**

Form of Agreement

**NEC4 TERM SERVICE CONTRACT**

1. *Client*

and
2. *[INSERT NAME OF CONTRACTOR]*

Agreement **in relation to the Underwater Inspections** (Incorporating (inter alia) the NEC4 Term Service Contract June 2017with January 2019 Amendments as modified and supplemented in the manner indicated in thisAgreement and the Schedules hereto)*.*

West Sussex County Council
County Hall
Chichester
PO19 1RQ
Legal Services File Ref: **CC803.17349**

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This Agreement is made on the 2021

Parties

1. **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex PO19 1RQ (the "***Client*"**),
2. **[insert contractor name]** (company registration number INSERT) whose registered office is situated at [insert address] (the "***Contractor*"**)

Background

1. The *Client* wishes for certain services, namely in relation to underwater inspections as more particularly described in this contract, to be executed.
2. The *Client* wishes to appoint the *Contractor* and the *Contractor* has agreed to be appointed in accordance with the terms and conditions set out below to Provide the Service.

Now it is agreed that:

Interpretation

In this Agreement (including the recitals) words and expressions shall have the meanings as are respectively assigned to them in the conditions of contract referred to below. Clause headings are for information purposes only and do not affect the interpretation of this contract.

The contract

This Agreement, together with the following documents, constitute the ‘contract’ and are in the following order of priority:

* 1. this Agreement;
	2. the conditions of contract as referred to in clause 3 below, including the annexures thereto;
	3. the Contract Data Part One set out in Schedule 2, Part A to this Agreement;
	4. the Contract Data Part Two set out in Schedule 2, Part B to this Agreement, including any appendices thereto; and
	5. the Scope.
	6. Tender Amendments (clarification log)
	7. The *Contractor*s tender.

NEC conditions

The conditions of contract are based on the NEC4 Term Service Contract June 2017 main Option A, dispute resolution Option W2 and Secondary Option clauses X1, X2, X8, X11, X17, X23 and Y(UK) 2 clauses together with the amendments set out in the ‘January 2019 Amendments’ published by the NEC and the modifications, additions and amendments set out in Schedule 1 to this Agreement (the ‘Z clauses’).

Appointment

The *Client* appoints the *Contractor* to Provide the Service in accordance with this contract and the *Contractor* accepts such appointment.

Payment

The *Client* pays the *Contractor* in consideration of his Providing the Service and remedying the Defects the amount due in accordance with this contract.

In witness whereof each of the Parties have executed this Agreement as a Deed the day and year first before written.

|  |  |  |
| --- | --- | --- |
| Signed and delivered as a Deed by the Client by affixing hereto the **common seal** of WestSussex County Council**In the presence of****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Authorised Signatory | ) | Affix Seal |
| Signed and delivered as a Deed by [INSERT NAME OF CONTRCTOR] acting by two directors or a director and the Company Secretary | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director |
|  | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Company Secretary/Director |

1. Z Clauses

 ***CLIENT’S* SCHEDULE OF CONTRACT AMENDMENTS**

**NEC4 TERM SERVICE CONTRACT (June 2017 with amendments January 2019)**

**“Z CLAUSES”**

NB: These amendments comprise the following:

PART 1 - Amendments to existing core clauses 1-9 and options (W, X and Y clauses)

PART 2 - Additional clauses (Z clauses)

**PART 1 - Amendments to existing core clauses 1-9 and options (W, X and Y clauses)**

**Core Clause 1 - General**

Clause 11 – Identified and defined terms

**11.2(2A) *Client* Data**

Insert the following as a new sub-clause 11.2(2A)

1. the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:
2. supplied or communicated to the *Contractor* by or on behalf of the *Client;*
3. inputted into the *Client's* IT systems or the *Contractor's* IT system by the *Client* or the *Client’s* representatives; or
4. which the *Contractor* is required to access, generate, process, store or transmit pursuant to this contract, whether on the *Client's* IT systems or the *Contractor's* IT system; or
5. any Personal Data for which the *Client* is the Data Controller;

**11.2(3) Contract Date**

Amend the definition of Contract Date to: The Contract Date is the date stated at the top of this Agreement.

Insert the following as a new sub-clause 11.2(3A)

**11.2(3A) *Contractor* Personnel**

The *Contractor's* employees and agents and all other persons employed or engaged on or in connection with the *service* or any part of it.

**11.2(4) Corrupt Act**

Amend the definition of Corrupt Act by adding a third bullet point:

* an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972
* under legislation creating offences concerning fraudulent acts
* at common law concerning fraudulent acts relating to this contract or any other contract with the *Client*
* defrauding, attempting to defraud or conspiring to defraud the *Client.*

Insert the following as a new sub-clause 11.2(4A):

**11.2(4A)** **Data Protection Legislation**

means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Investigatory Powers Act 2016, the Investigatory Powers (Interception of Businesses etc for Monitoring and Record-keeping Purposes) Regulations 2018, the Data Protection Act 2018 and the GDPR and any legislation implemented in connection with the GDPR and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner;Insert the following as a new sub-clause 11.2(4B):

**11.2(4B) Data Room**

Is the data room the *Contractor* was given access to by the *Client* during the tender process following submission of the invitation to tender.

Insert the following as a new sub-clause 11.2(8A):

**11.2(8A)** **Funder**

Is a party (acting for itself and where it leads for a syndicate of persons, as agent and trustee for them) who agrees to provide or is providing finance for the carrying out of the *service* or on the security of the completed *service*.

Insert the following as a new sub-clause 11.2(8B):

**11.2(8B)** **Laws**

Means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of the European Union (Withdrawal) Act 2018, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**11.2(9) Others**

Amend the ending of the definition by adding 'Others includes Tenants, Purchasers and Funders.'

Insert the following as a new sub-clause 11.2(9A):

**11.2(9A) Pandemic**

A Pandemic Event means:

1. any pandemic (including, but not limited to, the COVID-19 coronavirus outbreak and/or any mutation thereof and any other outbreak of an infectious human disease),
2. any measures, recommendations, regulations and legislation issued by the government and/or public authorities in relation to any pandemic from time to time, and/or
3. any consequences of any pandemic which are outside the reasonable control of the *Contractor*, which affects the *service* including without limitation the *Contractor* being unable to reasonably access the Service Areas, delay in or non-delivery of any materials required for the *service* or the *Contractor* being unable to reasonably adequately resource the *service.*

Insert the following as a new sub-clause 11.2(11A):

**11.2(11A) Pre-Contract Mobilisation Period**

Means the two (2) week period commencing on [INSERT DATE]

Insert the following as a new sub-clause 11.2(13A):

**11.2(13A)** **Purchaser**

Is any purchaser of the whole or any part of the Affected Property whether by way of freehold or long leasehold interest.

Insert the following as a new sub-clause 11.2(22):

**11.2(22)** **Tenant**

Is any tenant of the whole or any part of the Affected Property or any tenant taking a new lease following the insolvency and termination of the lease of any first tenant.

Insert the following as a new sub-clause 11.2(30):

**11.2(30) Termination Assistance Period**

Means the six (6) month period prior to the Termination Date.

Insert the following as a new sub-clause 11.2(31):

**11.2(31) Termination Date**

Means the end of the Service Period or an earlier date for termination in accordance with the provisions of the contract.

Insert the following as a new sub-clause 11.2(32):

**11.2(32) Working Days**

Means Monday to Friday inclusive of each week, excluding Christmas Day, Good Friday and Bank Holidays in England.

Clause 12 – Interpretation and the law

Delete clause 12.2 and insert the following:

This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of England. Subject to the provisions of Secondary Option W2 (unless not a Construction Contract in which case Secondary Option W1 will apply) the Parties agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this contract (including non-contractual disputes or claims) and irrevocably submit to the jurisdiction of those courts.

Delete existing clause 12.4 and add the following wording:

12.4Except where expressly provided in this contract, this contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this contract.

Insert a new clause 12.5 as follows:

The contract comprises:

a. the core conditions of contract contained in the NEC4 TSC Contract June 2017 (including NEC4 amendments);

b. the Contract Data;

c. the Scope;

d. the amendments to existing core clauses and option clauses part 1

e. the optional and Z clauses of contract;

f. the *Contractor’s* tender response.

Clause 17 Requirements for instructions

Insert an additional clause 17.3 as follows:

17.3In the event that an ambiguity or inconsistency exists between the documents comprising this contract, and to assist the *Service Manager* in giving its instruction to resolve the ambiguity or inconsistency, the ambiguity or inconsistency shall be resolved according to the following descending order of priority:

1. the additional clauses of contract as set out in Option Z (“the Z clauses”);
2. the amendments to existing core clauses of contract (excluding the Z Clauses);
3. the core clauses of contract
4. the Contract Data Part One and (excluding the clauses of contract) all the documents referred to in such part;
5. the Contract Data Part Two and all documents referred to in such part;
6. any other Contract Document not listed at (a) to (d).

**Core Clause 2 The *Contractor’s* Main Responsibilities**

Clause 20 – Providing the Service

Insert an additional clause 20.3 as follows:

20.3 The *Contractor* shall perform all design services with the degree of skill, care and diligence reasonably to be expected from a skilled, qualified and competent professional person holding himself out as being experienced in performing those services in relation to Tasks of a similar size, scope and nature to the *Tasks* and shall unless and so far as the *Client* otherwise directs, select materials and goods for the *service* in accordance with all relevant Laws, statutory requirements, regulations and permissions, current British or European Union Standards, any other approved criteria, relevant codes of practice or other recognised best practice.

Clause 25 – Other responsibilities

Insert a new clause 25.5 as follows:

25.5 The *Contractor* will act in accordance with any statutes, proclamations, bylaws, directives, regulations, rules, orders, notices, rules of court or delegated or subordinated legislation and any planning or building permission or regulation or other official consents, request or requirement made by anybody of competent jurisdiction in respect of which the *Client* or *Contractor* has a legal obligation to comply, each as is in force from time to time and as amended from time to time, including (but not limited to) the Joint Fire Code (2009) and the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (as revised October 2013).

Delete clause 26 and add the below as a new clause 26:

Clause 26 - Assignment

26.1 The *Contractor* will not assign his interest in or any rights arising under this contract without the consent of the *Client*.

26.2 The *Client* may assign, charge or transfer his interest in this contract or any rights arising under it at any time without the consent of the *Contractor*. The *Client* must notify the *Contractor* of any such assignment, charge or transfer.

26.3 The *Contractor* will not (and ensures that its employees andSubcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to provide the *service*.

**Core Clause 5 Payment**

Clause 51.1 – Payment

Delete existing clause 51.1 and insert:

51.1 The *Service Manager* certifies a payment within 7 days of each assessment date. The certificate from the *Service Manager* specifies the amount (if any) of the payment to be made or proposed to be made and the basis upon which that amount was calculated. Immediately following the issue of a certificate the *Contractor* sends a valid VAT invoice to the *Service Manager* confirming the amount due within the certificate. For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of a certificate is the date the *Client* receives the *Contractor’s* invoice, the *Contractor’s* invoice shall be the payment notice and the final date for payment pursuant to the certificate, is 30 days from the *Client’s* receipt of the *Contractor’s* valid and undisputed invoice. The invoice must contain the relevant project purchase order number, the project name and address, the project number and the West Sussex County Council *Service Manager’s* name and must be sent via email to ctg.invoicing@westsussex.gov.uk. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. Payments are in the currency of this contract unless otherwise states in this contract.

In the event the *Service Manager* fails to certify the payment application within the specified timescales, then the *Contractor’s* payment application under clause 50.3 would become the payment notice.

Clause 51.2 - Payment

Delete existing clause 51.2 and insert:

51.2 The *Client* or, if applicable, the *Contractor* makes each payment due under this contract by the final date for payment and interest is paid on the late payment, this interest being calculated at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998. Interest is assessed from the final date of payment until the date when the late payment is made and is included in the first assessment after the late payment is made.

51.6Insert a new clause 51.6:

 The final date for payment of a Subcontractor’sinvoice is 30 days from receipt of a valid and undisputed invoice and the *Contractor* shall ensure that the subcontract includes similar clauses to 51.1 and 51.2 above.

Clause 53 - Final Assessment:

Add a new clause 53.5:

All references to payment within one week of the paying Party receiving an invoice shall be changed to payment within 30 days of the paying Party receiving an invoice.

**Core Clause 8 Liabilities and Insurance**

Clause 83 - Insurance cover

In clause 83.3 add a row to the Insurance Table to cover Professional Indemnity Insurance as follows:

|  |  |
| --- | --- |
| Professional Indemnity insurance (where applicable)  | £2,000,000 for each and every claim |
| Product Liability (where applicable)  | £2,000,000 |
| Motor insurance cover for all vehicles used in providing the *service*. | The amount required by the applicable Law in force at the time. |

Insert a new clause 83.4 as follows:

83.4Each Party notifies the other Party as soon as reasonably practicable after his receipt of any formal written claim and

 (a) does not settle or compromise any claim without the prior agreement of the other Party (such agreement not to be unreasonably withheld or delayed) and

(b) takes reasonable steps to mitigate any loss or damage in respect of which each Party is entitled to be indemnified by the other Party.

**Core Clause 9 Termination**

Clause 90 – Termination

Insert a new row (shown here below the existing headings) in the Termination Table at clause 90.2 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Terminating Party | Reason | Procedure | Amount Due |
| *Client* | R23, R24, R25,  | P4 | A1 and A2 |

Clause 91 – Reasons for Termination

**Clause 91.7 Corrupt Act**

### Insert the following new clauses:

91.7.1 Any notice of termination under this clause 91.7 specifies the nature of the act, the identity of the party who the *Client* believes has committed the act and the date on which the contract will terminate.

### 91.7.2 Any clause limiting the *Contractor’s* liability does not apply to any of the provisions of this clause 91.7.

91.7.3The *Contractor* warrants and undertakes that he has not committed and does not commit (and that each person associated with the *Contractor* has not committed and does not commit) any Corrupt Act.

91.7.4The *Contractor* procures that provisions equivalent to the preceding clauses of this clause 91.7 are included within each subcontract under which a Subcontractor is appointed.

**Clause 91.8 Reasons for Termination**

Insert a new clause 91.8 as follows:

91.8The *Client* may terminate if:

(a) The effect of a compensation event is to substantially modify the contract within the meaning of Regulation 73 of the Public Contracts Regulations 2015 and the *Client* is required to initiate a new procurement procedure (R23);

(b) The *Contractor*, including any person employed by the *Contractor* in an administrative, management or supervisory role and including any person who has powers of representation, decision-making or control within the *Contractor*, becomes the subject of a conviction for one of the reasons set out in Regulation 57(1) of the Public Contracts Regulations 2015 (R24);

(c) The contract is declared ineffective by a review body in accordance with Regulation 98(2) of the Public Contracts Regulations 2015 (R25);

###  and for the avoidance of doubt, the *Contractor* is not entitled to any compensation on any such termination as covered by this clause 91.8.

Insert a new clause 91.9 and 91.10 as follows:

91.9 The *Contractor* is not a party to a cartel involving or including any commercial or other arrangement between individuals and/or corporations which is intended or organised so as to share or control marketing arrangements or prices (whether or not that arrangement is a concealed or hidden commercial venture) and in the event of the *Contractor* being a party to such a cartel the *Client* is entitled to terminate the contractand recover from the *Contractor* the amount of any losses, damages, charges or costs which it may directly or indirectly sustain by reason of such termination.

91.10 The *Contractor*, its employees or anyone acting on the *Contractor’s* behalf does not solicit any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the *service* other than bona fide charges approved by the *Client*.

92 - Procedures on termination

Add the following sub clauses:

92.3 Where the contractis terminated as a result of the receivership, administration or liquidation of the *Contractor*, the *Client* shall be entitled to engage an alternative contractor.

92.4 In the event of termination of the contract, the *Client* is entitled to repossess its materials; clothing, equipment, vehicles or goods loaned or hired to the *Contractor* and exercise a lien over any materials, clothing, equipment, vehicles or goods belonging to the *Contractor* for any sum due to the *Client* from the *Contractor*.

92.5 The *Client* shall at the termination of the contracthave the right to re-purchase any machinery/equipment previously sold to the *Contractor* at a price mutually agreed not exceeding the price originally paid by the *Contractor* to the *Client*.

**Option W2**

Insert a new clause W2.1 (5) as follows:

Each party gives serious consideration to the use of mediation if any dispute cannot be resolved by reference to the meeting described at conditions W2.1 (1) to (3).

**X1 Price Adjustment for Inflation (for use with Option A and C only)**

The proportions used to calculate the Price Adjustment Factor are:

|  |  |  |
| --- | --- | --- |
| Proportion |   | linked to the index for |
| 1.00 |   | The Consumer Price Index (CPIH) all items (MM23) |
|   |   |   |
| 0.00 |   |  |
|   |   |   |
| 0.00 |  | Non-adjustable: 0% |
|   |   |   |
| 1.00 |   |   |
|   |   |   |
| The *base date* for indices is |   | 1st March 2025 |
|  The inflation adjustment dates are  |   |  1st April 20261st April 20271st April 20281st April 20291st April 20301st April 2031Optional extension 1st April 2032 |
| These indices are |   | The Consumer Price Index (CPIH) as published by the Office for National Statistics. |

**X8 Undertakings to the *Client* or Others**

Insert new clause X8.6:

X8.6 Each undertaking is executed and delivered to the *Client* within 14 days of a request to do so by the *Client* (acting reasonably).

**X13 Performance Bond- not used.**

Delete Option X13 and replace with:

X13.1 The *Contractor* gives the *Client* a performance bond, provided by a bank or insurer which the *Service Manager* has accepted, and in the format of performance bond as provided by the *Client* to the *Contractor* as part of the Scope. The amount of the performance bond will be 10% of the tendered total of the Prices. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date.

X13.2 If the *Contractor* does not procure the execution and delivery of a performance bond no later than 4 weeks of the Contract Date then, notwithstanding any other term of this contract, the *Client* may deduct £33,050.30 (being 10% of the gross tendered price) from the tendered total of the Prices or the sums that would otherwise be due to the *Contractor* under this contract, until the *Contractor* procures such execution and delivery.

**Option Y(UK)2**

In clause Y2.3 replace “seven days” in the second line with “one day”.

**Z Clauses- additional clauses**

**Z2 Pandemic Event**

### Insert the following:

Z2.1 Throughout the duration of a Pandemic Event, the Parties discuss the risk of potential delays and work to mitigate any likely effects. Any such delays are logged on the Early Warning Register and early warning meetings are held to discuss any issues foreseen. The programme is kept up to date accordingly.

Z2.2 The *Contractor* has robust policies and procedures in place to adequately and effectively deal with a Pandemic Event. The *Contractor* complies with the Health Protection (Coronavirus, Restrictions) Regulations 2020 as updated or supplemented by Government directions, guidance and advice and the *Contractor* procures that it shall keep its employees informed about the risks of a Pandemic Event and shall take steps to ensure that there is good hygiene in the workplace (based on the facts and science of the Pandemic Event) and that working practices do not pose undue risks to its employees.

Z2.3 Add new clause 60.1 (22):

"A Pandemic Event."

Z2.4 In the termination table in clause 90.2, insert:

R17A i) after R21 in the row regarding termination by the *Client* and ii) after R17 in the row regarding termination by the *Contractor*.

Z2.5 Add a new clause 91.5A:

"Either Party may terminate if the *service* has been suspended for at least ninety (90) days due to a Pandemic Event (R17A)."

## **Z3 Mobilisation**

Z3.1 The *Contractor*, as part of his tender, submits a detailed Mobilisation Plan. The Mobilisation Plan is set out at Annex 2 of this contract.

## Z3.2 During the Pre-Contract Mobilisation Period the *Contractor* implements the Mobilisation Plan and keeps the *Client* up to date at all times in respect of the Mobilisation Plan.

**Z4**  **Crime and Disorder Act 1998**

### Insert the following:

Z4.1 The *Contractor* complies on the *Client’s* behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and indemnifies the *Client* against all actions, costs, expenses, proceedings and demands which may be brought against the *Client* for breach of statutory duty under the Act which arises upon acts or omissions by the *Contractor*, its servants, employees and agents under this contract.

**Z5 Prevent Clause**

Insert the following:

Z5.1The *Contractor* procures that adequate provisions are made for it and its associates and Subcontractors to this contract to support the *Client* in its statutory duty as a specified authority under Section 26 of the Counter- Terrorism and Security Act 2015 (as amended by the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism (Guidance) Regulations 2015 (SI 2015/1697)) to have due regard to the need to prevent people from being drawn into terrorism (the “Prevent Duty”).

Z5.2The adequate provisions procured by the *Contractor* in order to support the *Client* as set out in clause Z5.1 are considered by the *Client* and *Contractor.*

**Z6** **Anti-Slavery**

Insert the following:

Z6.1 In performing his obligations under this contract, the *Contractor* complies with the requirements set out in the Modern Slavery Act 2015, where the provisions of that Act apply to this contract.

**Z7 Execution of the Contract**

Z7.1All contracts where the tendered total of the Prices is £500,000 or more are executed as a Deed by the *Client* and the *Contractor*.

**Z8 Disclosure and Barring Service Checks**

Insert the following:

Z8.1 The *Contractor* ensures that all individuals employed or engaged in connection with the *service* are of suitable character and are appropriately qualified, trained and experienced in the area of services which they are to perform.

Z8.2The *Contractor* will not employ, engage or use the services of any person who:

Z8.2.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the *service* involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the *Client’s* prior and express written consent; or

Z8.2.2 discloses that he or she has a Relevant Conviction, or who is found by the *Contractor* to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), in the provision of any part of the *service* involving access to or processing of financial data, or access to or processing of sensitive personal data without the *Client's* prior and express written consent.

Z8.2.3 For the purposes of this clause Z8, the following definitions apply:

 Z8.2.3.1 Regulated Activity means in relation to children as defined in Part 1 of Schedule 4, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4, of the Safeguarding Vulnerable Groups Act 2006;

 Z8.2.3.2 Vulnerable Adults means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 is provided;

 Z8.2.3.3 Relevant Conviction means a conviction that is relevant to the nature of the services to be provided.

Z8.3 The *Contracto*r ensures:

Z8.3.1 that the *Contractor’s* key people who, in providing the *service*, will be engaged in the provision of a Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

Z8.3.2 that all *Contractor* Personnel are under the supervision of the *Contractor’s* key people whilst providing the *service* outside the Service Areas; and

Z8.3.3 that the *Contractor* monitors the level, frequency and validity of the checks required under this clause Z8.3 for the *Contractor’s* key people.

Z8.4 The *Contractor* warrants that at all times for the purposes of this contract it has no reason to believe that any person who is or will be employed or engaged by the *Contractor* in the provision of the *service*:

Z8.4.1 has a Relevant Conviction; or

Z8.4.2 Is barred from carrying out Regulated Activity, in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

Z8.5 The *Contractor* immediately notifies the *Client* of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause Z8 have been met.

Z8.6 The *Contractor* refers information about any person carrying out the *service* to the Disclosure and Barring Service where it removes permission for such person to carry out the *service* (or would have, if such person had not otherwise ceased to carry out the *service*) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.

**Z9** **Suppliers Advantage Initiative**

Z9.1 The *Client* has established the Supplier Advantage Initiative and for the duration of this contract or until the Supplier Advantage Initiative is terminated on the *Client’s* written notice to the *Contractor* or in any other way comes to an end then the *Contractor* acknowledges and agrees that in consideration of the *Client* paying a certified payment or final payment under or in connection with this contract prior to the final date for payment under the terms of this contract, the *Client* is entitled to deduct and retain from the certified payment or final payment, for its own benefit, such percentage of that certified payment or final payment that is calculated in accordance with the SAI Calculation of Rebate Table below (the “SAI Rebate”).

Z9.2 If the *Client* elects to make payment in accordance with clause Z9.1, it:

.1 issues a notice in accordance with clause Y2.3 (a Pay Less Notice) stating the sum due to the *Contractor* as at the date of issue of the Pay Less Notice (which is calculated as the amount set out in the certified payment or final payment (as applicable) reduced in accordance with the SAI Rebate; and

.2 makes payment by way of BACS of the amount of the Pay Less Notice on the date of the Pay Less Notice,

provided always that the latest date by which the *Client* may make payment to the *Contractor* by way of BACs payment under this clause Z9 is 1 day before the Final Date for Payment.

Z9.3 For the avoidance of doubt, nothing in this clause Z9:

.1 affects the date by which payment of a certified payment or final payment is required to be made by the *Client;* or

.2 requires the *Client* to make early payment to the *Contractor* in respect of any certified payment or final payment.

Z9.4 For the avoidance of doubt, the SAI Rebate is applied only in accordance with this clause Z9 after the valuation or assessment of amounts otherwise due in accordance with this contract. The valuation or assessment of amounts otherwise due to the *Contractor* under and in accordance with this contract excludes any deductions made as a result of the application of the SAI Rebate. The Prices are not adjusted by reason of the application of the SAI Rebate.

Z9.5 In the event of any inconsistency between this clause Z9 and the remaining provisions of this contract, this clause prevails.

Z9.6 This clause is without prejudice to any other right or remedy of the *Client* (including the right to issue a notice under clause Y2.3) under or in connection with this contract.

Z9.7 In the event the *Contractor*, acting reasonably, considers that the *Client* has incorrectly applied a SAI Rebate it raises a query in respect of that SAI Rebate with the *Client’s* accounts payable team (whose details are provided to the *Contractor* by the *Client*, as updated from time to time) within seven (7) days of the relevant SAI Rebate being applied.

Z9.8 If the *Contractor* does not raise a genuine query under clause Z9.7 within seven (7) days of the relevant SAI Rebate being applied, the *Client* is deemed to have applied the SAI Rebate correctly in that instance and is entitled to retain that SAI Rebate.

Z9.9 The Parties refer any query raised in accordance with clause Z9.7 to clause W2 (Resolving and Avoiding Disputes) of this contract.

Z9.10 The Parties agree to implement an e-invoicing process within 1 month of the date of this contract. The *Contractor* sends electronic copies of their invoices;

.1 in machine generated PDF format (i.e. produced directly from the *Contractor’s* billing application or PC program.

.2 to the designated *Client* invoice receiving email address: ctg.invoicing@westsussex.gov.uk.

Z9.11 The *Client* may make reasonable proposals to implement an online portal to administer the early payment programme and the *Contractor* agrees to implement such proposals in good faith and not to refuse the *Client’s* reasonable request to amend its invoicing requirements under this contract to reflect such proposals.

Z9.12 In the event that the *Client* implements an online portal the *Client* grants (insofar as it has the power to do so) to the *Contractor* a revocable, royalty free, non-exclusive, worldwide licence to use the online portal for the sole purpose of meeting its obligations under and realising its benefits arising from this contract.

Z9.13 The *Contractor* does not transfer the licence granted under clause Z9.12, without the prior written consent of the *Client.*

Z9.14 The licence granted at clause Z9.12 continues for the duration of the contract or until the *Client* decides for any reason to terminate the licence (by notifying the *Contractor* in writing), whichever occurs first.

Z9.15 Notwithstanding anything to the contrary in the contract, any and all intellectual property rights in the online portal remain vested in the *Client* and/or any other third party or Parties that supplied the online portal (or any part of it) to the *Client.*

 **Z9** **Suppliers Advantage Initiative**

Z9.1 The *Client* has established the Supplier Advantage Initiative and for the duration of this contract or until the Supplier Advantage Initiative is terminated on the *Client’s* written notice to the *Contractor* or in any other way comes to an end then the *Contractor* acknowledges and agrees that in consideration of the *Client* paying a certified payment or final payment under or in connection with this contract prior to the final date for payment under the terms of this contract, the *Client* is entitled to deduct and retain from the certified payment or final payment, for its own benefit, such percentage of that certified payment or final payment that is calculated in accordance with the SAI Calculation of Rebate Table below (the “SAI Rebate”).

|  |  |
| --- | --- |
| Number of days elapsed between the Calculation Trigger Date and the Invoice Payment Date | % of the amount owed that may be deducted and retained by the Council as the Rebate from the Invoiced Debt |
|  | Rebate Percentage |
|  | 0.50% | 1% | 1.25% | 1.50% | 2.0%  |
| 0 | 0.75% | 1.50% | 1.88% | 2.25% | 3.00% |
| 1  | 0.73% | 1.45% | 1.81% | 2.18% | 2.90% |
| 2  | 0.70% | 1.40% | 1.75% | 2.10% | 2.80% |
| 3  | 0.68% | 1.35% | 1.69% | 2.03% | 2.70% |
| 4  | 0.65% | 1.30% | 1.63% | 1.95% | 2.60% |
| 5  | 0.63% | 1.25% | 1.56% | 1.88% | 2.50% |
| 6  | 0.60% | 1.20% | 1.50% | 1.80% | 2.40% |
| 7  | 0.58% | 1.15% | 1.44% | 1.73% | 2.30% |
| 8  | 0.55% | 1.10% | 1.38% | 1.65% | 2.20% |
| 9  | 0.53% | 1.05% | 1.31% | 1.58% | 2.10% |
| **10** **(Target Date)** | **0.50%** | **1.00%** | **1.25%** | **1.50%** | **2.00%** |
| 11  | 0.48% | 0.95% | 1.19% | 1.43% | 1.90% |
| 12  | 0.45% | 0.90% | 1.13% | 1.35% | 1.80% |
| 13  | 0.43% | 0.85% | 1.06% | 1.28% | 1.70% |
| 14  | 0.40% | 0.80% | 1.00% | 1.20% | 1.60% |
| 15  | 0.38% | 0.75% | 0.94% | 1.13% | 1.50% |
| 16  | 0.35% | 0.70% | 0.88% | 1.05% | 1.40% |
| 17  | 0.33% | 0.65% | 0.81% | 0.98% | 1.30% |
| 18  | 0.30% | 0.60% | 0.75% | 0.90% | 1.20% |
| 19  | 0.28% | 0.55% | 0.69% | 0.83% | 1.10% |
| 20  | 0.25% | 0.50% | 0.63% | 0.75% | 1.00% |
| 21  | 0.23% | 0.45% | 0.56% | 0.68% | 0.90% |
| 22  | 0.20% | 0.40% | 0.50% | 0.60% | 0.80% |
| 23  | 0.18% | 0.35% | 0.44% | 0.53% | 0.70% |
| 24  | 0.15% | 0.30% | 0.38% | 0.45% | 0.60% |
| 25  | 0.13% | 0.25% | 0.31% | 0.38% | 0.50% |
| 26 | 0.10% | 0.20% | 0.25% | 0.30% | 0.40% |
| 27 | 0.08% | 0.15% | 0.19% | 0.23% | 0.30% |
| 28 | 0.05% | 0.10% | 0.13% | 0.15% | 0.20% |
| 29 | 0.03% | 0.05% | 0.06% | 0.08% | 0.10% |
| 30 | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |

Calculation of SAI Rebate:

Gross Tender Price - % Early Payment Rebate = Lowest Tender Price

**Z10 Freedom of Information/ Disclosure of Information**

Insert the following:

Z10.1 A Disclosure Request is a request for information relating to this contract received by the *Client* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004, both as amended, or otherwise.

Z10.2 The *Contractor* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Contractor* before doing so in accordance with the relevant Code of Practice. The *Contractor* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Service Manager* and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.

Z10.3 When requested to do so by the *Service Manager*, the *Contractor* promptly provides information in its possession relating to this contract and assists and co- operates with the *Service Manager* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

Z10.4 The *Contractor* promptly passes any Disclosure Request which it receives to the *Service Manager*. The *Contractor* does not respond directly to a Disclosure Request unless instructed to do so by the *Service Manager*.

Z10.5 The *Contractor* acknowledges that the *Client* is subject to transparency obligations which require the *Client* to publish certain contract information and materials. The *Contractor* gives its consent for the *Client* to publish this contract and its schedules in its entirety, including agreed changes to the contract (except such matters as the *Client* is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the *Client* decides. The *Contractor* gives such assistance and cooperates with the *Client* to enable such publication, including, assisting the *Client* at no additional costs to the *Client* in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

**Z11 Data Protection**

Z11.1The *Contractor* and the *Client* duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this contract and the *Contractor* procures that the *Contractor* Personnel shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this contract.

Z11.2 The *Contractor* performs its obligations under this contract to ensure that it does not cause the *Client* to breach any of its applicable obligations under the Data Protection Legislation.

Z11.3 The *Contractor* is liable for and indemnifies (and keeps indemnified) the *Client* against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the *Client* which arise directly from a breach by the *Contractor* of its obligations under the Data Protection Legislation, including those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the *Contractor* or the *Contractor* Personnel.

Z11.4 This clause Z11 applies during the continuance of this contract and indefinitely after its expiry or termination.

**Data Processor Obligations**

Z11.5 For the purposes of this contract the *Client* is the Data Controller (as defined in the Data Protection Act 2018) and the *Contractor* is the Data Processor (as defined in the Data Protection Act 2018). A description of the Personal Data (as referred to in the Data Protection Act 2018) processed by the *Contractor* and the processing activities undertaken by the *Contractor* is set out in a Data Processing Activities at Annex 1 of this Agreement.

Z11.6 In respect of Personal Data that the *Contractor* processes on behalf of the *Client* in connection with this contract, the *Contractor*:

Z11.6.1 processes the Personal Data for the purposes of fulfilling its obligations under this contract and complies with the *Client’s* written instructions as set out in this *contract* and as may be specified in writing by the *Client*.

Z11.6.2 notifies the *Client* immediately if the *Client’s* instructions relating to the processing of Personal Data are unlawful.

Z11.6.3 does not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the *Client*.

Z11.6.4 complies with the *Client’s* instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the *Contractor* is required to transfer Personal Data outside the United Kingdom, in which case the *Contractor* informs the *Client* in writing of the relevant legal requirement before any transfer occurs unless any relevant Laws prohibit such notification on important grounds of public interest;

Z11.6.5 takes reasonable steps to ensure the reliability of any *Contractor* Personnel who have access to the Personal Data and ensures that all *Contractor* Personnel used by the *Contractor* to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;

Z11.6.6 ensures that none of the *Contractor* Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Client*.

Z11.6.7 does not engage any Subcontractor to carry out any processing of Personal Data without the prior written consent of the *Client* provided that (despite any such consent) the *Contractor* remains liable for compliance with all the requirements of this contract including in relation to the processing of Personal Data;

Z11.6.8 ensures that obligations equivalent to the obligations set out in these data protection clauses are included in all contracts between the *Contractor* and Subcontractors who will be processing Personal Data.

Z11.6.9 takes appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including all measures that may be required to ensure compliance with the Data Protection Legislation;

Z11.6.10 upon request provides a written description of the technical and organisational measures employed by the *Contractor* pursuant to clause Z11.6.9 (within the timescales required by the *Client*) and if the *Client* does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implements such additional measures as may be specified by the *Client* (acting reasonably) to ensure compliance;

Z11.6.11 taking into account the nature of the Data Processing Activities undertaken by the *Client*, provides, at no cost to the *Client*, all possible assistance and co-operation including putting in place appropriate technical and organisational measures to enable the *Client* to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including:

Z11.6.11.1 notifying the *Client* within two (2) Working Days, of receiving any request from a Data Subject, as defined in the Data Protection Legislation, exercising their rights under the Data Protection Legislation; and

Z11.6.11.2 complying with the *Client’s* instructions in relation to complying with the Data Subject’s rights under the Data Protection Legislation, which may include providing notices to Data Subjects in a format specified by the *Client,* rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the *Client;*

Z11.6.12 maintains a record of the *Contract*or’s processing activities in accordance with the requirements of the Data Protection Legislation;

Z11.6.13 assists the *Client*, at no cost to the *Client*, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the *Contractor* and the information available to the *Contractor*, including:

Z11.6.13.1 providing information and assistance upon request to enable the *Client* to notify Data Security Breaches as defined in the Data Protection Act 2018 to the Information Commissioner and/or to affected individuals and/or to any other regulators to whom the *Client* is required to notify any Data Security Breaches; and

Z11.6.13.2 providing input into and carrying out Data Protection Impact Assessments, as defined in the Data Protection Act 2018, in relation to the *Contractor*’s Data Processing Activities.

Z11.6.14 ensures that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the *Contractor* in connection with this contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

Z11.6.15 notifies the *Client* immediately and in any event within twenty-four (24) hours in writing if:

Z11.6.15.1 the *Contractor* or any Subcontractor engaged by or on behalf of the *Contractor* suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

Z11.6.15.2 the *Contractor* or any Subcontractor engaged by or on behalf of the *Contractor* receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to the *Client’s* or the *Contractor*’s compliance with the Data Protection Legislation, and in each case the *Contractor* provides full co-operation, information and assistance to the *Client* in relation to any such Data Security Breach, complaint, notice or communication at no cost to the *Client;*

Z11.6.16 upon termination of this contract, at the discretion of and at no cost to the *Client*, deletes securely or returns all Personal Data to the *Client* and deletes all existing copies of the Personal Data unless the *Contractor* is required to retain copies of the Personal Data under applicable Laws in which case the *Contractor* notifies the *Client* in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the *Contractor,* the *Contractor* provides the *Client* with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.

Z11.6.17 makes available to the *Client* at no cost to the *Client* all information necessary to demonstrate compliance with the obligations set out in these Data Protection clauses and, upon request, allows the *Client,* the Information Commissioner’s Office and its representatives access to the *Contractor’s* premises, records and *Contractor* Personnel for the purposes of assessing the *Contractor’s* compliance with its obligations under the Data Protection clauses; and

Z11.6.18 Where the Parties are required to transfer any data and/or Personal Data, theParties complete a Data Sharing Agreement in a form to be agreed between the Parties.

**Z12 Health and Safety**

Z12.1 The *Contractor* complies at all times with the Health and Safety at Work Act 1974, the regulations made under the Act including the Management of Health and Safety at Work Regulations 1999 and all other legal health, safety and welfare requirements applicable to the *service*.

Z12.2 The *Contractor’s* health and safety policy together with specific risk assessments (or method statements incorporating risk assessment or safe working procedures as the case may be) (the Contract Safe Working Arrangements) are submitted to the *Client* and the *Contractor* complies with the Contract Safe Working Arrangements at all times when carrying out the contract. The *Contractor* is to ensure that the *Contractor's* site safety plan is sufficiently developed and in place prior to *service* commencement on all Tasks for which the *Contractor* is responsible.

Z12.3 Whilst on premises controlled by the *Client*, the Affected Propertyand theService Areas the *Contractor* ensures that his employees, sub-*Contractor's* and agents comply with the lawful requirements of the *Client*, including the *Client’s* requirement to monitor the Contract Safe Working Arrangementsperiodically. The *Contractor* ensures that his employees, Subcontractors and agents observe any local arrangements for fire, health, safety, welfare, hygiene and security.

Z12.4 The *Contractor* ensures that a suitably competent person (safety trained, experienced and qualified) is responsible for health and safety matters as required by law for the duration of the contract. The *Contractor* is required to undertake Health and Safety monitoring under the contract and to take remedial action as required.

Z12.5 The *Contractor*  reports all serious accidents and incidents (including those reportable to the Enforcing Authority under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) involving his employees, Subcontractors, agents, or members of the public as a result of carrying out the contract, to the *Client* without undue delay. The *Contractor* ensures that all necessary details of the accident are passed to the *Client*.

Z12.6 The *Client* is empowered to suspend the provision of the *service* if the *Contractor* fails to comply with any legal requirements stated in this clause Z12, or fails to comply with the Contract Safe Working Arrangements referred to in this clause Z12, the *Client's* safety policy and corporate codes of practice, most notably that concerning the control of contractors. The *Contractor* complies with the *Client’s* Environment & Development Group Health & Safety Information Systems as regards property works.

Z12.7 The *Contractor does* not resume provision of the *service* until the *Client* is satisfied that the non-compliance has been rectified. In respect of any such period of suspension, the provisions for default set out in this contract apply.

**Z13 The Construction (Design & Management) Regulations 2015 (“CDM Regulations 2015”)**

Z13.1Where the *Contractor* is“principal contractor”under the CDM Regulations 2015 in respect of the *service,* he performs all the functions and duties and exercises the powers of the principal contractor as defined in the CDM Regulations 2015.

Z13.2The *Contractor*, where responsible under section 4 of the Health and Safety at Work Act 1974 keeps theService Areas, the Service Areas access and the Service Areas exit safe and without risk to the health of persons using it.

Z13.3The *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Service Areas in order to discharge his responsibilities.

Z13.4 Where the *Contractor* is "principal designer" under the CDM Regulations 2015 in respect of the *service*, he performs all the functions and obligations required to be performed by the principal designer under the CDM Regulations 2015.

Z14 TUPE and Pensions

Z14.1 The following definitions apply in this clause Z14:

|  |  |
| --- | --- |
| Acquired Rights Directive | means Directive 77/187/EEC as amended and updated. |
| *Contractor*'s Final Staff List | the list of all the *Contractor*'s, and any Subcontractor’s, personnel engaged in, or wholly or mainly assigned to, the provision of the *service* or any part of the *service* at the Service Transfer Date; |
| *Contractor*'s Provisional Staff List | the list prepared and updated by the *Contractor* of all the *Contractor*'s, and any Subcontractor’s, personnel engaged in, or wholly or mainly assigned to, the provision of the *service* or any part of the *service* at the date of the preparation of the list; |
| Employment Liabilities | all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses; |
| Employee Liability Information | the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE and this contract, including:(a) the identity and age of the employee; and(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two (2) years; and(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the transfereearising out of the employee's employment with the transferor; and (e) information about any collective agreement that will have effect after the Relevant Transfer in relation to the employee under regulation 5(a) of TUPE; |
| Final Staff List | means the list of all the *Contractor’s* and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the *service* or any part of the *service* at the Service Transfer Date; |
| Provisional Staff List | means the list prepared and updated by the *Contractor* of all the *Contractor's* and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the *service* or any part of the *service* at the date of the preparation of the list, and in the format requested by the *Client*; |
| Relevant Employees | those employees whose contracts of employment transfer with effect from the Service Transfer Date to the *Client* or a Replacement Contractor by virtue of the application of the TUPE; |
| Relevant Transfer | a relevant transfer for the purposes of the TUPE; |
| Replacement Contractor | any third-party supplier of a Replacement Service appointed by the *Client* from time to time; |
| Replacement Service | means any services that are fundamentally the same as any of the *service* and which the *Client* receives in substitution for any of the *service* following the termination or expiry of this contract, whether those services are provided by the *Client* internally or by any Replacement Contractor; |
| Relevant Transfer Date | the date on which the *service* (or any part of the *service*), transfer from the *Contractor* to the *Client* or any Replacement Contractor; |
| Service Transfer Date | means the date on which the *service* (or any part of the *service*), transfer from the *Contractor* or Subcontractor to the *Client* or any Replacement Contractor; |
| Staffing Information | in relation to all persons detailed on the *Contractor*'s Provisional Staff List, in an anonymised format, such information as the *Client* may reasonably request including the Employee Liability Information and details of whether the *Contractor* personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the *service*; |
| Subsequent Transfer  | means, following the commencement of this contract, circumstances whereby the identity of the provider of the *service* (or any part of the *service*) changes (whether as a result of termination of this contract, or part or otherwise) resulting in a transfer of the *service* in whole or in part from the *Contractor* to the *Client* or Replacement Contractor; |
| TUPE | Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014); |

**Z14.2 Employment Exit Provisions**

Insert the following:

Z14.2.1 The *Client* and the *Contractor* agree that at the commencement of the provision of the *service* or of any part of the *service* therewill not be a Relevant Transfer in relation to any employees of the *Client* and/or the *Contractor.* This contract envisages that subsequent to its commencement, the identity of the provider of the *service* (or any part of the *service*) may change (whether as a result of termination of this contract, or part or otherwise) resulting in a transfer of the *service* in whole or in part (“Subsequent Transfer”). If a Subsequent Transfer is a Relevant Transfer then the *Client* or Replacement Contractor inherits liabilities in respect of the Relevant Employees.

Z14.2.2 The *Contractor,* (and the *Contractor* procures that any Subcontractor) on receiving notice of termination of this contract or otherwise, on request from the *Client* and at such times as required by the TUPE, provides in respect of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of the *service*, the *Contractor*'s Provisional Staff List and the Staffing Information together with any additional information required by the *Client*, including information as to the application of the TUPE to the employees. The *Contractor* notifies the *Client* of any material changes to this information as and when they occur.

Z14.2.3 At least twenty eight (28) days prior to the Service Transfer Date, the *Contractor* (and the *Contractor* procures that any Subcontractor) prepares and provides to the *Client* and/or, at the direction of the *Client*, to the Replacement Contractor, the *Contractor*'s Final Staff List, which is completed and accurate in all material respects. The *Contractor*'s Final Staff List identifies which of the *Contractor* personnel named are Relevant Employees.

Z14.2.4 The *Client* is permitted to use and disclose the *Contractor*'s Provisional Staff List, the *Contractor*'s Final Staff List and the Staffing Information for informing any bidder or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of) the *service*.

Z14.2.5 The *Contractor* warrants that the *Contractor*'s Provisional Staff List, the *Contractor*'s Final Staff List and the Staffing Information is true and accurate in all material respects when given and that no persons are employed or engaged in the provision of the *service* other than those included on the *Contractor*'s Final Staff List.

Z14.2.6 The *Contractor* (and the *Contractor* procures that any Subcontractor) ensures at all times that it has the right to provide these records under Data Protection Legislation.

Z14.2.7 In the six (6) months prior to termination of this contract, the *Contractor* (and the *Contractor* procures that any Subcontractor) does not materially increase or decrease the total number of staff listed on the *Contractor*'s Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the *Client*'s prior written consent.

Z14.2.8 The *Contractor* indemnifies and keeps indemnified in full the *Client* and at the *Client*'s request each and every Replacement Contractor against Employee Liabilities relating to:

Z14.2.8.1 any person who is or has been employed or engaged by the *Contractor* or any Subcontractor in connection with the provision of any of the *service*; or

Z14.2.8.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the *Contractor* and/or any Subcontractor),

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

Z14.2.9 The Parties co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

Z14.2.10 Within seven (7) Working Days following the Service Transfer Date, the *Contractor* provides to the *Client* or any Replacement Contractor, in respect of each person on the *Contractor*'s Final Staff List who is a Relevant Employee:

### Z14.2.10.1 the most recent month's copy pay slip data.

### Z14.2.10.2 details of cumulative pay for tax and pension purposes;

### Z14.2.10.3 details of cumulative tax paid;

### Z14.2.10.4 tax code;

### Z14.2.10.5 details of any voluntary deductions from pay; and

### Z14.2.10.6 bank/building society account details for payroll purposes.

Z14.2.11 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 applies to clauses Z14.2.2 to Z14.2.10 inclusive, to the extent necessary to ensure that any Replacement Contractor has the right to enforce the obligations owed, and indemnities given to the Replacement Contractor by the *Contractor* or the *Client* in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

Z14.2.12 Despite clause Z14.2.11, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

Z14.2.13 Where there will be a Relevant Transfer, the *Contractor* ensures or procures that any relevant Subcontractor ensures that all employees who are transferring from the *Client* or who transferred from the *Client* under a previous outsourcing of the *service* (the Transferring Employees) are offered within one month of the Service Transfer Date:

1. continued membership or eligibility for membership of the Local Government Pension Scheme (LGPS) through the *Contractor* becoming an admitted body to the scheme and making the required contributions; or

(ii) access to an alternative pension scheme which has been certified by the Government Actuary’s Department as being broadly comparable to the LGPS.

Z14.2.14 Clause Z14.2.13 shall be directly enforceable against the *Contractor* by the Transferring Employees.

**Z15 Intellectual Property Rights and Confidentiality**

Z15.1 The *Client* retains ownership of the Intellectual Property Rights (being rights including copyright, patents, patent rights, registered and unregistered design rights, trademarks, service marks and all other intellectual property rights wherever enforceable) in all documents produced by the *Client* in connection with or arising out of the contract. The *Contractor* may obtain or make at his own expense any further copies of such documentation required solely for use by him in performing the contract.

Z15.2 The Intellectual Property Rights in any and all documents, drawings, designs, data or other material in any format created by the *Contractor* in the course or and for the purpose of performing the *service* shall belong to the *Client* and the *Contractor* agrees that he shall execute or cause to be executed (by his staff as necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the *Client*.

Z15.3 The *Contractor* shall not during the Service Period or any time thereafter make use for his own purposes of, or disclose to any person (except as may be required by law) any information contained in any material provided to him by the *Client* pursuant to the contractor prepared by the *Contractor* pursuant to the contract, all of which information shall be deemed to be confidential.

Z15.4 The *Contractor* and the *Contractor* Personnel shall regard as confidential and shall not disclose to any person other than a person authorised by the *Client* any information acquired by the *Contractor* or the *Contractor* Personnel whilst employed on the *Client’s* premises or otherwise in connection with this contract.

Z15.5 The *Contractor* shall not advertise the contractual relationship with the *Client* or use the *Client’s* name or logo in any printed material without the *Client’s* express written permission.

Z15.6 The *Contractor* shall not in connection with the performance of the *service* use, manufacture, supply or deliver any process, article, matter or thing, the use manufacture supply or delivery of which would be an infringement of any Intellectual Property Rights of any third party.

**Z16 Operational Requirements of Contractors**

Z16.1 The *Contractor* complies with requests for non-recurring services to be completed in emergencies, such services to be carried out at the time required by and on the authority of the *Client*. The *Contractor* may be able to comply with requests by varying the standard of service to cover the emergency by agreement with the *Client*.

Z16.2 Where:

(a) an emergency or disaster involving destruction of or danger to life or property occurs, or is imminent; or

(b) there is reasonable ground for apprehending such an emergency or disaster and the *Client* is of opinion that it is likely to affect the whole or part of their area or all of some of its inhabitants (Civil Protection in Peacetime Act 1986); or

(c) in the event of hostile attack by a foreign power or a threat of such an attack and the *Client* has a duty to carry out plans made by the *Client* for the purposes of civil defence within the meaning of the Civil Contingencies Act 1984 then the *Contractor*, immediately on receipt of an instruction from the *Client,* makes all resources to carry out the contract(staff, plant, equipment, materials and premises) available to the *Client* to assist in dealing with the emergency and services in pursuit of this sub-clause is referred to as “emergency services”.

Z16.3 All emergency services to be carried out must be authorised by the *Client*.

Z16.4 For the period during which the *Contractor* is engaged in carrying out emergency services the whole or part of the *service* required to be carried out under the contract may be suspended on authority of the *Client*.

Z16.5 From time to time members of the *Contractor* Personnel may be required to be involved in emergency training exercises and other training for this role organised by the *Client*, a District in the County or Central Government.

Z16.6 In view of the provisions in the *Client’s* emergency plans, for all *Client* premises to be used for the assistance of the public in the event of a major accident or natural disaster, the *Contractor* makes immediately available all *Client* accommodation and equipment and shall use his best endeavours to comply with all direction and instructions given by the *Client* and to make available all material and employees to assist in dealing with any such accident or disaster.

**Z17 Environment**

Z17.1 The *Contractor* ensures that during the performance of the contract he uses working methods, equipment, materials and consumables which minimises environmental damage and in particular the *Contractor* shall ensure that he complies with the *Client’s* Environmental Policy provided by the *Client* as part of the tender pack, specifically in the Data Room.

**Z18**  **Equal Opportunities**

Z18.1 The *Contractor* operates an equal opportunities policy and warrants that this policy shall comply with all relevant Laws. A copy of the *Contractor’s* policy is made available on request by the *Client*.

Z18.2 If any Court or tribunal or the Equality and Human Rights Commission should make any finding of unlawful discrimination against the *Contractor* the *Contractor* takes all necessary steps to prevent reoccurrence of such unlawful discrimination.

Z18.3 The *Client* may require the *Contractor* to provide full details of the steps taken to prevent such reoccurrence of unlawful discrimination.

Z18.4 The *Contracto*r’s equal opportunities policy is set out in any instructions circulated to those members of the *Contractor* Personnel concerned with recruitment training and promotion in relevant documentation available to the *Contractor* Personnel and others and in its recruitment advertisements and other relevant literature and the Contractor may be required to provide the *Client* with copies of such instructions, documents, advertisements and other literature.

**Z19** Not used

**Z20 Business Continuity**

Z20.1 The *Contractor* has in place adequate and appropriate measures to ensure, where reasonably practicable, that is it able to continue to Provide the Services within a predetermined time in the event of service disruption or a state of emergency which partially or completely interrupts the *Contractor’s* business critical functions and which would otherwise impact the *Contractor’s* ability to Provide the Services, and:

Z20.1.1 the *Contractor* may be required by the *Client* to provide satisfactory evidence demonstrating compliance with the key principals of the British Standard for Business Continuity (BS25999) or its equivalent; however, certification of the *Contractor* to this standard, though desirable, is not mandatory.

Z20.1.2 the *Client* may from time to time require the Contractor to demonstrate to the reasonable satisfaction of the *Client* the viability and effectiveness of the Contractor’s business continuity arrangements by providing details of its exercising and maintenance programmes.

Z20.2 From time to time, the *Client* may require members of *Contractor* Personnel to attend and be involved in business continuity exercises and/or Emergency training exercises, and such other relevant training organised by the *Client.*

**Z21 Human Rights Act 1998**

Z21.1 The *Contractor does* not do or permit or cause to be done any act or thing or omission in connection with this contractwhich would either cause or give proper grounds for action to be brought against the *Client* under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or give grounds for a person to rely upon such act or thing or omission on the part of the *Contractor* in his defence in any proceedings brought against a third party by the *Client*.

**Z22 Sufficiency of Information**

Z22.1 The *Contractor* is deemed to have been satisfied before submitting a tender as to the accuracy and sufficiency of the rates and prices stated in this document which shall (except insofar as it is otherwise provided in the contract) cover all the *Contractor’s* obligations under the contractand the *Contractor* shall be deemed to have obtained all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect this contract. The *Contractor* has no entitlement to a compensation event as a result of the occurrence of any such risks, contingencies or circumstances that might affect or influence the *Contractor's* ability to provide the *service*.

**Z23 Working In Occupied Premises**

Z23.1 The *Contractor* allows where applicable for working within properties in occupation and for maintaining works throughout the contract. The *Contractor* keeps users advised when they are to be affected by the *service* and gives at least seven days’ notice in writing to the tenants of his intention to commence services. The *Contractor* ensures that the *service* is carried out in such a way as to minimise disturbance of the users by noise, dust, etc. The *Contractor* provides adequate protection, in the form of dust sheets, screens, etc.

**Z24 Exit Strategy**

Z24.1 The *Contractor* produces an Exit Management Plan as per the Scope within its tender response.

**Z25 Obligations to Assist during the Contract and On Re-Tendering Of *Service***

Z25.1 During the Service Period the *Contractor*, on reasonable notice, provides to the *Client* and/or to its potential Replacement Contractor, the following material and information in order to facilitate the preparation by the *Client* of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence:

1. details of the *service* including any information, reports and data for inclusion in the *Client’s* requests for information and requests for proposals;
2. details of, and information relating to, the assets, including their condition, physical location, technical specifications, and any other information in the asset database;
3. an inventory of the *Client* Data in the *Contracto*r’s possession or control;
4. a copy of the asset database, updated by the *Contractor* up to the date of delivery of such asset database; and
5. all information relating to *Contractor* Personnel required to be provided by the *Contractor* under this contract.

Z25.2 In addition, *Contractor*:

1. answers questions raised by any potential Replacement Contractor; and
2. provides reasonable access to *Contractor* Personnel to enable any potential Replacement Contractor to perform reasonable due diligence in respect of the relevant *service* provided that it does not materially disrupt *service* performance.

Z25.3 The tender/bid assistance to be performed pursuant to this clause Z25 will:

1. be at least to the level that would be required for reasonably skilled and experienced third party service providers to:
2. prepare an informed, non-qualified offer for the relevant replacement *service*;
3. not be disadvantaged compared to the *Contractor* (if the *Contractor* is invited to participate) in respect of access to information; and
4. in any event, be no less than the co-operation and assistance provided by the *Client* to the *Contractor* prior to the *starting date*.

**Z26 Exit Management Plan**

Z26.1 The *Contractor* produces, maintains and updates an Exit Management Plan in accordance with the contract and Scope. The Exit Management Plan contains, as a minimum:

1. the management structure to be employed during both transfer and cessation of the *service;* and

b) a detailed description of both the transfer and cessation processes, including a timetable.

Z26.2 In addition, the Exit Management Plan:

a) gives effect to any approach to the transfer of the *service* specified by the *Client* in accordance with this contract;

b) documents how the *service* will transfer to the Replacement Contractor and/or the *Client*, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the *Client* Data and technology components from any data or technology components hosted or operated by the *Contractor* or its Subcontractors(where applicable);

1. documents the *Contractor*’s back-up arrangements for the *Client* Data and the applications hosting in or running on the *Contractor’s* environments;
2. describes how the *Contractor’s* obligations in respect of the Transferring Employees will be achieved;
3. describes how the transfer of relevant assets will be achieved;
4. specifies the scope of the Termination Services (set out at clause Z27) that may be required for the benefit of the *Client* (including the services set out in clause Z27 below as are applicable) and the Termination Assistance Fees (defined in clause X27.3) (if any) that would be payable for the provision of such Termination Services, and details how such services would be provided (if required), during the Termination Assistance Period;
5. addresses each of the issues set out in this contract to facilitate the transition of the *service* from the *Contractor* to the Replacement Contractor and/or the *Client* with the aim of ensuring that there is no disruption to or degradation of the *service* during the Termination Assistance Period;
6. provides a timetable and identifies critical issues for providing the Termination Services (including key milestones to track the progress of the transfer of the *service* which are the subject of the termination to the Replacement Contractor); and
7. specifies acceptance criteria and testing procedures to confirm whether the transfer of the *service* has been successfully completed.

**Z27 Termination Services**

Z27.1 During the Termination Assistance Period or such shorter period as the *Client* may require, the *Contractor* continues to provide the *service* and at the request of the *Client* pursuant to clause Z27.5, provides the Termination Services.

Z27.2 The Termination Services to be provided by the *Contractor* includes the following services as the *Client* may specify:

a) notifying its Subcontractors of the procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and documenting such processes and procedures so that they are appropriate for use by the *Client* and/or Replacement Contractor with effect from the Termination Date;

c) delivering to the *Client* systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the term of this contract;

d) ensuring that leasing arrangements in respect of certain relevant assets are assigned or novated (at the *Client’s* option) to the *Client* or a Replacement Contractor, as required by the *Client*;

e) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;

f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;

g) providing the *Client* with any problem logs which have not previously been provided to the *Client*;

h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the *service*;

i) agreeing with the *Client* a handover plan for all security (logical and physical) matters and a security management control procedures manual. the *Contractor* co-operates fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;

j) answering all reasonable questions from the *Client* and/or its Replacement Contractor regarding the *service*;

k) agreeing with the *Client* and/or the Replacement Contractor a plan for the migration of the *Client* Data to the *Client* and/or the Replacement Contractor. The *Contractor* fully co-operates in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard; and

l) providing access to the *Client* and/or the Replacement Contractor during the Termination Assistance Period and for a period not exceeding three (3) months afterwards for the purpose of the smooth transfer of the *service* to the *Client* and/or the Replacement Contractor:

1. to information and documentation relating to the *service* that is in the possession or control of the *Contractor* or its Subcontractors (and the *Contractor* agrees and procures that its Subcontractors do not destroy or dispose of that information within this period) including the right to take copies of that material;
2. following reasonable notice and during the *Contractor’s* normal business hours, to members of the *Contractor* Personnel who have been involved in the provision or management of the *service* and who are still employed or engaged by the *Contractor* or its Subcontractors; and

iii. such other Termination Services as may be specified by the *Client*.

Z27.3 The *Contractor’s* charges for providing the Termination Services (“Termination Assistance Fees”), unless otherwise requested by the *Client*, are calculated on a fixed price basis and set out in the Exit Management Plan, based on the day rates and charging methodology, except that where this contract has been terminated by the *Client*, the day rates used for calculation shall be 75% of those based on day rates and associated charging methodology. Where payable, the Termination Assistance Fees are paid to the *Contractor* in tranches upon and subject to the *Contractor* achieving certain milestones, as agreed between the Parties and documented in the Exit Management Plan.

Z27.4 During the Termination Assistance Period, the *Service* and the Termination Services are provided at no detriment to the *service* levels.

Z27.5 The *Client* is entitled to require the provision of Termination Services by notifying the *Contractor* in writing (“Termination Assistance Notice”) at least thirty (30) days prior to the date of termination or expiry of this contractor as soon as reasonably practicable following the service by either Party of any notice to terminate.

The Termination Assistance Notice specifies the:

a) date from which Termination Services are required;

b) nature of the Termination Services required; and

c) period during which it is anticipated that Termination Services will be required.

Z27.6 The *Client*, in respect of any or all of the Termination Services, has the option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than three (3) months after the date the *Contractor* ceases to provide the *Service* or, if applicable, beyond the end of the Termination Assistance Period and provided that it notifies the *Contractor* to such effect no later than twenty (20) Working Days’ prior to the date on which the provision of Termination Services is otherwise due to expire. The *Client* has the right to terminate its requirement for Termination Services by serving not less than ten (10) Working Days’ written notice upon the *Contractor* to such effect.

Z27.7 The *Contractor* complies with all of its obligations contained in the Exit Management Plan and upon termination or expiry of this contract, provides to the *Client* an up-to-date procedures manual.

**Z28 Approach to transfer of the *service***

Z28.1 The *Client* is entitled to determine (and change), in each case following prior consultation with the *Contractor*, the approach to be taken to the transfer of the relevant *service*, and such approach shall be set out in the Exit Management Plan, including:

Z28.1.1 The *Client* may, to the extent relevant, acquire relevant assets used by the *Contractor* to perform the *service* in accordance with this contract;

Z28.1.2 The *Client* may require that leasing arrangements in respect of certain relevant assets are assigned or novated (at the *Client's* option) to the *Client* or a Replacement Contractor; and

Z28.1.3 The *Client* may require interim changes to be made to the relevant services to enable the transfer of those services to the Replacement Contractor.

**Z29 Change Freeze**

Z29.1 The *Contractor*, unless otherwise approved by the *Client*, ensures that no material changes are made (i) in the case of expiry of this contract, during the three (3) month period preceding the due date for expiry, and (ii) in all other cases of termination of this contract, during the period between service of a notice of termination and the Termination Date to the relevant *service* or to the manner in which the *service* isprovided (including any changes to the technical environment), other than changes necessary for the continued performance of the *service*.

**Z30 Expiry of the Termination Assistance Period**

Z30.1 At the end of the Termination Assistance Period (or earlier if requested by the *Client*):

a) The *Contractor* transfers all the *Client* Data to the *Client* in such form as the *Client* may require;

b) The *Contractor* erases the *Client* Data from any computers, storage devices, storage media and cloud-based storage that are to be retained by the *Contractor* after the end of the Termination Assistance Period;

c) The *Contractor* returns to the *Client* the following as is in the *Contractor’s* possession or control:

1. all copies of the *Client* software and any other software licensed by the *Client* to the *Contractor* under this contract;
2. all materials created by the *Contractor* under this Contract, the Intellectual Property Rights in which are owned by the *Client*;
3. any equipment which belongs to the *Client*; and
4. any items that have been on-charged to the *Client*, such as consumables; and
5. the *Contractor* vacates any Affected PropertyandService Areas.

Z30.2 Except where this contractprovides otherwise, all licences, leases and authorisations granted by the *Client* to the *Contractor* in relation to the *service* are terminated with effect from the end of the Termination Assistance Period.

**Z31 KNOWLEDGE TRANSFER**

Z31.1 During the Termination Assistance Period, the *Contractor*:

1. transfers all training material and provides appropriate training to the *Client* and/or Replacement Contractor’sstaff responsible for internal training in connection with the provision of the *service*.
2. provides for transfer to the *Client* and/or the Replacement Contractorof all knowledge reasonably required for the provision of the *service* which may, as appropriate, include information, records and documents.
3. provides the *Client* and/or Replacement Contractor with access to such members of the *Contractor* Personnel as have been involved in the design, development, provision or management of the *service* and who are still employed or engaged by the *Contractor* or its Subcontractors and permit Replacement Contractor personnel for reasonable periods during the Termination Assistance Period to work alongside the *Contractor* Personnel who are not transferring to the Replacement Contractor on a collaborative basis, to shadow their role and enable knowledge transfer;
4. facilitates the transfer of knowledge from the *Contractor* to the *Client* and/or its Replacement Contractor, including providing a detailed explanation of the procedures, standards and operations used to provide the *service*, the change management process and other standards and procedures to the operations personnel of the *Client* and/or the Replacement Contractor; and
5. answers questions in respect of information provided pursuant to any of the terms of this contract or the Exit Management Plan.
6. The information which the *Contractor* provides to the *Client* and/or its Replacement Contractor pursuant to paragraph Z31.1 above includes:

copies of up-to-date procedures and operations manuals.

product information.

agreements with third party suppliers of goods and services which are to be transferred to the *Client*.

key support contact details for third party suppliers and personnel under contracts which are to be assigned or novated to the *Client* pursuant to this contract.

information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period.

details of physical and logical security processes and tools which will be available to the *Client*; and

any relevant interface information.

Z31.2 During the Termination Assistance Period the *Contractor*  grants any agent or personnel (including employees, consultants and suppliers) of the Replacement Contractor, the *Contractor* and/or the *Client* access, during business hours and upon reasonable prior written notice, to any Affected Property or Service Areas for the purpose of effecting a prompt knowledge transfer provided that any such agent or personnel (including employees, consultants and suppliers) having access to any service delivery locations under this paragraph shall sign a confidentiality undertaking in favour of the *Contractor* substantially in the form attached in the Scope.

1. Contract Data
	1. Contract Data Part One

The Contract Data Part One (Data provided by the Client) shall be read as follows:

**CONTRACT DATA**

|  |
| --- |
| **PART ONE – DATA PROVIDED BY THE CLIENT** |
| 1. **GENERAL**
 | *The conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017* |
|  | Main Option  | Option A |
|  | Secondary Options | X1, X2, X8, X11, X17 and X23 |
|  | The Service is: | Provision of Underwater Inspections and Services for the Maintenance of Highway Structures Assets.Document 2 - Clients Requirements Underwater Inspections |
|  | The Client is: | West Sussex County CouncilAddress for communications: Highways Planned Delivery, Structures and Drainage Team, County Hall, Chichester, West Sussex, PO19 1RQAddress for electronic communications: structures@westsussex.gov.uk; Elio.rapa@westsussex.gov.uk |
|  | The Service Manager is: | Elio Rapa |
|  | The Affected Property is: | Details can be found in Document No Document 2 - Clients Requirements Underwater Inspections |
|  | The Scope is in: | Details can be found in Document 2 - Clients Requirements Underwater Inspections |
|  | The *shared services* which may be carried out outside the Service Areas are: | N/A |
|  | The language of the contract is: | English  |
|  | The law of the contract is the law of: | England and Wales, subject to the exclusive jurisdiction of the Courts in England and Wales.  |
|  | The period for reply is: | Two weeks  |
|  | The following matters will be included in the Early Warning Register: | Risks will be site specific and will include: Resources to meet programme demands. Health and Safety requirementsEnvironmental constraints  |
|  | Early Warning meetings are to be held at intervals no longer than: | One (1) month |
| 1. **THE CONTRACTOR’S MAIN RESPONSIBILITIES**
 |
| If Option C or E is used | The Contractor prepares forecasts of the total Defined Cost for the whole of the service at intervals no longer than: | N/A |
| 1. **TIME**
 |
|  | The Starting Date is: | 1st May 2025 |
|  | The Service Period is: | Six (6) years with the option to extend for one (1) year.  |
|  | The Contractor submits revised plans at intervals no longer than:  | At intervals no longer than one (1) month.  |
|  | The period within which the Contractor is to submit a Task Order programme for acceptance is: | Two (2) weeks |
| *If no plan is identified in part two of the Contract Data* | The period after the Contract Date within which the Contractor is to submit a first plan for acceptance is: | (2) Two weeks  |
|  |  |  |
| 1. **QUALITY MANAGEMENT**
 |
|  | The period after the Contract Date within which the Contractor is to submit a quality policy statement and quality plan is: | (2) two weeks of the Starting Date |
| 1. **PAYMENT**
 |
|  | The Currency of the contract is the:  | £ Sterling  |
|  | The assessment interval is: | A calendar month |
|  | The interest rate is: | the interest rate is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require 3% per annum above the Bank of England base rate in force from time to time.  |
|  | Payment terms: | 30 days on receipt of a valid and undisputed invoice.  |
| 1. **COMPENSATION EVENTS**
 |
| *If Option A is used* | The *value engineering percentage is 50%, unless another percentage is stated here, in which case it is:*  |  |
| *If there are additional compensation events* | These are additional compensation events: |  |
| 1. **LIABILITIES AND INSURANCE**
 |
|  | The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Service for one event is: | Public liability £10 million Employer’s liability £5 million Product liability £2 million Professional indemnity £2 million |
| *If the Client is to provide Plant and Materials* | The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the Client for an amount of:  | N/A |
| *If the Client is to provide any of the insurances stated in the Insurance Table* | N/A | N/A |
| *If additional insurances are to be provided* | N/A | N/A |
|  | The Contractor Provides these additional Insurances:  | The Contractor shall hold and maintain the following levels of insurance for each single incident: Public Liability Insurance: £10,000,000 (ten million pounds)  Employers liability insurance £5,000,000 (Five million pounds)  Product Liability Insurance £2,000,000 (two million pounds) Professional Indemnity Insurance £2,000,000 (two million pounds) The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded matters is limited to £10,000,000 that as set out in Option X18, as amended. |
| 1. **RESOLVING AND AVOIDING DISPUTES**
 |
|  | The tribunal is: | Arbitration  |
| *If the tribunal is arbitration*  | The arbitration procedure is: | The arbitration procedure is the latest version of the ICE procedure in force when the arbitrator is appointedThe place where arbitration is to be held is LondonThe person or organisation who will choose an arbitrator **i**f the Parties cannot agree a choice or if the arbitration procedure does not state who selects an arbitrator is theRoyal Institute of Chartered Surveyors |
|  | The Senior Representatives of the Client are:  | Matt Davey, Assistant Director Highways, Transport and PlanningGuy Bell, Head of Highway Planned Delivery |
|  | The Adjudicator is: | Appointed by the *Adjudicator nominating body* |
|  | The Adjudicator nominating body is: | The Royal Institute of Chartered Surveyors |
| 1. **X CLAUSES**
 |
| *LIST HERE THE X CLAUSES TO BE USED ALONG WITH THE COMMENTARY THAT CAN BE TAKEN FROM THE CONTRACT* | X1: PRICE ADJUSTMENT FOR INFLATION (USED ONLY WITH OPTIONS A AND C) | Applies.  |
|  | X2: CHANGES IN THE LAW | APPLIES. The law of the project is the law of England and Wales subject to the jurisdiction of the courts in England and Wales |
|  | X3: MULTIPLE CURRENCIES (USED ONLY WITH OPTION A) | N/A |
|  | X4: ULTIMATE HOLDING COMPANY GUARANTEE | N/A |
|  | X8: UNDERTAKINGS TO THE CLIENT OR OTHERS | APPLIES. Please see collateral warranty proforma provided in the tender pack in Document No 9.  |
|  | X10: INFORMATION MODELLING  | N/A |
|  | X11: TERMINATION BY THE CLIENT (NOT USED WITH OPTION X19) | APPLIES |
|  | X12: MULTIPARTY COLLABORATION (NOT USED WITH OPTION X20) | N/A |
|  | X13: PERFORMANCE BOND (NOT USED WITH OPTION X20) | N/A |
|  | X17: LOW SERVICE DAMAGES | Applies, as set out in Appendix 2.  |
|  | X18: LIMITATION OF LIABILITY  | Replace Option X18 with the following:- X18.5 The *Contractor’s* liability to the *Client* for the *Client’s* indirect or consequential loss is limited to £5,000,000.00 (five million pounds) for any one event.  X18.6 For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client’s* property is limited to £10,000,000 (ten million pounds). X18.7 The *Contractor’s* liability to the *Client* for Defects due to its design of an item of Equipment is limited to £5,000,000.00 (five million pounds). X18.8 The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters below, is limited to £10,000,000, and otherwise to the extent allowed *under the law of the contract*.The excluded matters are amounts payable by the *Contractor* as stated in the contract for * loss of or damage to the *Client’s* property;
* low performance damages if Option X17 applies;

X18.9 The *Contractor* is not liable to the *Client* for a matter unless it is notified to the *Contractor* before the *end of the*  *liability date*. |
|  | X19: TERMINATION BY EITHER PARTY (NOT USED WITH OPTION X11) | N/A |
|  | X20: KEY PERFORMANCE INDICATORS (NOT USED WITH OPTION X12) | N/A  |
|  | X21: WHOLE LIFE COST | N/A |
|  | X23: EXTENDING THE SERVICE PERIOD  | APPLIES. The Initial Period is for (6) six years with the option to extend for a period of up to one (1) year in accordance with Optional Clause X23. |
|  | X24: THE ACCOUNTING PERIODS | N/A |
|  | X29 Climate Change  | N/A |
| 1. **Y CLAUSES**
 |
| *Y CLAUSES TO BE USED ALONG WITH THE COMMENTARY THAT CAN BE TAKEN FROM THE CONTRACT* | Y(UK) 1: PROJECT BANK ACCOUNT | N/A |
|  | Y(UK) 2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 | Applies.  |
|  | Y(UK) 3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 | N/A |
| 1. **Z CLAUSES**
 |
|  | The additional conditions of contract are set out in the Form of Agreement  | Applies.  |

* 1. Contract Data Part Two

The Contract Data Part Two (Data provided by the Contractor) shall be read as follows:

**CONTRACT DATA**

|  |
| --- |
| **PART TWO – DATA PROVIDED BY THE CONTRACTOR** |
| 1. **GENERAL**
 | *Completion of the Data in full, according to the Options chosen, is essential to create a complete contract.* |
|  | The Contractor is: |  |
|  | The fee percentage is: |  |
|  | The Service Areas are: |  |
|  | The Key Persons are: |  |
|  | The following matters will be included in the Early Warning Register: |  |
|  |
| *If the Contractor is to provide Scope for its plan* | The Scope provided by the Contractor for its plan is in: |  |
|  |
| *If a plan is to be identified in the Contract Data* | The plan identified in the Contract Data is: |  |
|  |
| *If Option A, C or E is used* | The price list is:  |  |
| *If Option A or C is used* | The tendered total of the Prices is: |  |
| 1. **RESOLVING OR AVOIDING DISPUTES**
 |
|  | The Senior Representatives of the Client are: |  |
| 1. **X10 INFORMATION MODELLING**
 |
|  | Enter details from contract if used or mark N/A |  |
|  |
| *If Option Y(UK)1 is used* | The project bank is: |  |
|  | Named suppliers are:  |  |
| 1. **DATA FOR THE SCHEDULE OF COST COMPONENTS (USED ONLY WITH OPTIONS C OR E)**
 |
|  | Enter details from contract if used or mark N/A |  |
| 1. **DATA FOR THE SHORT SCHEDULE OF COST COMPONENTS (USED ONLY WITH OPTION A)**
 |
|  | Enter details from contract if used or mark N/A |  |

**APPENDIX 1**

**Specification of Requirements**

****

**Appendix 2**

**Low Service Damages**

**Low Service Damages- Applies**

|  |  |  |  |
| --- | --- | --- | --- |
|   | **X17 Service Level Table** |   |   |
|   |   | **Measure** | **Amount per week.**  |
| 1.1 | Inspection reports for each Site to be provided to the Service Manager within the agreed timescales.  | number of Inspection reports not provided in agreed timescales according to agreed programme | £200 per week (per late report) |
| 1.2 | Compliance with reporting requirements, with reports provided within agreed timescales and at key dates | number of reports not provided within agreed timescales according to agreed programme | £50 per week (per late report) |

**Appendix 3**

**Data Processing Activities**

|  |  |  |
| --- | --- | --- |
| **Categories of Data** | Please tick all relevant boxes and add more detail if required: |  |
|  | **Personal Data** |   |
|  | Name  | ✓ |
|  | identification number | ✓ |
|  | location data | ✓ |
|  | online identifier (email/IP address) | ✓ |
|  | Other (please insert details): |  |
|  |  |  |
|  |  |  |
|  | **Special Categories of Personal Data** |  |
|  | race | ☐ |
|  | ethnic origin | ☐ |
|  | political opinions | ☐ |
|  | religion | ☐ |
|  | trade union membership | ☐ |
|  | genetics | ☐ |
|  | biometrics (where used for ID purposes) | ☐ |
|  | health | ☐ |
|  | sex life | ☐ |
|  | sexual orientation | ☐ |
|  | **Criminal Offence Data** |  |
|  | allegations | ☐ |
|  | proceedings  | ☐ |
|  | convictions  | ☐ |
|  |  |  |
| **Categories of Data Subjects** | Please tick all relevant boxes: |  |
|  | Company service users/customers | ✓ |
|  | Company service user/customer next of kin | ☐ |
|  | Company employees | ✓ |
|  | Company employees next of kin | ☐ |
|  | Other (please insert details): |  |
|  |   |
|  |   |
|  |  |  |
| **Processing Operations** | Please tick all relevant boxes: |  |
|  | Using data provided by the Company | ✓ |
|  | Collecting new data from Data Subjects | ✓ |
|  | Transforming data by adding new data collected from service users/customers to data provided by the Company | ✓ |
|  | Sharing data with anyone other than the Company | ☐ |
|  | Erasure or destruction of personal data | ✓ |
|  | Other (please insert details): |  |
|  |   |
|  |   |

|  |  |  |
| --- | --- | --- |
| **Location of Processing Operations** | Please tick one box only: |  |
|  | UK | ✓ |
|  | EEA[[1]](#footnote-2) (European Economic Area) | ☐ |
|  | Outside EEA (European Economic Area) | ☐ |
|  | If outside the EEA please provide details: |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Identity of sub-contractors** | N/A*Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor.* |
|  |  |  |
| **Purposes** | For the purpose of performing the Contract. *If you're using the data for a reason other than the purpose of delivering the contract, please amend this section accordingly and provide details here.* |
|  |  |  |
| **Duration** | Until the expiry or termination date of the Contract.*If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Contract, please amend this section accordingly and detail how long these activities will go on for.* |

**Appendix 4**

**Mobilisation Plan**

**APPENDIX 5 – PRICING SCHEDULE**

**APPENDIX 6 – CLARIFICATION LOG**

**APPENDIX 7 – METHOD STATEMENT RESPONSES**

1. Details of countries in the EEA are available at the following website: [www.gov.uk/eu-eea](http://www.gov.uk/eu-eea) [↑](#footnote-ref-2)