

Z18.4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

Z18.4.2 Each Party Processes the Personal Data in compliance with its obligations under the Data Protection Legislation and does not do anything to cause the other Party to be in breach of it.

Z18.4.3 Where a Party has provided Personal Data to the other Party in accordance with sub-clause Z18.3.8 above, the recipient of the Personal Data provides all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

Z18.4.4 The Parties are responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the contract.

Z18.4.5 The Parties only provide Personal Data to each other:

- (a) to the extent necessary to perform their respective obligations under the contract;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
- (c) where it is recorded as responsible in the *Processing Personal Data Requirements*.

Z18.4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party, with respect to its Processing of Personal Data as Independent Controller, implements and maintains appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

Z18.4.7 A Party Processing Personal Data for the purposes of the contract maintains a record of its Processing activities in accordance with Article 30 UK GDPR and makes the record available to the other Party upon reasonable request.

Z18.4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the contract ("Request Recipient"):

- (a) the other Party provides any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, informs the other Party that it has received the same and forwards such request or correspondence to the other Party; and
 - (ii) provides any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

Z18.4.9 Each Party promptly notifies the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the contract and:

- (a) does all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
- (b) implements any measures necessary to restore the security of any compromised Personal Data;
- (c) works with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) does not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

Z18.4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the contract as specified in the *Processing Personal Data Requirements*.

Z18.4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the contract which is specified in the *Processing Personal Data Requirements*.

Z18.4.12 Notwithstanding the general application of sub-clause Z18.3 to Personal Data, where the *Service Provider* is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it acts as an Independent Controller of Personal Data in accordance with sub-clauses Z18.4.1-Z18.11.

Z19 OBEYING THE LAW

- (a) To the extent that it arises as a result of a default by the *Service Provider*, the *Service Provider* indemnifies the *Client* against any fine or penalty incurred by the *Client* pursuant to

Law and any costs incurred by the *Client* in defending any proceedings which result in such fine or penalty.

(b) The *Service Provider* must appoint a Compliance Officer(s), responsible for ensuring that the *Service Provider* complies with Law, clause Z2 (Tax Compliance), sub-clauses Z19(a) and (b) (Obeying the Law), clause Z14 (Discrimination), and clause Z20 (Conflicts of Interest) inclusive.

Z20 – CONFLICTS OF INTEREST

- (a) The *Service Provider* takes action to ensure that neither the *Service Provider* nor the *Service Provider* Staff are placed in the position of an actual or potential Conflict of Interest.
- (b) The *Service Provider* promptly notifies and provides details to the *Service Manager* if a Conflict of Interest happens or is expected to happen.
- (c) The *Client* may terminate the *Service Provider's* obligation to Provide the Service immediately by giving notice in writing to the *Service Provider* or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest (R30).

Z21 – REAL LIVING WAGE

- Z21.1 The *Service Provider* pays no less than the Real Living Wage to all of its employees engaged on this contract and requires its Subcontractors to do the same in respect of their employees engaged on this contract.
- Z21.2 Notwithstanding Option X2 (Changes in the Law), where the *Service Provider* can provide evidence that a percentage increase to the Real Living Wage in a given period (including for the avoidance of doubt the period between the Bid Date and the Full Service Commencement Date) has exceeded any percentage increase for the same period in the Prices as a result of adjustment pursuant to Option X1, the *Service Provider* may request (at any time) an increase in the People Rates by submitting a quotation to the *Service Manager* for acceptance (not to be unreasonably withheld or delayed). For the avoidance of doubt the *Service Provider* may include in any quotation submitted under this clause the cost of maintaining the pay differential required pursuant to clause Z21.5.
- Z21.3 The *Service Provider* includes in its quotation evidence of the:
 - Z21.3.1 *Service Provider* employees affected by the Real Living Wage increase and the element of the service that they provide;
 - Z21.3.2 affected *Service Provider* employees' current hourly rate of pay; and
 - Z21.3.3 the number of hours worked by each of the affected *Service Provider* employees.
- Z21.4 The *Service Manager* has discretion to accept any quotation submitted under this clause Z21 (such acceptance not to be unreasonably withheld or delayed) and does not accept any quotation that:
 - Z21.4.1 exceeds the difference between the Prices as a result of adjustment pursuant to Option X1 and the current Real Living Wage rate increase for each of the *Service Provider* employees affected by the Real Living Wage increase;
 - Z21.4.2 seeks any increase in the Prices which goes beyond the part of the *service* affected by the Real Living Wage increase; and

Z21.4.3 subject to clause Z21.5, increases the Prices in respect of those *Service Provider* employees on an hourly rate already in excess of the Real Living Wage.

The Parties agree that the *Service Manager's* non-acceptance of a quotation submitted in accordance with this clause Z21 for the reasons set out at clauses Z21.4.1-Z21.4.3 is reasonable.

Z21.5 The *Service Provider* is to maintain the pay differential between the *Service Provider* employees affected by this clause Z21 and higher paid *Service Provider* employees employed on the part of the *service* affected by the Real Living Wage increase e.g. if as at the Bid Date a supervisor employed on the part of the *service* affected by the Real Living Wage increase is paid 10% more than the *Service Provider* employees affected by this clause Z21, the hourly rate of pay of that supervisor should increase by the same percentage as the hourly rate of pay of *Service Provider* employees affected by this clause Z21.

Z22 - CLUSTERING

Z22.1 The *Client* enters into this contract on behalf of the Business Units and the *Client* may enforce any provision of the contract on behalf of a Business Unit.

The *Service Provider* Provides the Service to the *Client* and to each Business Unit.

Z22.2 The *Service Provider* adopts processes and systems in the administration of this contract to accommodate separate invoicing based on the amount due from the *Client* and from each Business Unit.

Z22.3 The Price for Service Provided to Date is calculated separately for the *Client* and each Business Unit to reflect:

- the Prices attributed to the *Client's* and each Business Unit's Affected Property in the Price List;
- the Project Orders and Service Orders attributable to the *Client's* and each Business Unit's Affected Property;
- the performance deduction being allocated against the *Client* and each Business Unit in the proportion identified in the Scope, or where not identified in the Scope in the same proportion as the total of the Prices is to the Prices allocated the *Client's* and to each Business Unit's Affected Property.

Z22.4 The *Service Provider's* obligation in regards to reporting will be owed to each Business Unit and the *Client* separately. The *Service Provider* submits to the *Service Manager* a monthly consolidated report reporting on the *service* delivered to the *Client* and all Business Units showing application for payment and payments made, KPI Credits, and performance reporting as further detailed in contract schedule 2 (Pricing Details).

Z22.5 The *Service Provider* submits to the *Client* and each Business Unit any application for payment with a breakdown showing the allocation of the amount due from the *Client* and relevant Business Unit. The *Client* and each Business Unit shall be responsible separately for making payment to the *Service Provider* for the portion of the Price for Service Provided to Date attributable to the *service* performed respectively at the *Client's* Affected Property or relevant Business Unit's Affected Property. For the avoidance of doubt, any costs invoiced as a result of instructions under clause 14.3 that relate to a Business Unit's Affected Property are invoiced to the relevant Business Unit.

Z22.6 The *Parties* (being the *Client* and *Service Provider* and not including a Business Unit) may in accordance with its provisions vary, terminate or rescind the contract or any part of it, without the consent of any Business Unit.

Z23 – INCORPORATION OF CALL-OFF SCHEDULES AND JOINT SCHEDULES

Z23.1 Additional conditions of contract are contained in contract schedules 1-13.

Z24 – FINANCIAL DIFFICULTIES

Warranties and duty to notify

- Z24.1 The *Service Provider* warrants and represents to the *Client* for the benefit of the *Client* that as at the Contract Date:
- Z24.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in the Contract Data; and
 - Z24.1.2 the financial position or, as appropriate, the financial performance of each of the *Service Provider* and Key Subcontractors satisfies the Financial Target Thresholds.
- Z24.2 The *Service Provider* shall promptly notify (or shall procure that its auditors promptly notify) the *Service Manager* in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- Z24.3 The *Service Provider* shall:
- Z24.3.1 complete the FVRA Tool prior to the Contract Date in line with the 'Bidder instructions' included in the FVRA Tool;
 - Z24.3.2 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - Z24.3.3 monitor and report to the *Service Manager* on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at clause Z24.15 (where specified) and in any event, on a regular basis and no less than once a year within ninety (90) days after the *Accounting Reference Date*; and
 - Z24.3.4 promptly notify (or shall procure that its auditors promptly notify) the *Service Manager* in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the *Service Provider* first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- Z24.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of clause Z24.6, and for the purposes of determining relief under clause Z24.18, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated that entity at or below the applicable Credit Rating Threshold; or
- Z24.5 Each report submitted by the *Service Provider* pursuant to clause Z24.3.3 shall:
- Z24.5.1 be a single report with separate sections for each of the FDE Group entities;
 - Z24.5.2 contain a sufficient level of information to enable the *Client* to verify the calculations that have been made in respect of the Financial Indicators;
 - Z24.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - Z24.5.4 be based on the audited accounts and unaudited half year accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date,

on unaudited management accounts prepared in accordance with their normal timetable;

Z24.5.5 include a history of the Financial Indicators reported by the *Service Provider* in graph form to enable the *Client* to easily analyse and assess the trends in financial performance; and

Z24.5.6 include an update on all data that was included in the FVRA Tool at the Contract Date by way of recompletion of the FVRA Tool and provision of a comparison document to the *Client*.

Financial Distress Events

Z24.6 The following shall be Financial Distress Events:

Z24.6.1 the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;

Z24.6.2 an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

Z24.6.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;

Z24.6.4 an FDE Group entity committing a material breach of covenant to its lenders;

Z24.6.5 a Key Subcontractor notifying CCS or the *Service Manager* that the *Service Provider* has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;

Z24.6.6 any of the following:

- (a) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
- (b) non-payment by an FDE Group entity of any financial indebtedness;
- (c) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
- (d) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
- (e) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the *Service Manager* reasonably believes could directly impact on the continued performance and delivery of the *service* in accordance with the contract; and

Z24.6.7 any one of the Financial Indicators set out at clause Z46.15 or Z24.16 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

Consequences of Financial Distress Events

Z24.7 Without prejudice to the provisions of clause 15 (Early warning) (which provisions for the avoidance of doubt apply to an actual or anticipated Financial Distress Event), immediately upon notification by the *Service Provider* of a Financial Distress Event (or if the *Service Manager* becomes

aware of a Financial Distress Event without notification and brings the event to the attention of the *Service Provider*), the *Service Provider* shall have the obligations and the *Client* shall have the rights and remedies as set out in clause Z24.9 to Z24.12.

Z24.8 In the event of a late or non-payment of a Key Subcontractor notified pursuant to clause Z24.6.5, the *Client* shall not exercise any of its rights or remedies under clause Z24.9 without first giving the *Service Provider* 10 Working Days to:

Z24.8.1 rectify such late or non-payment; or

Z24.8.2 demonstrate to the *Service Manager's* reasonable satisfaction that there is a valid reason for late or non-payment.

Z24.9 The *Service Provider* shall (and shall procure that any relevant Key Subcontractor shall):

Z24.9.1 at the request of the *Service Manager*, meet the *Service Manager* as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Service Manager* may permit and notify to the *Service Provider* in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the *service* in accordance with the contract; and

Z24.9.2 where the *Service Manager* reasonably believes (taking into account the discussions and any representations made under clause Z24.9.1 that the Financial Distress Event could impact on the continued performance and delivery of the *services* in accordance with the contract:

- (a) submit to the *Service Manager* for acceptance, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Service Provider* in writing); and
- (b) to the extent that it is legally permitted to do so and subject to clause Z24.14, provide such information relating to the *Service Provider* and/or Key Subcontractors as the *Service Manager* may reasonably require in order to understand the risk to the *service*, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

Z24.10 The *Service Manager* shall not withhold its acceptance of a draft Financial Distress Remediation Plan unreasonably. If the *Service Manager* does not accept the draft Financial Distress Remediation Plan, it shall inform the *Service Provider* of its reasons and the *Service Provider* shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the *Service Manager* within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is accepted by the *Service Manager* or referred to the procedure set out at clause W2.

Z24.11 If the *Service Manager* considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the *Service Provider's* obligations in accordance with the contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the procedure set out at clause W2.

Z24.12 Following acceptance of the Financial Distress Remediation Plan by the *Service Manager*, the *Service Provider* shall:

Z24.12.1 on a regular basis (which shall not be less than fortnightly):

- (a) review and make any updates to the Financial Distress Remediation Plan as the *Service Provider* may deem reasonably necessary and/or as may be reasonably requested by the *Service Manager*, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the *service* in accordance with this contract; and
- (b) provide a written report to the *Service Manager* setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the *Service Provider* and/or the reasons why the *Service Provider* may have decided not to make any changes;

Z24.12.2 where updates are made to the Financial Distress Remediation Plan in accordance with clause Z24.12.1(a), submit an updated Financial Distress Remediation Plan to the *Service Manager* for its acceptance, and the provisions of clauses Z24.10 and Z24.11 shall apply to the review and acceptance process for the updated Financial Distress Remediation Plan; and

Z24.12.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

Z24.13 Where the *Service Provider* reasonably believes that the relevant Financial Distress Event under clause Z24.4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the *Client* and the Parties may agree that the *Service Provider* shall be relieved of its obligations under clause Z24.4.6.

Z24.14 The *Service Provider* shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at clause Z24.9.2(b) is available when required and on request from the *Client* and within reasonable timescales. Such measures may include:

Z24.14.1 obtaining in advance written authority from Key Subcontractors authorising the disclosure of the information to the *Client* and/or entering into confidentiality agreements which permit disclosure;

Z24.14.2 agreeing in advance with the *Client*, Key Subcontractors a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the *Client*;

Z24.14.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the *Client* (which may include making price sensitive information available to the *Client's* nominated personnel through confidential arrangements, subject to their consent); and disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

Financial Indicators

Z24.15 Subject to the calculation methodology set out in the Contract Data, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation	Financial Target Threshold:	Mitie FM Limited (Contracting Entity)	Mitie Plc (Group)
1. Operating Margin	Operating Margin = Operating Profit / Revenue	$x < 2.0\%$	<p>Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date.</p> <p>Frequency – Every 12 months.</p> <p>Timing – 120 days after the relevant accounting reference date.</p>	<p>Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 6 months ending on the relevant half year end date.</p> <p>Frequency – Every 6 months.</p> <p>Timing – 90 days after the relevant half year end date.</p>
2. Net Debt to EBITDA Ratio	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>	$x > 2.0$	<p>Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date.</p> <p>Frequency – Every 12 months.</p> <p>Timing – 120 days after the relevant accounting reference date.</p>	<p>Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 12 months ending on the relevant half year end date.</p> <p>Frequency – Every 6 months.</p> <p>Timing – 90 days after the relevant half year end date.</p>
3. Net Debt + Net Pension Deficit to EBITDA ratio	<i>Net Debt + Net Pension Deficit to EBITDA ratio = (Net Debt + Net Pension Deficit) / EBITDA</i>	$x > 3.5$	<p>Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date.</p> <p>Frequency – Every 12 months.</p> <p>Timing – 120 days after the relevant accounting reference date.</p>	<p>Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 12 months ending on the relevant half year end date.</p> <p>Frequency – Every 6 months.</p> <p>Timing – 90 days after the relevant half year end date.</p>

4. Net Interest Paid Cover	Net Interest Paid Cover = <i>Earnings Before Interest and Tax / Net Interest Paid</i>	$x < 3$	Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date. Frequency – Every 12 months. Timing – 120 days after the relevant accounting reference date.	Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 12 months ending on the relevant half year end date. Frequency – Every 6 months. Timing – 90 days after the relevant half year end date.
5. Acid Ratio	Acid Ratio = (Current Assets – Inventories) / Current Liabilities	$x < 0.8$	Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date. Frequency – Every 12 months. Timing – 120 days after the relevant accounting reference date.	Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 6 months ending on the relevant half year end date. Frequency – Every 6 months. Timing – 90 days after the relevant half year end date.
6. Net Asset Value	Net Asset Value = Net Assets	$x < 0.0$	Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date. Frequency – Every 12 months. Timing – 120 days after the relevant accounting reference date.	Tested and reported half yearly in arrears within 90 days of each half year end based upon figures for the 6 months ending on the relevant half year end date. Frequency – Every 6 months. Timing – 90 days after the relevant half year end date.
7. Group Exposure Ratio	<i>Group Exposure / Gross Assets</i>	$x > 50.0\%$	Tested and reported yearly in arrears within 120 days of each year end based upon figures for the 12 months ending on the relevant accounting reference date. Frequency – Every 12 months. Timing – 120 days after the relevant accounting reference date.	Not applicable.

Key: 1 – see the Contract Data which sets out the calculation methodology to be used in the calculation of each financial indicator.

Termination Rights

Z24.17 The *Client* may terminate the *Service Provider's* obligation to Provide the Service if:

- Z24.17.1 the *Service Provider* fails to notify the *Client* of a Financial Distress Event in accordance with clause Z24.3.4;
- Z24.17.2 the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with clauses Z24.9 to Z24.11; and/or
- Z24.17.3 the *Service Provider* fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with clause Z24.12.3 (R31).

Primacy of Credit Ratings

Z24.18 Without prejudice to the *Service Provider's* obligations and the *Client's* rights and remedies under clause Z24.1-Z24.5, if, following the occurrence of a Financial Distress Event pursuant to any of clauses Z24.6.2 to Z24.6.7, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in the Contract Data, then:

Z24.18.1 the *Service Provider* shall be relieved automatically of its obligations under clauses Z24.9 to Z24.12; and

Z24.18.2 the *Client* shall not be entitled to require the *Service Provider* to provide financial information in accordance with clause Z24.9.2(b).

Board Confirmation

Z24.19 Subject to clause Z24.22, the *Service Provider* shall within ninety (90) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the *Client* in the form set out at contract schedule 3 (Financial Difficulties), confirming that to the best of the *Service Provider's* board of director's knowledge and belief, it is not aware of and has no knowledge:

- Z24.19.1 that a Financial Distress Event has occurred since the later of the Contract Date or the previous Board Confirmation or is subsisting; or
- Z24.19.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

Z24.20 The *Service Provider* shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Service Provider Staff and other persons as is reasonably necessary to understand and confirm the position.

Z24.21 In respect of the first Board Confirmation to be provided under this contract, the *Service Provider* shall provide the Board Confirmation within 15 months of the Contract Date if earlier than the timescale for submission set out in clause Z24.19.

Z24.22 Where the *Service Provider* is unable to provide a Board Confirmation in accordance with clauses Z24.19 to Z24.21 due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the *Service Provider* to submit in place of the Board Confirmation, a statement from the *Service Provider's* board of directors to the *Client* (and where the *Service Provider* is a Strategic Supplier, the *Service Provider* shall send a copy of the statement to the Cabinet Office Markets and

Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

Z25 – SUSTAINABILITY

Z25.1 The *Service Provider* complies with the *Client's* Sustainability Requirements. The *Service Provider* ensures that the Sustainability Requirements are explained to the Service Provider Staff where it is relevant to their role.

Z25.2 The *Service Provider* meets and requires its suppliers and Subcontractors to meet the standards and behaviours set out in the HM Government 'Supplier Code of Conduct' available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf. The *Service Provider*, in connection with provision of the *service*, must comply and procure that its subcontractors comply with the 'Supplier Code of Conduct'.

Z25.3 The *Service Provider* shall comply with reasonable requests by the *Client* for information evidencing compliance with the provisions of this clause within fourteen (14) days of such request, provided that such requests are limited to two per calendar year.

Z25.4 The *Service Provider* ensures that any part of the *service* or works required in connection with the contract are designed, sourced, and delivered in a manner which is environmentally and socially responsible, always consistent with best practice environmental management and social standards, policy, and Laws.

Z25.5 As part of the continuous improvement plan to be produced pursuant to paragraph 2.1 of Annex F (Shared Savings and Continuous Improvement) of Attachment 3 (Specification) of the Scope, the *Service Provider* shall include plans for improving the provision of the *service* with respect to environmental and social performance.

Human Rights - Modern Slavery, Child Labour and Inhumane Treatment

Z25.5 The *Service Provider* throughout the Service Period:

- a. does not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- b. does not require any Service Provider Staff to lodge deposits or identify papers with the *Client* and shall be free to leave their employer after reasonable notice;
- c. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- d. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- e. makes reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world;
- f. has and maintains throughout the Service Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and includes in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- g. implements due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the contract;
- h. prepares and delivers to the *Client*, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not

taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 5;

- i. does not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- j. does not use or allow child or slave labour to be used by its Subcontractors;
- k. reports the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the *Client*;
- l. completes the Modern Slavery Assessment Tool on the Contract Date and in accordance with the Reporting Requirements set out at Part B to this clause Z25; and
- m. reviews and progresses the Modern Slavery Assessment Tool scores against the following areas; governance, policies and procedures, risk assessment and management, due diligence, training and KPIs.

Z25.6 The *Service Provider* shall use reasonable and proportionate endeavours to ensure that workers employed within its supply chain are treated fairly, humanely, and equitably.

Z25.7 The *Service Provider* must comply with Core Labour Standards, encompassing the right to freedom of association and collective bargaining, prohibition of forced labour, prohibition of discrimination and prohibition of child labour.

Z25.8 As part of the Sustainability Reports, the *Service Provider* must identify any areas of risk associated with this contract to ensure that it is meeting the Core Labour Standards.

Whistleblowing

Z25.9 As soon as it is aware of it the *Service Provider* does, and ensures that its Subcontractors do, report to the *Client* any actual or suspected breach of:

Z25.9.1 Laws; or

Z25.9.2 clauses 25.4; or

Z25.9.3 this clause Z25; or

Z25.9.4 clause 18.

Z25.10 The *Service Provider* does not retaliate against any of the Service Provider Staff who in good faith reports a breach listed in this paragraph to the *Client* or a Prescribed Person.

Z25.11 The *Client's* and Business Units' whistleblowing helplines and/or whistleblowing policies must be made available to the *Service Provider* and Service Provider's staff, Subcontractors and key suppliers in the supply chain in order to report any concerns.

Z25.12 The *Service Provider* agrees:

(a) to insert the following wording into its whistleblowing policy and communicate to all Service Provider Staff in a format they can understand:

"If you feel unable to raise your concern internally and it relates to work being carried out for which the ultimate beneficiary (through a contractual chain or otherwise) is the Department for Transport, please email Whistleblowing@dft.gov.uk."

(b) to ensure that their Subcontractors have free access to the *Client's* and Business Units' whistleblowing policies.

Environmental Requirements

Z25.13 The *Service Provider* has a documented management system and controls in place to manage the environmental impacts of Providing the Service. Such management system and controls are relevant and proportionate to the contract.

Z25.14 The *Service Provider* warrants that it has obtained a relevant ISO 14001 certification from an accredited body and complies with and maintains certification requirements throughout the Service Period.

Z25.15 The *Service Provider* complies with Government Buying Standards available here <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs> applicable to the *service* and uses reasonable endeavours to support the *Client* in meeting applicable Greening Government Commitments available here <https://www.gov.uk/government/collections/greening-government-commitments>

Z25.16 The *Service Provider* considers and reduces sustainability impacts which are relevant to the contract. The *Service Provider* shall to the reasonable satisfaction of the *Client*:

Z25.16.1 eliminate and/or reduce the impacts of embodied carbon and support the Government and *Client* in meeting their Net Zero carbon commitments;

Z25.16.2 demonstrate that the whole life cycle impacts (including end of use) have been considered and reduced;

Z25.16.3 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;

Z25.16.4 reduce use of single use consumable items (including packaging), and avoid single use plastic in line with Government commitments;

Z25.16.5 avoid use of products that are linked to unsustainable forest management and deforestation, where forest products are used these must be from a sustainable source with evidence provided to the *Client* upon reasonable request;

Z25.16.6 deliver opportunities to enhance biodiversity and ecosystems services and look for opportunities to connect communities with the environment.

Z25.17 The *Service Provider* demonstrates to the *Client* it has done and shall continue to protect the environment including:

Z25.17.1 reducing relevant biosecurity risks (including but not limited to biosecurity risks to plant and tree health from harmful pests and diseases and from invasive non-native species);

Z25.17.2 eliminate hazardous/harmful substances to the environment; and

Z25.17.3 undertaking due diligence to ensure that the risks of pollution entering the environment are mitigated.

Z25.18 Should an environmental incident occur or if there is an Environmental Near Miss these must be reported to the Environment Agency Incident Hotline at the earliest opportunity, and then to the *Client* within 24 hours of the occurrence.

Z25.19 In addition to the requirements under clause Z25.16.3 and Z25.16.4, the *Service Provider*, its subcontractors and its supply chain must:

Z25.19.1 prioritise waste management in accordance with the Waste Hierarchy;

Z25.19.2 be responsible for ensuring that any waste generated by the *Service Provider* and its Subcontractors; and its (or their) supply chain as a consequence of the contract is sent for recycling, disposal or other recovery and is taken by a licensed waste carrier to an authorised

site for treatment or disposal and that the transport, disposal or treatment of waste complies with Law;

Z25.19.3 ensure that it and its subcontractors; and its (or their) supply chain used to undertake recycling disposal or other recovery as a consequence of the contract do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this and provide relevant data and evidence of recycling, recovery and disposal;

Z25.19.4 inform the *Client* within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under the contract is revoked and in circumstances where a permit, licence or exemption to carry or send waste generated under the contract is revoked, the *Service Provider* shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the *Client*.

Z25.20 In performing its obligations under the contract the *Service Provider* shall to the reasonable satisfaction of the *Client* publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

Z25.21 The *Service Provider* supports the *Client* to meet its carbon reduction ambitions including with regard to the environmental requirements set out in this clause Z25 and will progress towards Net Zero during the Service Period. A hierarchy approach to addressing carbon emissions must be taken: eliminate first, reduce as far as possible before off-setting considerations.

Z25.22 The *Service Provider* complies in all material respects with all applicable environmental laws, permits and regulations in force in relation to the contract.

Materials

Z25.23 All materials used in the Affected Property must be capable of meeting the requirements set out in the Scope and be either (i) new and of recent origin, (ii) reused or (iii) recycled.

Z25.24 The *Service Provider* shall avoid the use of paper and card in carrying out its obligations under the contract.

8.3 The *Service Provider* shall ensure that any paper or card deployed in the performance of the *service* consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so. Any paper or card deployed must be recycled following its end of use.

Z25.25 The *Service Provider* does not provide to the *Client* goods or use in the provision of *service* anything which comprises wholly or partly of the Prohibited Items described in Table A in this clause Z25 unless the use is primarily related to the management of the *Service Provider's* own facilities or internal operations as opposed to the provision of the *service*. The *Service Provider* shall, in Providing the Service, use goods, materials and services that comply with best environmental practice at all times.

Timber

Z25.26 All Timber and Wood-Derived Products for supply or use in performance of the contract must conform with the requirements set out in the Scope.

Business Continuity

Z25.27 The *Service Provider* will prepare a business continuity and disaster recovery plan (“**the BCDR Plan**”) in accordance with the Scope.

Supply Chain Maps

Z25.28 The *Service Provider* shall comply with any reasonable request by the *Service Manager* to provide a Supply Chain Map of all areas of sustainability risk within ten (10) Working Days of the Contract Date or alternative timescale agreed by the *Service Manager*.

Z25.29 The *Service Provider* shall at a minimum provide a Supply Chain Map within three (3) months of the Contract Date if the modern slavery risk associated with the contract is assessed as "medium" or "high" (as determined by the Modern Slavery Assessment Tool).

Social Value Requirements

Z25.30 The *Service Provider* shall complete the Sustainability Report including in relation to its performance on meeting any social value obligations agreed to for the provision of the *service* under this contract and provide the Sustainability Report to the *Client* on the date and frequency outlined in Table A of Part B.12.3 The *Service Provider*, as an organisation, addresses workforce imbalance by supporting disadvantaged, underrepresented and minority groups into employment (including apprenticeships and other training schemes) throughout the Service Period.

Z25.31 The *Service Provider* will support the *Client* in highlighting opportunities to provide wider social, economic, or environmental benefits to local and/or national communities through the delivery of the contract. The *Service Provider* will provide details to the *Service Manager* of the approach taken, progress made and benefits delivered.

Z25.32 The *Service Provider* will ensure that supply chain opportunities are inclusive and accessible to:

Z25.32.1 new businesses and entrepreneurs;

Z25.32.2 small and medium enterprises (SMEs);

Z25.32.3 voluntary, community and social enterprise (VCSE) organisations; and

Z25.32.4 mutuals; and

Z25.32.5 other underrepresented business groups.

Z25.33 The *Service Provider* engages with and identifies barriers to these organisations and works actively to remove such barriers, ensuring equal opportunities to compete. This shall include helping these organisations to grow and supporting their development throughout the Service Period.

Z25.34 Without prejudice to clause Z17, the Government's 'Contracts Finder' website can be used to help advertise any subcontracting opportunities outside the established supply chain. Other routes advertising to SMEs, VCSE organisations and other underrepresented business groups should be sought to highlight opportunities and encourage a diverse and inclusive supply base.

Z25.35 The *Service Provider* does not and procures that its Subcontractors do not enter into Zero Hours Contracts for any part of the *service* without the *Service Manager's* prior written acceptance except where necessary in respect of emergency Reactive Maintenance Works.

Z25.36 Zero Hours Contracts shall be used only to meet short term demand or specific situations where the *Service Provider* can evidence that continuity in delivery of the relevant part of the *service* can be only be achieved by engaging a person(s) on a Zero Hours Contract.

Z25.37 The *Service Provider* provides an annual report to the *Service Manager* on each anniversary of the Contract Date detailing the number of Zero Hours Contracts that it or its Subcontractors have entered into, how long each Zero Hours Contract was in place for and the total length of time any individual was or continues to be engaged on a Zero Hours Contract.

Record Keeping

Z25.38 The *Service Provider* will demonstrate compliance with the *Client's* Sustainability Requirements upon reasonable request.

Z25.39 If the *Service Manager* is concerned either as to the sustainability or health and safety conduct of the *Service Provider*, Subcontractors and supply chain in the performance of the contract then the *Service Manager* may:

Z25.39.1 require that the *Service Provider* provide to the *Service Manager* within four weeks of the date when the *Service Manager* notified the *Service Provider* a plan setting out how the *Service Provider* will improve its sustainability conduct or performance and the *Service Provider* will make changes to such plan as reasonably required by the *Client* and once it is agreed then the *Service Provider* shall act in accordance with such plan and report to the *Service Manager* on demand

Z25.39.2 if the *Service Provider* fails within four weeks of the date when the *Service Manager* notified the *Service Provider* to provide a plan or fails to agree any changes which are requested by the *Service Manager* or materially fails to implement or provide updates on progress with the plan, the *Client* reserves the right to terminate the contract immediately for substantially failing to comply with its obligations (R11) (or on such date as the *Service Manager* notifies).

Part B

Reporting Requirements

Z25.40 The *Service Provider* shall complete the Sustainability Report in relation to its provision of the *service* under the contract and provide the Sustainability Report to the *Service Manager* on the date and frequency outlined in Table A of this Part B.

Z25.41 The *Service Provider* shall provide the baseline data contained within table 'B(1) – Baseline data' to facilitate subsequent measurement throughout the Service Period. The information required to populate table B(1) will be provided to the *Service Manager* within 10 Working Days of the submission of a request and annually thereafter.

Z25.42 The *Service Provider* shall complete the Framework Quarterly Performance Indicator Submission Form to the *Service Manager*. *Service Providers* will report on the content within table B.

Z25.43 The *Service Provider* shall attend relationship meetings with the *Service Manager* to discuss the information contained in the Framework Quarterly Performance Indicator Submission Forms. The information will be used to measure progress of sustainability activity.

Z25.44 The *Service Provider* shall complete the Framework Quarterly Performance Indicator Submission Form on the frequency outlined in Table B of this Part B and return to the *Service Manager*.

Z25.45 In the event CCS develops an alternative sustainability measurement tool during the Service Period, the performance indicator measures described at Table B will be superseded by that tool.

Table A

Report Name	Content of Report	Frequency of Report
-------------	-------------------	---------------------

Sustainability	<ul style="list-style-type: none"> a. the key sustainability impacts identified; b. sustainability improvements made; c. actions underway or planned to reduce sustainability impacts; d. contributions made to the <i>Client's</i> sustainability policies and objectives; e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the <i>Service Provider's</i> operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and f. risks to the <i>service</i> and Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the <i>Service Provider</i> in response to those risks. 	Every 6 months from the Contract Date
Sustainability Plan	Report on progress of the sustainability plan once agreed with the <i>Client</i>	6 monthly
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill. On a site by site basis	monthly.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	On the Contract Date, on the anniversary of the Contract Date and within ten (10) Working Days if there is any change or renewal to license or exemption to carry, store or dispose waste
Greenhouse Emissions	Gas Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses	monthly

	Broken down by source, type and scope (1,2,3) Carbon Reduction Plan once agreed with the <i>Client</i>	
Water Use	Volume in metres cubed broken down by site. Number of water leaks identified, and amount of excess water lost.	monthly
Energy Use	Separate energy consumption figures for: a. assets deployed on the <i>Service Provider's</i> site; b. assets deployed on the <i>Client's</i> site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. 'Power Usage Effectiveness' (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.	monthly
FGas	Amount of Fgas used across the estate broken down by site and type Amount of Fgas escapes to the atmosphere broken down by site and type	monthly
Transport Use	a. miles travelled by transport and fuel type, for goods delivered to the <i>Client's</i> sites; b. miles travelled by staff when visiting the <i>Client's</i> sites from the <i>Service Provider's</i> sites or home; c. resulting 'Green House Gas' (GHG) emissions using agreed 'Conversion Factors'; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees	monthly
Prohibited Items	The following consumer single use plastics are 'Prohibited Items': Catering	

	<ul style="list-style-type: none"> a. Single use sachets e.g. coffee pods, sauce sachets, milk sachets b. Take away cutlery c. Take away boxes and plates d. Cups made wholly or partially of plastic e. Straws f. Stirrers g. Water bottles <p>Facilities</p> <ul style="list-style-type: none"> a. Single use containers e.g. hand soap, cleaning products b. Wipes containing plastic <p>Office Supplies</p> <ul style="list-style-type: none"> a. Plastic envelopes b. Plastic wrapping for brochures c. Paper or card which is bleached with chlorine <p>Packaging</p> <ul style="list-style-type: none"> a. Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products. b. Single use carrier bags <p>Any items that harm the environment will need to be agreed by the <i>Client</i> before purchase or use.</p>	
Resource Use	<p>Materials / Resources used, including:</p> <ul style="list-style-type: none"> a. type of material/ resource used; b. quantity or volume of material/resource used; <p>and</p> <ul style="list-style-type: none"> c. amount of recycled/recovered material used 	

Greening Government Commitment	Any reporting as required by the <i>Client</i> to report on the 'Greening Government Commitments'	Monthly
Supplier Diversity	Demonstration of work undertaken to remove any barriers to contracting with and supporting SMEs and other under-represented supplier groups.	Annual
Real Living Wage (Living Wage Foundation)	Demonstration of compliance within a year of contract award and that this is maintained throughout the contract.	Annual
Modern Slavery	<ul style="list-style-type: none"> • Modern Slavery Assessment Tool to be completed on or before the Contract Date. Progress against MSAT action plan to be reviewed regularly • Regular review of any MS incidents, potential MS incidents. 	Quarterly (align to MS statement reporting requirements – FY)
Modern Slavery	<ul style="list-style-type: none"> • 90 days from the Contract Date the <i>Service Provider</i> will provide a summary of the risks of modern slavery relevant to the contract, steps that will be taken to address them and work to improve supply chain transparency. <p>An annual due diligence report will be required to demonstrate progress.</p>	Annual (Will need to be before end of FY so updates can be included in modern slavery statement)
Supply Chain Mapping	<ul style="list-style-type: none"> • Mapping of highest risk goods and services within year 1 or setting out a planned approach. 	Annual review
Equality, Diversity & Inclusion	<ul style="list-style-type: none"> • EDI action plan to be developed and reviewed regularly • Regular review of EDI incidents/complaints 	Quarterly
Sustainability Training	<ul style="list-style-type: none"> • Evidence of staff trained on modern slavery & EDI 	Annual (Needs to align with reporting periods for EDI & modern slavery statement)
Whistleblowing	<p>Evidence that whistleblowing policy communicated and accessible to subcontractors and key suppliers</p> <ul style="list-style-type: none"> • Any instances and actions recorded. 	Six monthly
Working Conditions	<p>The supplier will provide a plan to work with staff to understand and address any improvements to working conditions</p> <p>Also link to commitments made in evaluation response</p>	Six Monthly

Government Buying Standards	Annual evidence/assurance demonstrating compliance	Annual
Apprenticeships/Wider Training Opportunities	<ul style="list-style-type: none"> Evidence that opportunities are open to and attracting those facing barriers to employment The number of people hours/weeks invested to support apprentices working on the contract by UK region The number of people hours supporting training opportunities with educational facilities e.g. schools by UK region Demonstration of the value added to individuals involved in the contract engaged in apprentice or wider training opportunity e.g. qualifications achieved, skills and confidence improved, permanent employment secured. Report requirements to satisfy clause Z10 (Apprenticeships). 	Annual
ISO 14001	<ul style="list-style-type: none"> Annual checks to confirm have maintained a relevant environmental management system 	Annual
Timber	<ul style="list-style-type: none"> Assurance to demonstrate timber compliance 	Quarterly

Table B – Submission to *Client*

Report Name	Content of Report	Frequency of Report
Framework Quarterly Performance Indicator Submission Form – Modern Slavery section	<p>MSAT completion and progress recorded against the following 6 areas:</p> <ul style="list-style-type: none"> Governance Policies and Procedures Risk Assessment and Management Due Diligence Training KPI 	Quarterly
Framework Quarterly Performance Indicator Submission Form – Carbon Net Zero	<p>The <i>Service Provider</i> to demonstrate progression towards carbon Net Zero by reporting on the below areas</p>	Quarterly

	<ul style="list-style-type: none"> • Number of carbon reduction activities that your organisation has taken to progress your Carbon Reduction Plan • Number of RM6232 carbon reduction activities that benefit the <i>Client</i> • List the top 3 carbon reduction activities completed for non RM6232 contracts 	
Framework Performance Indicator Submission Form – Apprenticeships	<p>The <i>Service Provider</i> shall submit data demonstrating how they are progressing apprenticeships within their organisation</p> <ul style="list-style-type: none"> • Number of apprenticeships started • Cumulative number of apprenticeships ongoing • Number of apprenticeships concluded • Number of apprenticeships retained 	Quarterly
Framework Performance Indicator Submission Form – Diversity & Inclusion	<p>To demonstrate that suppliers are redressing workforce imbalance within their organisation</p> <ul style="list-style-type: none"> • Representation of women • Representation of ethnic minorities • Representation of staff who identify as having a disability • Representation of prison leavers • Representation of LGBTQIA+ 	Quarterly
Framework Performance Indicator Submission Form – SMEs/VCSEs	<p>To demonstrate that <i>Service Providers</i> are engaging with and developing SMEs/VCSEs</p> <ul style="list-style-type: none"> • Number of SMEs/VCSEs within your supply chain for RM6232 • Number of SME/VCSEs within your supply chain delivering services on RM6232 contracts • How many subcontract opportunities have there been within the reporting period • Of the subcontract opportunities, how many were awarded to a SMEs 	Quarterly

Confirmation of receipt of Framework Quarterly Performance Indicator Submission Form – Prompt Payments	The <i>Service Provider</i> will pay 100% of supply chain invoices within the time required by this contract.	Quarterly
--	---	-----------

Table B(1) – Baseline data

Report Name	Content of Report	Frequency of Report
Apprenticeships baseline data	<p>The <i>Service Provider</i> shall submit data demonstrating:</p> <ul style="list-style-type: none"> ● % of apprentices in their current workforce ● % conversion rate of apprentices retained when an apprenticeship ends <p>Concludes</p>	To be provided to the <i>Service Manager</i> within 10 Working Days of the submission of a request and annually thereafter
Diversity of Workforce baseline data	<p>The <i>Service Provider</i> shall submit baseline figures, to the extent these are available, of their current UK workforce:</p> <ul style="list-style-type: none"> ● Representation of women ● Representation of ethnic minorities ● Representation of staff who identify as having a disability ● Representation of prison leavers ● Representation of LGBTQIA+ 	To be provided to the <i>Service Manager</i> within 10 Working Days of the submission of a request and annually thereafter
SMEs/VCSEs baseline data	The <i>Service Provider</i> shall produce and submit a SME / VCSE engagement strategy detailing how they intend to retain and develop SMEs/VCSEs within their supply chain.	To be provided to the <i>Service Manager</i> within 10 Working Days of the submission of a request and annually thereafter

Z26 – NOT USED

Z27 – NOT USED

Z29 – SUBCONTRACTORS

Z29.1 The *Service Provider* includes in the subcontract with each Key Subcontractor (and each new or replacement subcontract):

- (i) the same provisions set out in the contract unless otherwise notified by the *Service Manager*;
- (ii) provisions which will enable the *Service Provider* to discharge its obligations under the contract;
- (iii) a right under the Contracts (Rights of Third Parties) Act 1999 for the *Client* and Business Units to take the benefit of and enforce all rights of the *Service Provider* under the subcontract as if the *Client* and Contracting Authorities were the *Service Provider*;
- (iv) a provision enabling the *Service Provider* to assign, novate or otherwise transfer any of its rights and/or obligations under the subcontract to the *Client* and/or Business Unit, any replacement service provider or a subcontractor of a replacement service provider without any payment of compensation or damages;
- (v) obligations no less onerous on the Key Subcontractor than those imposed on the *Service Provider* under the contract in respect of:
 - (A) the GDPR requirements set out in clause Z18;
 - (B) the FOIA and other access request requirements set out in clause Z9 (Freedom of Information);
 - (C) the obligation not to embarrass the *Client* or Contracting Authorities or otherwise bring the *Client* or Contracting Authorities into disrepute;
 - (D) the keeping of records in respect of the goods and/or services being provided under the subcontract and the conduct of audits set out in clause Z13 (Records, audit access and open book data);
- (vi) provisions enabling the *Service Provider* to terminate the subcontract on notice on terms no more onerous on the *Service Provider* than those imposed on the *Client* under clause 90 (Termination) of the contract;
- (vii) step-in rights for the *Client* drafted in the same terms contained in the contract;
- (viii) a provision restricting the ability of the Key Subcontractor to subcontract all or any part of the provision of the Service provided to the *Service Provider* under the subcontract without first seeking the written consent of the *Client*;

Z29.2 Where the *Service Provider* is unable to procure that its Key Subcontractors enter into the terms set out in clause Z29.1 above after reasonable attempts to obtain such terms and the *Service Provider* demonstrates such attempts it immediately notifies the *Service Manager* and the *Service Manager* decides whether to waive any such provisions. Such waiver only relates to such Key Subcontractor and is not be used as a precedent.

Z29.3 The *Service Provider* delivers to the *Service Manager* a copy of each Key Subcontractor's subcontract as soon as it is entered into. The *Service Provider* does not allow a Key

Subcontractor to commence performance until such copy has been delivered together with the signed collateral warranties required pursuant to clause Z3 in favour of the parties identified in the Contract Data.

Z29.4 Subject to clause Z29.5, the *Service Provider* does not:

- (i) terminate or agree to the termination of all or part of any Key Sub-contractor's subcontract;
- (ii) make or agree to any material variation of any Key Sub-contractor's subcontract;
- (iii) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Key Sub-contractor's subcontract; or
- (iv) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Key Sub-contractor's subcontract,

unless the proposed course of action (and any relevant documentation) is submitted to the *Service Manager* for review and there is no objection within twenty (20) Working Days of receipt by the *Service Manager* of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties.

Z29.5 Notwithstanding clause Z29.4, a Key Sub-contractor's subcontract may not be waived, assigned, transferred, subcontracted or terminated without the prior written consent of the *Client* (such consent to be withheld at its absolute discretion).

Z29.7 Subject to the procedure set out at Z24.8, the *Client* may terminate if the *Service Manager* has notified that the *Service Provider* has not complied with its payment obligations under any Key Subcontract and the *Service Provider* has not put the default right within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default (R28).

Z29.8 The *Service Provider* provides the *Service Manager* with the following information in respect of the proposed Key Sub-contractor's subcontract:

- (i) the proposed Key Subcontractor's name, registered office and company registration number;
- (ii) the scope/description of any services to be provided by the proposed Key Subcontractor;
- (iii) where the proposed Key Subcontractor is an Affiliate of the *Service Provider*, evidence that demonstrates to the reasonable satisfaction of the *Client* and that the proposed subcontract has been agreed on "arm's-length" terms;
- (iv) the subcontract price expressed as a percentage of the total projected Price over the Service Period; and
- (v) Credit Rating Threshold of the Key Subcontractor.

Z29.9 The *Service Provider* includes in the subcontract with each Subcontractor (and each new or replacement subcontract):

- (i) a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract;

- (ii) a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract; and
- (iii) a provision requiring the Subcontractor to assess the amount due to a Subsubcontractor without taking into account the amount paid by the *Service Provider*.

Z29.10 The *Service Provider* includes in the subcontract with each Subcontractor (and each new or replacement subcontract) a provision restricting the ability of the Subcontractor to subcontract all or any part of the provision of the *service* provided to the *Service Provider* under the subcontract without first seeking the written consent of the *Service Manager*.

Z29.11 The *Service Provider* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Service Manager*.

Z29.12 The *Service Provider* provides to the *Client* a list, updated quarterly, of all Subcontractors and Subsubcontractors which may provide a service which is necessary to Provide the *Service* and/or work for any Project.

Z29.13 The *Service Provider* ensures that any contract with any suppliers or Subcontractors that are connected to the contract includes:

- (i) an obligation to comply with the *Client's* Sustainability Requirements; and
- (ii) an obligation to explain the Sustainability Requirements to directors, officers, employees, agents, consultants and contractors of the supplier or Subcontractor (as the case may be) where it is relevant to their role.

Z30 - ACCESSED CONTRACTS

Z30.1 The *Client* may from time to time notify the *Service Provider* of contracts which are available to the *Client* and which the *Client* can grant access to the *Service Provider* to use or which the *Service Provider* shall use in connection with the supply of the *service* ("**Accessed Contracts**").

Z30.2 The *Service Provider* shall prior to the Contract Date and at reasonable intervals thereafter liaise with the *Client* to agree which Accessed Contracts it shall use in Providing the *Service*.

Z30.3 The *Service Provider* shall ensure that all benefits (including volume rebates and enhanced discounts) gained through or in connection with use of an Accessed Contract shall be passed on for the benefit of the *Client*.

Z30.4 Where the *Service Provider* uses an Accessed Contract the *Service Provider* shall:

- .1 act in accordance with such procedures, rules and guidance as the *Client* may from time to time notify the *Service Provider*;
- .2 with the prior written agreement of the *Client*, directly award a contract to a supplier under the Accessed Contract or run a further competition to obtain the most economically advantageous offer; and
- .3 manage all contracts it enters into as agent on behalf of the *Client*, and the *Service Provider's* obligations and responsibilities in this regard shall be to:
 - (a) not terminate or otherwise amend the terms of the Accessed Contract or enter into any new or replacement agreements in addition to or in substitution for the Accessed Contract without obtaining the prior written consent of the *Client*;
 - (b) advise the *Client* of the steps to be taken to avoid or mitigate any event which may adversely affect the performance of Accessed Contracts and where required by the *Client* the *Service Provider* shall take such steps;

- (c) provide to the *Client* such other information as the *Client* may from time to time reasonably require in relation to the performance by the parties pursuant to an Accessed Contract; and
 - (d) notify the *Client* of any changes to the prices charged under the Accessed Contract. For the avoidance of doubt, the *Service Provider* shall not be entitled to negotiate or accept any changes to the price without obtaining the *Client's* prior written consent.
- .4 In addition, at all times in carrying out its obligations and responsibilities under this clause Z30 the *Service Provider* shall:
- (a) comply with all Laws, rules and guidance that apply to the *Client* including, without limitation, public procurement rules;
 - (b) act towards the *Client* dutifully and in good faith, not allow its interests to conflict with the duties that it owes to the *Client* under this contract and generally to carry out its agency in the way which it thinks best to promote the interests of the *Client*;
 - (c) except as authorised by the *Client*, not act in a way which will incur any liabilities on behalf of the *Client*, nor pledge the credit of the *Client*;
 - (d) comply with all reasonable and lawful instructions from the *Client* from time to time concerning its duties under the Accessed Contracts;
 - (e) describe itself in all dealings with suppliers under Accessed Contracts and on all correspondence, marketing and advertising material as the agent of the *Client*;
 - (f) use all reasonable endeavours to ensure that each supplier under an Accessed Contract performs its relevant obligations in accordance with each Accessed Contract; and
 - (g) discharge the obligations of the *Client* under each Accessed Contract (including, where required by the *Client*, making payments thereunder) as though it were the *Client* and in accordance with the terms of each such Accessed Contract.
- .5 The parties acknowledge that the Accessed Contracts may through the effluxion of time expire or may terminate during the Service Period. Prior to any Accessed Contract expiring or otherwise terminating where the *Service Provider* receives notice of such termination it shall immediately notify the *Client* of the same.
- .6 Throughout and after the Service Period the *Service Provider* shall indemnify the *Client* and keep the *Client* indemnified against all losses, claims, damages, costs and expenses (including reasonable legal fees) incurred by the *Client* arising from the *Service Provider's* breach of any Accessed Contract and from the acts or omissions of the *Service Provider* which may put the *Client* or another person in breach of any Accessed Contract.
- .7 For the avoidance of doubt, the *Service Provider* shall not be entitled to use any Accessed Contract for its own benefit or for any purpose other than as set out in this clause Z30.
- .8 The *Client* may terminate the *Service Provider's* obligation to Provide the Service if the *Service Provider* breaches any of the provisions of this clause Z30 [R32].
-

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 *Service Provider* and whose normal place of working is within the Service Areas,
- people who are directly employed by the *Service Provider* 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 *Service Provider* 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 on work in the contract.

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.

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 *Service Provider*.

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 *Service Provider* 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 *Service Provider* 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 service* outside the Service Areas.

Insurance

8 The following are deducted from cost

- the cost of events for which the contract requires the *Service Provider* to insure and
- other costs paid to the *Service Provider* by insurers

Contract Data Part One

The document so identified in the *Client's* solicitor's email to the signatories of the Parties on 17 May 2024.

Annex 1

The Scope

The document so identified in the *Client's* solicitor's email to the signatories of the Parties on 17 May 2024.

Annex 2

The Price List

The document so identified in the *Client's* solicitor's email to the signatories of the Parties on 17 May 2024.

Schedules

The documents so identified in the *Client's* solicitor's email to the signatories of the Parties on 17 May 2024, as follows:

Schedule 1 - Commercially Sensitive Information

Schedule 2 – Pricing Details

Schedule 3 – Financial Difficulties

Schedule 4- Staff Transfer

Schedule 5 – ICT Services

Schedule 6 – Security

Schedule 7 – TUPE Surcharge

Schedule 8 – Redundancy Surcharge

Schedule 9 – Collateral Warranty Agreements

Schedule 10 – Key Performance Indicators

Schedule 11 – Cyber Essentials

Schedule 12 – Supply Chain Information Report Template

Schedule 13 - Key Subcontractors

Schedule 14 – Data Protection

Schedule 15 - Data Processing schedule where BTP or HS2 is acting as Controller

Contract Data Part Two

The document so identified in the *Client's* solicitor's email to the signatories of the Parties on 17 May 2024.