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CALL-OFF CONTRACT

**based on NEC4 Facilities Management Contract
June 2021**

**These amended conditions of contract are based on
the NEC family of contracts the copyright of which
belongs to the Institution of Civil Engineers.**

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

**SECRETARY OF STATE FOR THE (1)
ENVIRONMENT, FOOD AND RURAL AFFAIRS**

and

ISS MEDICLEAN LIMITED (2)

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CONTRACT AGREEMENT

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

SECRETARY OF STATE FOR THE (1)
ENVIRONMENT, FOOD AND RURAL AFFAIRS

and

ISS MEDICLEAN LIMITED (2)

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THIS CONTRACT is dated: 31st May 2023

BETWEEN

- (1) The Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London SW1P 3JR acting through the Department for Environment Food and Rural Affairs (**DEFRA**) and its executive agencies ("**Client**"); and
- (2) ISS Mediclean Limited incorporated and registered in England and Wales with company number 01659837 whose registered office is at Velocity 1 Brooklands Drive, Brooklands, Weybridge, Surrey, England, KT13 0SL ("**Service Provider**").

BACKGROUND

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

AGREED TERMS

1. INTERPRETATION

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

2. SERVICE PROVIDER'S RESPONSIBILITIES

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

3. CLIENT'S RESPONSIBILITIES

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

4. THE CONTRACT

The Contract comprises:

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

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4.8 Contract Data Part Two.

5. PRIORITY OF DOCUMENTS

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

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

6. LAW AND JURISDICTION

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

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

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Core Terms

Core Clauses

1. GENERAL

Actions	10
	10.1 The Parties and the <i>Service Manager</i> shall act as stated in this contract.
	10.2 The Parties and the <i>Service Manager</i> act in a spirit of mutual trust and co-operation.
Identified and defined terms	11
	11.1 In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
	11.2 (1) The Accepted Plan is the plan identified in the Contract Data or is the latest plan accepted by the <i>Service Manager</i> . The latest plan accepted by the <i>Service Manager</i> supersedes previous Accepted Plans.
	(2) Affected Property is property of the <i>Client</i> or Others which is <ul style="list-style-type: none"> • affected by the work of the <i>Service Provider</i> or used by the <i>Service Provider</i> in Providing the Service and • identified in the Contract Data, unless later changed in accordance with the contract.
	(3) The Contract Date is the date of the contract.
	(4) Not Used.
	(5) The Early Warning Register is a register of matters which are <ul style="list-style-type: none"> • listed in the Contract Data for inclusion and • notified by the <i>Service Manager</i> or the <i>Service Provider</i> as early warning matters. It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.
	(6) Equipment is items provided and used by the <i>Service Provider</i> to Provide the Service and which the Scope does not require the <i>Service Provider</i> to include in the Affected Property.
	(7) The Fee is the amount calculated by applying the <i>fee percentage</i> to the amount of Defined Cost.
	(8) Others are people or organisations who are not the <i>Client</i> , the <i>Service Manager</i> , the <i>Adjudicator</i> , the <i>Service Provider</i> or any employee, Subcontractor or supplier of the <i>Service Provider</i> .
	(9) The Parties are the <i>Client</i> and the <i>Service Provider</i> .
	(10) The Performance Table states the targets the <i>Service Provider</i> is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.

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

(12) The Price List is the *price list* unless later changed in accordance with the contract. The Price List includes a statement of the method and rules used to compile it.

(13) To Provide the Service means to do the work necessary to provide the *service* in accordance with the contract and all incidental work, services and actions which the contract requires.

(14) Scope is information which

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

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with the contract.

(15) The Service Areas are the Affected Property and those parts of the *service areas* which are

- necessary for Providing the Service and
- used only to provide services in the contract

unless later changed in accordance with the contract.

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

- the Scope,
- the Law,
- the Accepted Plan,
- the mobilisation plan, if a mobilisation plan is required, or
- the demobilisation plan.

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

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

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

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

(20) A Subcontractor is a person or organisation who has a contract with the *Service Provider* to provide a service which is necessary to Provide the Service, except for the

- hire of Equipment or
- supply of people paid for by the *Service Provider* according to the time they work.

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Interpretation and the law	12	
	12.1	In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round.
	12.2	The contract is governed by the <i>law of the contract</i> .
	12.3	No change to the contract, unless provided for by these <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
	12.4	The contract is the entire agreement between the Parties.
	12.5	Failure by the <i>Client</i> to exercise its rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the <i>Service Provider</i> from any of its obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement
	12.6	If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect. In the event that in the <i>Client's</i> reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the <i>Client</i> and the <i>Service Provider</i> immediately commence good faith negotiations to remedy such invalidity.
Communications	12.7	A reference in these conditions of contract to any <u>Law</u> or <u>Laws</u> includes <ul style="list-style-type: none"> • that Law as from time to time amended, re-enacted or substituted and • any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such <u>Law</u>.
	13	
	13.1	Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the <i>language of the contract</i> .
	13.2	If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope. If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
	13.3	If the contract requires the <i>Service Manager</i> or the <i>Service Provider</i> to reply to a communication, unless otherwise stated in these <i>conditions of contract</i> , they reply within the <i>period for reply</i> .
	13.4	The <i>Service Manager</i> replies to a communication submitted or resubmitted by the <i>Service Provider</i> for acceptance. If the reply is not acceptance, the <i>Service Manager</i> states the reasons in sufficient detail to enable the <i>Service Provider</i> to correct the matter. The <i>Service Provider</i> resubmits the communication within the <i>period for reply</i> taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the <i>Service Provider's</i> submission fully.
	13.5	The <i>Service Manager</i> may extend the period for reply to a communication if the <i>Service Manager</i> and the <i>Service Provider</i> agree to the extension before the reply is due. The <i>Service Manager</i> informs the <i>Service Provider</i> of the extension which has been agreed.
	13.6	The <i>Service Manager</i> issues certificates to the <i>Client</i> and the <i>Service Provider</i> .
	13.7	A notification or certificate which the contract requires is communicated separately from other communications.
	13.8	The <i>Service Manager</i> may withhold acceptance of a submission by the <i>Service Provider</i> . Withholding acceptance for a reason stated in these <i>conditions of contract</i> is not a compensation event.
	13.9	The <i>Client</i> and the <i>Service Provider</i> comply with the Call-Off Contract Management

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Process.

The Service Manager**14**

- 14.1 No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Client* or the *Service Manager*, nor any enquiry or inspection which the *Client* or the *Service Manager* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Service Provider's* duties and obligations under this contract unless it is in writing from the *Client*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.
- 14.2 The *Service Manager*, after notifying the *Service Provider*, may delegate any of its actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Service Manager* in the contract includes an action by its delegate and the action will be in respect of the relevant Contracting Authority where appropriate. The *Service Manager* may take an action which it has delegated.
- 14.3 The *Service Manager* may give an instruction to the *Service Provider* which changes the Scope or the Affected Property.
- 14.4 The *Client* may replace the *Service Manager* after notifying the *Service Provider* of the name of the replacement.
- 14.5 The *Service Manager* gives an instruction to correct a mistake in the Price List which is
- a departure from the method and rules stated in the Price List and used to compile it or
 - due to an ambiguity or inconsistency.
- 14.6 If the *Service Manager* gives an instruction to the *Service Provider* which changes the Scope or the Affected Property the *Client* is entitled to award any such part of the *service* to another supplier or carry out that part of the *service* itself.

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Early warning	15	<p>15.1 The <i>Service Provider</i> and the <i>Service Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> • increase the total of the Prices, • interfere with the timing of the <i>service</i>, • impair the effectiveness of the <i>service</i> or • cause any part of the <i>service</i> to extend beyond the end of the Service Period. <p>The <i>Service Manager</i> or the <i>Service Provider</i> may give an early warning by notifying the other of any other matter which could increase the <i>Service Provider's</i> total cost. The <i>Service Manager</i> enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.</p> <p>15.2 The <i>Service Manager</i> prepares a first Early Warning Register and issues it to the <i>Service Provider</i> within one week of the <i>starting date</i>. The <i>Service Manager</i> instructs the <i>Service Provider</i> to attend a first early warning meeting within two weeks of the <i>starting date</i>.</p> <p>Later early warning meetings are held</p> <ul style="list-style-type: none"> • if either the <i>Service Manager</i> or <i>Service Provider</i> instructs the other to attend an early warning meeting, and, in any case, • at no longer interval than the interval stated in the Contract Data until the end of the Service Period. <p>The <i>Service Manager</i> or <i>Service Provider</i> may instruct other people to attend an early warning meeting if the other agrees.</p> <p>A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.</p> <p>15.3 At an early warning meeting, those who attend co-operate in</p> <ul style="list-style-type: none"> • making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced, • seeking solutions that will bring advantage to all those who will be affected, • deciding on the actions which will be taken and who, in accordance with the contract, will take them, • deciding which matters can be removed from the Early Warning Register and • reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them. <p>15.4 The <i>Service Manager</i> revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the <i>Service Provider</i> within one week of the early warning meeting. If a decision needs a change to the Scope, the <i>Service Manager</i> instructs the change at the same time as the revised Early Warning Register is issued.</p>
Service Provider's proposals	16	<p>16.1 The <i>Service Provider</i> may propose to the <i>Service Manager</i> that the Scope provided by the <i>Client</i> is changed in order to reduce the amount the <i>Client</i> pays to the <i>Service Provider</i> for Providing the Service. The <i>Service Manager</i> consults with the <i>Client</i> and the <i>Service Provider</i> about the change.</p>

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

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

- 16.3 The *Service Provider* may submit a proposal for adding an area to the Service Areas to the *Service Manager* for acceptance. A reason for not accepting is that the proposed area is
- not necessary for Providing the Service or
 - used for services not in the contract.

Requirements for instructions

17

- 17.1 The *Service Manager* or the *Service Provider* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The *Service Manager* states how the ambiguity or inconsistency should be resolved.
- 17.2 At the Contract Date, the *Service Provider* agrees that the Scope does not contain any defective design work or illegal or impossible requirements. Throughout the course of the *service*, should an instruction be given in accordance with the contract that amends or adds to the Scope, the *Service Provider* notifies the *Service Manager* as soon as it considers that the instruction requires the *Service Provider* to do anything which is illegal or impossible. If the *Service Manager* agrees, it gives an instruction to change the Scope appropriately.
-

Prevention of Fraud and Bribery

18

- 18.1 The *Service Provider* represents and warrants that neither it, the *Service Provider's* Affiliates, nor to the best of its knowledge any of the Service Provider Staff, have at any time prior to the Contract Date:
- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 18.2 During the *service period* neither the *Service Provider* nor the *Service Provider's* Affiliates:
- commit a Prohibited Act; and/or
 - do or suffer anything to be done which would cause the *Client* and/or a Contracting Authority or any of the *Client's* and/or a Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements
- 18.3 During the *service period* the *Service Provider*:
- establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - keeps appropriate records of its compliance with this contract and make such records available to the *Client* and/or a Contracting Authority on request;
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- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* and/or a Contracting Authority on request) to prevent it and any Service Provider Staff from committing a Prohibited Act;
- if required by the *Client*, within 20 Working Days of the Contract Date, and then annually, certify in writing to the *Client* that it has complied with this clause 18, including compliance of all Service Provider Staff and *Service Provider* Affiliates, and provide reasonable supporting evidence of this on request, including its policies and procedures.

18.4 The *Service Provider* immediately notifies the *Service Manager* in writing if it becomes aware of any breach of clause 18.1 or has reason to believe that it has or any of the Service Provider Staff or *Service Provider's* Affiliates have:

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act

18.5 If the *Service Provider* makes a notification to the *Service Manager* pursuant to clause 18.4 the *Service Provider* responds promptly to the *Service Manager's* enquiries, co-operates with any investigation, and allows the *Client* and/or a Contracting Authority to audit any books, records and/or any other relevant documentation in accordance with this contract.

18.6 Any notice the *Service Provider* gives under clause 18.4 above specifies:

- The Prohibited Act;
- The identity of the party who it thinks has committed the Prohibited Act; and
- The action it has decided to take.

18.7 The *Service Provider* immediately notifies the *Client* in writing if a foreign public official becomes an officer or employee of the *Service Provider* or acquires a direct or indirect interest in the *Service Provider*, and the *Service Provider* warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this contract;

Service Orders

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19.1 The *Service Manager* may issue a Service Order to the *Service Provider*.

19.2 A Service Order is in the form stated in the Service Order Requirements and includes

- a detailed description of the work to be done,
- unless stated in the contract, the time period within which the work is to be done and
- any other information which the Service Order Requirements states is required.

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

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

19.3 A Service Order is not issued if the work in the Service Order will not be complete before the end of the Service Period.

19.4 The *Service Manager* maintains a record of Service Orders unless stated otherwise in the Service Order Requirements.

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2. THE SERVICE PROVIDER'S MAIN RESPONSIBILITIES

Providing the Service	20	
	20.1	The <i>Service Provider</i> Provides the Service in accordance with the Scope.
	20.2	In Providing the Service, the <i>Service Provider</i> minimises the interference caused to the Affected Property and the activities taking place in it and Provides the Service in a manner which does not cause damage to the Affected Property. The <i>Service Provider</i> reports any damage caused to Affected Property to the <i>Service Manager</i> immediately. The cost of repair or replacement of any damaged Affected Property is borne by the <i>Service Provider</i>
	20.3	The <i>Service Provider</i> keeps records of the work done and provides them to the <i>Client</i> as stated in the Scope. The <i>Service Provider</i> provides access for the <i>Service Manager</i> to inspect the records. The <i>Client</i> owns the <i>Service Provider's</i> rights over these records except as stated in the Scope.
Design of Equipment	21	
	21.1	The <i>Service Provider</i> submits particulars of the design of an item of Equipment to the <i>Service Manager</i> for acceptance if the <i>Service Manager</i> instructs the <i>Service Provider</i> to. A reason for not accepting is that the design of the item will not allow the <i>Service Provider</i> to Provide the Service in accordance with <ul style="list-style-type: none"> the Scope, the Accepted Plan the <u>Law</u>; necessary consents or this contract.
People	22	Not used.
	22.1	
	22.2	
Working with the <i>Client</i> and Others	23	
	23.1	The <i>Service Provider</i> co-operates with Others, including in obtaining and providing information which they need in connection with the <i>service</i> . The <i>Service Provider</i> shares the Affected Property with Others as stated in the Scope.
	23.2	The <i>Client</i> and the <i>Service Provider</i> provide services and other things as stated in the Scope. Any cost incurred by the <i>Client</i> as a result of the <i>Service Provider</i> not providing the services and other things which it is to provide is assessed by the <i>Service Manager</i> and paid by the <i>Service Provider</i> .
Subcontracting	24	
	24.1	If the <i>Service Provider</i> subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. The contract applies as if a Subcontractor's employees and equipment were the <i>Service Provider's</i> .
	24.2	The <i>Service Provider</i> submits the name of each proposed Subcontractor and SubSubcontractor to the <i>Service Manager</i> for acceptance. A reason for not accepting the Subcontractor or SubSubcontractor is that:

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- the appointment will not allow the *Service Provider* to Provide the Service,
- the appointment may prejudice the provision of the Service or may be contrary to the interests of the *Client*,
- in the reasonable view of the *Service Manager*, the proposed Subcontractor or SubSubcontractor is considered to be unreliable and/or has not provided reliable goods and/or reasonable services to its other clients,
- the appointment would create a conflict of interest, or
- the proposed Subcontractor or SubSubcontractor employs unfit persons.

The *Service Provider* does not appoint a proposed Subcontractor or SubSubcontractor until the *Service Manager* has

- accepted the Subcontractor or SubSubcontractor and, to the extent these *conditions of contract* require,
- accepted the subcontract documents.

- 24.3 The *Service Provider* submits the proposed subcontract documents, except any pricing information, for each subcontract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required.

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A reason for not accepting the subcontract documents is that

- they will not allow the *Service Provider* to Provide the Service,
- they do not include the requirements stated in the contract to be included in a subcontract or
- they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.

24.4 The *Service Provider* does not engage a Key Subcontractor other than those listed in Schedule 17 (Key Subcontractors). The *Client* will update Schedule 17 (Key Subcontractors) periodically to record any Key Subcontractors the *Service Provider* is entitled to sub-contract its obligations to. In respect of any other Subcontractors, the provisions of clause 24.2 apply. For the avoidance of doubt, in the event that an existing Subcontractor qualifies to become a Key Subcontractor, the *Service Manager* notifies the *Service Provider* and the list at Schedule 17 (Key Subcontractors) shall be amended accordingly.

Other responsibilities

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- 25.1** The *Service Provider* obtains approval from Others where necessary.
- 25.2** The *Service Provider* provides access to work being done and to Plant and Materials being stored for the contract for
- the *Service Manager* and
 - Others as named by the *Service Manager*.
- 25.3** The *Service Provider* obeys an instruction which is in accordance with the contract and is given by the *Service Manager*.
- 25.4** The *Service Provider* acts in accordance with the health and safety requirements stated in the Scope.
-
- 25.5** (1) The *Service Provider* takes full responsibility for the adequacy, stability and safety of all site operations and methods of operation and complies fully with the requirements of the CDM Regulations.
- (2) The *Service Provider* warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations.
- (3) The *Service Provider* throughout the progress of the service and while the *Service Provider* has access to the Affected Property in accordance with this contract has full regard for the safety of all persons entitled to be upon the Affected Property and keeps the Affected Property (so far as the same is under its control) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the service, provides and maintains at its own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the service or for the safety and convenience of the public or Others.
- (4) The *Service Provider* performs all the functions and duties of and exercises the powers of the "principal contractor", the "principal designer" and a "contractor" and "designer" as defined in the CDM Regulations.
- (5) The *Service Provider* warrants to the *Client* that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "principal contractor", "principal designer", "contractor" and "designer" as defined in the CDM Regulations.
- (6) The *Service Provider* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Affected Property for the effective discharge of those responsibilities.
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(7) The *Service Provider* procures that each Subcontractor complies fully with the requirements of the CDM Regulations.

(8) Before the commencement of the service the *Service Provider* provides the Service Manager with a copy of its Statement of health and safety policy, and that of any Subcontractor prior to such Subcontractor commencing the service.

(9) The *Service Provider* to the extent that he is in control of the Affected Property or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Affected Property, its access and egress, safe and without risk to the health of persons using it.

Assignment	26	
	26.1	<p>The <i>Client</i> is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:</p> <ul style="list-style-type: none"> • any Central Government Body; or • any other public or private sector body which substantially performs any of the functions that previously had been performed by the <i>Client</i>.
	26.2	<p>The <i>Service Provider</i> does not, without the prior written consent of the <i>Client</i>, assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this contract. In the absence of the <i>Client's</i> written consent no sum of money becoming due under this contract is payable to any person other than the <i>Service Provider</i>.</p>
	26.3	<p>The <i>Client</i> is entitled to, and the <i>Service Provider</i> gives consent to, novate this contract or any part thereof to:</p> <ul style="list-style-type: none"> • any Central Government Body; or • any other public or private sector body which substantially performs any of the functions that previously had been performed by the <i>Client</i>; <p>upon such terms as the <i>Client</i> specifies.</p>
	26.4	<p>Any change in the legal status of the <i>Client</i> and/or a Contracting Authority such that it ceases to be a Central Government Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the <i>Client</i> and/or a Contracting Authority.</p>
	26.5	<p>If this contract is novated to a body which is not a Central Government Body or if a successor body which is not a Central Government Body becomes the <i>Client</i> (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee only assigns, novates or otherwise disposes of its rights and obligations under this contract or any part thereof with the written consent of the <i>Service Provider</i>.</p>
Disclosure	27	
	27.1	<p>Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall</p> <ul style="list-style-type: none"> • treat the other Party's Confidential Information as confidential and safeguard it accordingly, • not disclose the other Party's Confidential Information to any other person without prior written consent, • immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and • notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
	27.2	<p>The clause above shall not apply to the extent that</p>

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- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the other party's Confidential Information.

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

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

27.4 The *Service Provider* may only disclose the *Client* Confidential Information to *Service Provider's* people who need to know the information and who have satisfied the *Client's* security clearance requirements as detailed in Schedule 18 (Call-Off Schedule 9 (Security)) and the Scope, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Service Provider's* people causes or contributes (or could cause or contribute) to the *Service Provider* breaching its obligations as to confidentiality under or in connection with this contract, the *Service Provider* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Service Provider's* people, the *Service Provider* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Service Provider* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Service Provider's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Service Provider's* people in connection with obligations as to confidentiality.

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

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

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
- for the purpose of the examination and certification of the *Client's* accounts,

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- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
 - for the purpose of the exercise of its rights under this contract or
 - to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,
 - and for the purposes of the foregoing, disclosure of the *Service Provider's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 27.6.
- 27.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the *Service Provider's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.
- 27.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 27.9 The *Client* may disclose the Confidential Information of the *Service Provider*
- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
 - to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- 27.10 Notwithstanding anything to the contrary contained in this Contract, either Party may also provide a copy of this Contract to a prospective permitted assignee/transferee or successor in title, provided that such Party is subject to a suitable non-disclosure agreement containing obligations of confidentiality at least equivalent to those contained in this Clause.

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3. TIME

Starting and the Service Period	30	
	30.1	The <i>Service Provider</i> does not start work until the <i>starting date</i> and Provides the Service throughout the Service Period.
The Service Provider's plan	31	
	31.1	If a plan is not identified in the Contract Data, the <i>Service Provider</i> submits a first plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.
	31.2	<p>The <i>Service Provider</i> shows on each plan submitted for acceptance</p> <ul style="list-style-type: none"> • the <i>starting date</i> and the end of the Service Period, • the order and timing of the work of the <i>Client</i> and Others as last agreed with them by the <i>Service Provider</i> or, if not so agreed, as stated in the Scope, • provisions for <ul style="list-style-type: none"> – time risk allowances, – health and safety requirements and – the procedures set out in the contract, • the dates when, in order to Provide the Service in accordance with the plan, the <i>Service Provider</i> will need <ul style="list-style-type: none"> – access to the Affected Property as stated in the Scope, – acceptances, – Plant and Materials, equipment and other things to be provided by the <i>Client</i> and – information from Others, • a statement of how the <i>Service Provider</i> plans to do the work identifying the principal Equipment and other resources which will be used, • a statement of how the <i>Service Provider</i> plans to provide business continuity to continue to Provide the Service following an incident which disrupts its normal operations in compliance with the requirements of Schedule 20 (Business Continuity and Disaster Recovery) and • other information which the Scope requires the <i>Service Provider</i> to show on a plan submitted for acceptance. <p>A plan issued for acceptance is in the form stated in the Scope.</p>
	31.3	<p>Within two weeks of the <i>Service Provider</i> submitting a plan for acceptance, the <i>Service Manager</i> notifies the <i>Service Provider</i> of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a plan is that</p> <ul style="list-style-type: none"> • the <i>Service Provider's</i> plans which it shows are not practicable, • it does not show the information which the contract requires, • it does not represent the <i>Service Provider's</i> plans realistically or • it does not comply with the Scope. <p>If the <i>Service Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Service Provider</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further one week after the <i>Service Provider's</i> notification, it is treated as acceptance by the <i>Service Manager</i> of the plan.</p>

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Revising the Service Provider's plan	32	<p>32.1 The <i>Service Provider</i> shows on each revised plan</p> <ul style="list-style-type: none"> the actual progress achieved and its effect upon the timing of the remaining work and services, how the <i>Service Provider</i> plans to deal with any delays and to correct notified Service Failures and any other changes which the <i>Service Provider</i> proposes to make to the Accepted Plan. <p>32.2 The <i>Service Provider</i> submits a revised plan to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> within the <i>period for reply</i> after the <i>Service Manager</i> has instructed the <i>Service Provider</i> to, within the <i>period for reply</i> after the <i>Service Manager</i> has instructed a change to the Affected Property, when the <i>Service Provider</i> chooses to and, in any case, at no longer interval than the interval stated in the Contract Data throughout the Service Period.
Mobilisation plan	33	<p>33.1 If a mobilisation plan is required and is not identified in the Contract Data, the <i>Service Provider</i> submits a mobilisation plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p> <p>33.2 The <i>Service Provider</i> shows on the mobilisation plan submitted for acceptance the information which the Scope requires the <i>Service Provider</i> to show.</p> <p>33.3 Within one week of the <i>Service Provider</i> submitting a mobilisation plan for acceptance, the <i>Service Manager</i> notifies the <i>Service Provider</i> of the acceptance of the mobilisation plan or the reasons for not accepting it. A reason for not accepting a mobilisation plan is that</p> <ul style="list-style-type: none"> the <i>Service Provider's</i> plans which it shows are not practicable or it does not comply with the Scope. <p>If the <i>Service Manager</i> does not accept the mobilisation plan, the <i>Service Provider</i> submits a revised mobilisation plan.</p> <p>33.4 The <i>Service Provider</i> submits a revised mobilisation plan to the <i>Service Manager</i> for acceptance:</p> <p>within the period for reply after the <i>Service Manager</i> has instructed the <i>Service Provider</i> to; and</p> <p>when the <i>Service Provider</i> chooses to.</p>
Demobilisation plan	34	<p>34.1 The <i>Service Provider</i> prepares a demobilisation plan and submits it to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p> <p>34.2 The <i>Service Provider</i> shows on the demobilisation plan submitted for acceptance the information which the Scope requires the <i>Service Provider</i> to show.</p> <p>34.3 Within one week of the <i>Service Provider</i> submitting a demobilisation plan for acceptance, the <i>Service Manager</i> notifies the <i>Service Provider</i> of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a demobilisation plan is that</p> <ul style="list-style-type: none"> it does not allow the <i>Service Provider</i> to Provide the Service or it does not comply with the Scope. <p>If the <i>Service Manager</i> does not accept the demobilisation plan, the <i>Service Provider</i> submits a revised demobilisation plan.</p> <p>34.4 The <i>Service Provider</i> submits a revised demobilisation plan to the <i>Service Manager</i> for acceptance</p>

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

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Access	35	35.1 The <i>Client</i> provides the right of access for the <i>Service Provider</i> to the Affected Property as shown on the Accepted Plan.
Instructions to stop or not to start work and Step-In	36	<p>36.1 The <i>Service Manager</i> may instruct the <i>Service Provider</i> to stop or not to start any work. The <i>Service Manager</i> subsequently gives an instruction to the <i>Service Provider</i> to</p> <ul style="list-style-type: none"> • re-start or start the work or • remove the work from the Scope. <p>36.2 Without prejudice to any other remedy that the <i>Client</i> may have (whether under this contract or otherwise) where the <i>Service Manager</i> instructs the <i>Service Provider</i> to stop or not to start any work (the "Step-In Services") the <i>Client</i> may carry out the Step-In Services itself or engage others (the "Step-In Third Party") to carry out the Step-In Services (the "Step-In Right").</p> <p>36.3 In the event that the <i>Client</i> opts to exercise its Step-In Right the <i>Service Manager</i> may:</p> <ol style="list-style-type: none"> 1. require by written notice, the <i>Service Provider</i> to immediately take the steps specified by the <i>Service Manager</i>; and/or 2. require a Subcontractor to immediately take the steps specified by the <i>Service Provider</i>, <p>in each case such steps to be taken within the time period stated in the notice, or in a reasonable time period if none is stated.</p> <p>36.4 In the event and to the extent that the <i>Client</i> exercises its Step-In Right the <i>Service Provider</i> shall and shall procure that the Subcontractors shall:</p> <ol style="list-style-type: none"> i. grant and procure that relevant third parties grant the <i>Client</i> such licences as are reasonably required (for itself or a Step-In Third Party) for the purposes of carrying out the Step-In Services; and ii. afford to the <i>Client</i> such co-operation and access to any Intellectual Property, Rights, employees, premises, equipment, documents, information or other items as are reasonably required for the purposes of carrying out the Step-In Services. <p>36.5 The exercise of the Step-In Right shall not excuse the <i>Service Provider</i> from its obligation to provide the services (excluding the Step-In Services for the period only of exercise of the Step-In Right) in accordance with this contract or be deemed to frustrate or waive performance of that obligation.</p>

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4. QUALITY MANAGEMENT

Quality management system	40	
	40.1	The <i>Service Provider</i> operates a quality management system which complies with the requirements stated in the Scope.
	40.2	Within the period stated in the Contract Data, the <i>Service Provider</i> provides the <i>Service Manager</i> with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the <i>Service Provider</i> to Provide the Service. If any changes are made to the quality plan, the <i>Service Provider</i> provides the <i>Service Manager</i> with the changed quality plan for acceptance.
	40.3	The <i>Service Manager</i> may instruct the <i>Service Provider</i> to correct a failure to comply with the quality plan. This instruction is not a compensation event.
Tests and inspections of the service	41	
	41.1	This clause only applies to tests and inspections of the <i>service</i> required by the Scope or the <u>Law</u> .
	41.2	The <i>Service Provider</i> and the <i>Client</i> provide materials, facilities and samples for tests and inspections of the <i>service</i> as stated in the Scope.
	41.3	The <i>Service Provider</i> and the <i>Service Manager</i> informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results. The <i>Service Provider</i> informs the <i>Service Manager</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Service Manager</i> may watch any test done by the <i>Service Provider</i> .
	41.4	If a test or inspection shows that any work has a Service Failure, the <i>Service Provider</i> repeats the work or otherwise corrects the Service Failure, and the test or inspection is repeated.
	41.5	The <i>Service Manager</i> does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Service Manager's</i> test or inspection being successful becomes due at the end of the Service Period if <ul style="list-style-type: none"> the <i>Service Manager</i> has not done the test or inspection and the delay to the test or inspection is not the <i>Service Provider's</i> fault.
	41.6	The <i>Service Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Service Failure is found. The <i>Service Provider</i> pays the amount assessed.
Testing and inspection before delivery	42	
	42.1	The <i>Service Provider</i> does not deliver those Plant and Materials which the Scope states are to be tested or inspected before delivery until the <i>Service Manager</i> has notified the <i>Service Provider</i> that they have passed the test or inspection.
Notifying and correcting Service Failures	43	
	43.1	Until the end of the Service Period the <i>Service Manager</i> and the <i>Service Provider</i> notifies the other as soon as they become aware of a Service Failure.
	43.2	The <i>Service Provider</i> corrects a Service Failure whether or not the <i>Service Manager</i> has notified it.
	43.3	The <i>Service Provider</i> corrects a notified Service Failure within a time which minimises the adverse effect on the <i>Client</i> or Others.
	43.4	If a notified Service Failure can be corrected, because that part of the <i>service</i> can still be provided within the times stated in the Scope, but the <i>Service Provider</i> does not correct it within a time which minimises the adverse effect on the <i>Client</i> or Others, the <i>Service Manager</i> assesses the cost to the <i>Client</i> of having the Service Failure corrected by other people and the <i>Service Provider</i> pays this amount. The Scope is treated as having been changed to accept the Service Failure.

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- 43.5 If a notified Service Failure cannot be corrected, because that part of the *service* was not provided within the times stated in the Scope, the *Service Manager* assesses the cost the *Service Provider* would have incurred in providing that part of the *service* and the *Service Provider* pays this amount. The Scope is treated as having been changed to accept the Service Failure.
- 43.6 In assessing the
- cost to the *Client* of having the Service Failure corrected or
 - cost the *Service Provider* would have incurred in providing that part of the *service*,
- the *Service Manager* takes into account any amounts in the Price for Service Provided to Date which would result in the *Client* paying or retaining the same amount twice.
- 43.7 The *Service Manager* arranges for the *Client* to allow the *Service Provider* access if it is needed for correcting a Service Failure.

Accepting Service Failures

- 44
- 44.1 The *Service Provider* and the *Service Manager* may propose to the other that the Scope should be changed so that a Service Failure does not have to be corrected.
- 44.2 If the *Service Provider* and the *Service Manager* are prepared to consider the change, the *Service Provider* submits a quotation for reduced Prices or changes to the Performance Table or both to the *Service Manager* for acceptance. If the quotation is accepted, the *Service Manager* changes the Scope, the Prices and the Performance Table accordingly and accepts the revised plan.

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5. PAYMENT

Assessing the amount due	50	
	50.1	<p>The <i>Service Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Service Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i>. Later assessment dates occur at the end of each <i>assessment interval</i> until</p> <ul style="list-style-type: none"> • four weeks after the end of the Service Period or • the <i>Service Manager</i> issues a termination certificate.
	50.2	<p>The <i>Service Provider</i> submits an application for payment to the <i>Service Manager</i> before each assessment date setting out the amount the <i>Service Provider</i> considers is due at the assessment date. The <i>Service Provider's</i> application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.</p> <p>In assessing the amount due, the <i>Service Manager</i> considers an application for payment submitted by the <i>Service Provider</i> before the assessment date.</p>
	50.3	<p>If the <i>Service Provider</i> submits an application for payment before the assessment date, the amount due at the assessment date is</p> <ul style="list-style-type: none"> • the Price for Service Provided to Date, • plus other amounts to be paid to the <i>Service Provider</i>, • less amounts to be paid by or retained from the <i>Service Provider</i>.
	50.4	<p>If the <i>Service Provider</i> does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of</p> <ul style="list-style-type: none"> • the amount the <i>Service Manager</i> assesses as due at the assessment date, assessed as though the <i>Service Provider</i> had submitted an application before the assessment date, and • the amount due at the previous assessment date.
	50.5	<p>If no plan is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the <i>Service Provider</i> has submitted a first plan to the <i>Service Manager</i> for acceptance showing the information which the contract requires.</p>
	50.6	<p>The <i>Service Manager</i> corrects any incorrectly assessed amount due in a later payment certificate.</p>
Payment	51	
	51.1	<p>The <i>Service Manager</i> certifies a payment within one week of each assessment date. The <i>Service Manager's</i> certificate includes details of how the amount due has been assessed. A payment is made by the <i>Service Provider</i> to the <i>Client</i> if the amount due is to the <i>Client</i>. Other payments are made by the <i>Client</i> to the <i>Service Provider</i>. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Service Manager's</i> certificate. Payments are in the <i>currency of the contract</i> unless otherwise stated in the contract.</p>
	51.2	<p>Each certified payment is made by the later of</p> <ul style="list-style-type: none"> • one week after the paying Party receives an invoice from the other Party and • three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. <p>If a certified payment is late, or if a payment is late because the <i>Service Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.</p>

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	<p>51.3 If an amount due is corrected in a later certificate</p> <ul style="list-style-type: none"> • in relation to a mistake or a compensation event, • because a payment was delayed by an unnecessary delay to a test or inspection done by the <i>Service Manager</i> or • following a decision of the <i>Adjudicator</i> or the <i>tribunal</i>, <p>interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.</p> <p>51.4 Interest is calculated on a daily basis at the <i>interest rate</i> and is compounded annually.</p> <p>51.5 Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.</p>
Defined Cost	<p>52</p> <p>52.1 All the <i>Service Provider's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.</p>
Performance measurements	<p>53</p> <p>53.1 From the <i>starting date</i> until the end of the Service Period, the <i>Service Provider</i> reports to the <i>Service Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.</p> <p>53.2 If the <i>Service Provider's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Service Manager</i> for acceptance its proposals for improving performance.</p> <p>A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.</p> <p>53.3 At the dates stated in the Performance Table,</p> <ul style="list-style-type: none"> • if a part of the <i>service</i> does not meet the target stated in the Performance Table, the <i>Service Provider</i> pays the amount stated in the Performance Table, • if a part of the <i>service</i> exceeds or meets the target stated in the Performance Table, the <i>Service Provider</i> is paid the amount stated in the Performance Table. <p>53.4 Information in the Performance Table is not Scope.</p>
Final assessment	<p>54</p> <p>54.1 The <i>Service Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, no later than</p> <ul style="list-style-type: none"> • thirteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, or • thirteen weeks after the <i>Service Manager</i> issues a termination certificate. <p>The <i>Service Manager</i> gives the <i>Service Provider</i> details of how the amount due has been assessed. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Service Manager's</i> certificate. The final payment is made by the later of</p> <ul style="list-style-type: none"> • one week after the paying Party receives an invoice from the other Party and • three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

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- 54.2 If the *Service Manager* does not make this assessment within the time allowed, the *Service Provider* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final payment is made by the later of
- one week after the paying Party receives an invoice from the other Party and
 - three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.
- 54.3 An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.
- If the contract includes Option W1, a Party
- refers a dispute about the assessment of the final amount due to the *Senior Representatives* within four weeks of the assessment being issued,
 - refers any issues not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and
 - refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.
- If the contract includes Option W2, a Party
- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
 - refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
 - refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.
- 54.4 The assessment of the final amount due is changed to include
- any agreement the Parties reach and
 - a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.
- A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

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6. COMPENSATION EVENTS

Compensation events	60	<p>60.1 The following events are compensation events.</p> <p>(1) The <i>Service Manager</i> gives an instruction changing the Scope or the Affected Property except</p> <ul style="list-style-type: none"> • a change made in order to accept a Service Failure or • a change to the Scope provided by the <i>Service Provider</i> for its plan which is made <ul style="list-style-type: none"> – at the <i>Service Provider's</i> request or – in order to comply with the Scope provided by the <i>Client</i>. <p>(2) The <i>Client</i> does not provide the right of access to the Affected Property in accordance with the Accepted Plan.</p> <p>(3) The <i>Client</i> does not provide something which it is to provide by the date shown on the Accepted Plan.</p> <p>(4) The <i>Service Manager</i> gives an instruction to stop or not to start any work.</p> <p>(5) The <i>Client</i> or Others do not work in accordance with</p> <ul style="list-style-type: none"> • the Accepted Plan or • the conditions stated in the Scope. <p>(6) The <i>Service Manager</i> does not reply to a communication from the <i>Service Provider</i> within the period required by the contract.</p> <p>(7) The <i>Service Manager</i> changes a decision which the <i>Service Manager</i> had previously communicated to the <i>Service Provider</i>.</p> <p>(8) The <i>Service Manager</i> withholds an acceptance (other than acceptance of a quotation for not correcting a Service Failure) for a reason not stated in the contract.</p> <p>(9) A test or inspection done by the <i>Service Manager</i> causes unnecessary delay.</p> <p>(10) A change to the Affected Property by the <i>Client</i> or Others.</p> <p>(11) An event which is a <i>Client's</i> liability stated in these <i>conditions of contract</i>.</p> <p>(12) The <i>Client</i> does not provide materials, facilities and samples for tests and inspections as stated in the Scope.</p> <p>(13) The <i>Service Manager</i> notifies the <i>Service Provider</i> of a correction to an assumption which the <i>Service Manager</i> stated about a compensation event.</p> <p>(14) A breach of contract by the <i>Client</i> which is not one of the other compensation events in the contract.</p> <p>(15) The <i>Service Manager</i> gives an instruction to correct a mistake in the Price List.</p> <p>(16) The <i>Service Manager</i> notifies the <i>Service Provider</i> that a quotation for a proposed instruction is not accepted provided that for the avoidance of doubt it is not a compensation event if the quotation relates to a Service Order.</p> <p>(17) Additional compensation events stated in Contract Data part one.</p>
Notifying compensation events	61	<p>61.1 For a compensation event which arises from the <i>Service Manager</i> giving an instruction or notification or changing an earlier decision, the <i>Service Manager</i> notifies the <i>Service Provider</i> of the compensation event at the time of that communication.</p>

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- 61.2 The *Service Manager* includes in the notification of a compensation event an instruction to the *Service Provider* to submit quotations unless
- the event arises from a fault of the *Service Provider* or
 - the event has no effect upon Defined Cost, the Performance Table or, if the contract includes Option X27, a Project Completion.
- 61.3 The *Service Provider* notifies the *Service Manager* of an event which has happened or which is expected to happen as a compensation event if
- the *Service Provider* believes that the event is a compensation event and
 - the *Service Manager* has not notified the event to the *Service Provider*.
- If the *Service Provider* does not notify a compensation event within eight weeks of becoming aware that the event has happened or of the date when the *Service Provider* ought to have become aware of the event, the Prices, the Performance Table or, if the contract includes Option X27, the Project Completion Dates are not changed unless the event arises from the *Service Manager* giving an instruction or notification or changing an earlier decision.
- 61.4 The *Service Manager* replies to the *Service Provider's* notification of a compensation event within
- one week after the *Service Provider's* notification or
 - a longer period to which the *Service Provider* has agreed.
- If the event
- arises from any act, error, omission, negligence, breach or default of the *Service Provider* or SubContractors or any of their employees or agents ,
 - has not happened and is not expected to happen,
 - has not been notified within the timescales set out in these *conditions of contract*,
 - has no effect upon Defined Cost, the Performance Table or, if the contract includes Option X27, a Project Completion or
 - is not one of the compensation events stated in the contract
- the *Service Manager* notifies the *Service Provider* that the Prices, the Performance Table and, if the contract includes Option X27, the Project Completion Dates are not to be changed and states the reasons in the notification. Otherwise, the *Service Manager* notifies the *Service Provider* that the event is a compensation event and includes in the notification an instruction to the *Service Provider* to submit quotations.
- If the *Service Manager* fails to reply to the *Service Provider's* notification of a compensation event within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If that failure continues for a further two weeks after the *Service Provider's* notification it is treated as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations.
- 61.5 If the *Service Manager* decides that the *Service Provider* did not give an early warning of the event which an experienced service provider could have given, the *Service Manager* states this in the instruction to the *Service Provider* to submit quotations.
- 61.6 If the effects of a compensation event are too uncertain to be forecast reasonably, the *Service Manager* states assumptions about the compensation event in the instruction to the *Service Provider* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.
- 61.7 A compensation event is not notified by the *Service Manager* or the *Service Provider* later than eight weeks after the end of the Service Period.

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Quotations for compensation events**62**

- 62.1 After discussing with the *Service Provider* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Service Provider* to submit alternative quotations. The *Service Provider* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable.
- 62.2 Quotations for a compensation event comprise proposed changes to the Prices and the Performance Table assessed by the *Service Provider*. The *Service Provider* submits details of the assessment with each quotation. If the plan for remaining work is altered by the compensation event, the *Service Provider* includes the alterations to the Accepted Plan in the quotation.
- 62.3 The *Service Provider* submits quotations within three weeks of being instructed to do so by the *Service Manager*. The *Service Manager* replies within two weeks of the submission. The reply is
- a notification of acceptance of the quotation,
 - an instruction to submit a revised quotation or
 - that the *Service Manager* will be making the assessment.
- 62.4 The *Service Manager* instructs the *Service Provider* to submit a revised quotation only after explaining the reasons for doing so to the *Service Provider*. The *Service Provider* submits the revised quotation within three weeks of being instructed to do so.
- 62.5 The *Service Manager* extends the time allowed for
- the *Service Provider* to submit quotations for a compensation event or
 - the *Service Manager* to reply to a quotation
- if the *Service Manager* and the *Service Provider* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Service Provider* of the extension which has been agreed.
- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If the *Service Provider* submitted more than one quotation for the compensation event, the notification states which quotation the *Service Provider* proposes is to be used. If the failure continues for a further four weeks after the *Service Provider's* notification it is treated as acceptance by the *Service Manager* of the quotation.

Assessing compensation events**63**

- 63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.
- 63.1A For the purposes of this clause 63.1A, the parties acknowledge and agree that at the Contract Date the fixed monthly fee "**Baseline Monthly Payment**" referred to in contract schedule 5 (Pricing Details) assuming all work has been completed is £2,058,496.36 (Two Million Fifty-Eight Thousand Four Hundred and Ninety Six Pounds and Thirty Six Pence) "**the Contract Date Baseline Monthly Payment**".

In this clause 63.1A:

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

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

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

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to the exclusion of clause 63.2:

- 63.1.A.1 subject to clause 63.1B the change to the Prices is assessed by a deduction of the Prices for the omitted Baseline Monthly Payment Works from the Baseline Monthly Payment and subject to 63.1A.2 below the Service Provider is not entitled to any part of the Fee or any other costs, losses or expenses whatsoever arising as a result;
- 63.1.A.2 where following the calculation pursuant to 63.1A1 above the compensation event results, either individually or cumulatively together with other Omission Instructions, in the Baseline Monthly Payment being less than the Threshold the Service Provider shall be entitled to a profit payment in each subsequent monthly assessment calculated by applying the profit percentage stated in the Price List to every £1 of the Baseline Monthly Payment below the Threshold **provided that**
- 63.1.A.3 the profit payment referred to in 63.1A.2 shall cease to be payable where any subsequent compensation event results in the Baseline Monthly Payment being more than or equal to the Threshold.

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

63.1.B In this clause 63.1B:

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

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

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

- 63.1.B.1 where the compensation event results, either individually or cumulatively together with other Change of Scope Instructions, in the Baseline Monthly Payment being less than the Management Fee Threshold the change to the Prices does not include any change to the management fee included in the Price List;
- 63.1.B.2 where the compensation event results, either individually or cumulatively together with other Change of Scope Instructions, in the Baseline Monthly Payment being more than the Management Fee Threshold there shall be a recalculation of the management fee included in the Price List calculated on the Baseline Monthly Payment at the date of the compensation event.
- 63.2 For other compensation events, the change to the Prices is assessed as the effect of the compensation event upon
- the actual Defined Cost of the work done by the dividing date,
 - the forecast Defined Cost of the work not done by the dividing date and
 - the resulting Fee.

For a compensation event that arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the dividing date is the

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date of that communication.

For other compensation events, the dividing date is the date of the notification of the compensation event.

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- 63.3 The *Service Manager* and the *Service Provider* may agree rates or lump sums to assess the change to the Prices.
- 63.4 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*.
- 63.5 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Scope other than a change to the Scope provided by the *Client*, which the *Service Provider* proposed and the *Service Manager* accepted,
 - a change in the Affected Property,
 - an instruction to correct a mistake in the Price List or
 - a correction to an assumption stated by the *Service Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.6 A change to the Performance Table is assessed as the effect of the compensation event upon the targets, amounts and dates stated in the Performance Table.
- 63.7 The rights of the *Client* and the *Service Provider* to changes to the Prices, the Performance Table and, if the contract includes Option X27, the Project Completion Dates are their only rights in respect of a compensation event.
- 63.8 If the *Service Manager* has stated in the instruction to submit quotations that the *Service Provider* did not give an early warning of the event which an experienced service provider could have given, the compensation event is assessed as if the *Service Provider* had given the early warning.
- 63.9 If the assessment of the effect of a compensation event is made using Defined Cost, it includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.10 If the assessment of the effect of a compensation event is made using Defined Cost, it is based upon the assumptions that the *Service Provider* reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred.

The *Service Manager's* assessments
64

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

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- 64.2 The *Service Manager* assesses the plan for the remaining work and uses it in the assessment of a compensation event if
- there is no Accepted Plan,
 - the *Service Provider* has not submitted a plan or alterations to a plan for acceptance as required by the contract or
 - the *Service Manager* has not accepted the *Service Provider's* latest plan for one of the reasons stated in the contract.
- 64.3 The *Service Manager* notifies the *Service Provider* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Service Provider's* submission of its quotation for the same compensation event. This period starts when the need for the *Service Manager's* assessment becomes apparent.
- 64.4 If the *Service Manager* does not assess a compensation event within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If the *Service Provider* submitted more than one quotation for the compensation event, the notification states which quotation the *Service Provider* proposes is to be used.

Proposed instructions**65**

- 65.1 The *Service Manager* may instruct the *Service Provider* to submit a quotation for a proposed instruction. The *Service Manager* states in the instruction the date by which the proposed instruction may be given. The *Service Provider* does not put a proposed instruction into effect.
- 65.2 The *Service Provider* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Service Manager*. The quotation is assessed as a compensation event. The *Service Manager* replies to the *Service Provider's* quotation by the date when the proposed instruction may be given. The reply is
- an instruction to submit a revised quotation including the reasons for doing so,
 - the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
 - a notification that the quotation is not accepted.
- If the *Service Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.
- 65.3 If the quotation is not accepted, the *Service Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Service Provider* to submit a quotation.
- 65.4 For the avoidance of doubt a quotation for a proposed instruction for the purposes of this clause 65 does not include a quotation for a Service Order.

Implementing compensation events**66**

- 66.1 A compensation event is implemented when
- the *Service Manager* notifies acceptance of the *Service Provider's* quotation,
 - the *Service Manager* notifies the *Service Provider* of an assessment made by the *Service Manager* or
 - a *Service Provider's* quotation is treated as having been accepted by the *Service Manager*.
- 66.2 When a compensation event is implemented the Prices and the Performance Table are changed accordingly.
- 66.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

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7. USE OF EQUIPMENT, PLANT AND MATERIALS

The <i>Client's</i> title to Plant and Materials	70	
	70.1	Whatever title the <i>Service Provider</i> has to Plant and Materials passes to the <i>Client</i> if they have been brought within the Service Areas. The title to Plant and Materials passes back to the <i>Service Provider</i> if they are removed from the Service Areas with the <i>Service Manager's</i> permission.
The Parties' use of equipment, Plant and Materials	71	
	71.1	The <i>Service Provider</i> has the right to use equipment, Plant and Materials and other materials provided by the <i>Client</i> only to Provide the Service. The <i>Service Provider</i> may make this right available to a Subcontractor.
	71.2	At the end of the Service Period or on termination the <i>Service Provider</i> provides to the <i>Client</i> <ul style="list-style-type: none"> • equipment and surplus Plant and Materials provided by the <i>Client</i>, in the condition stated in the Scope, • items of Equipment for the <i>Client's</i> use as stated in the Scope, • any warranties given to the <i>Service Provider</i> by its Subcontractors or suppliers and • information and other things as stated in the Scope and the demobilisation plan.
Installation Works	72	
	72.1	Where the <i>Service Provider</i> reasonably believes it has completed the Installation Works it notifies the <i>Service Manager</i> in writing. Following receipt of such notice, the <i>Service Manager</i> inspects the Installation Works and, by giving written notice to the <i>Service Provider</i> : <ul style="list-style-type: none"> a) accepts the Installation Works, or b) rejects the Installation Works and provides reasons to the <i>Service Provider</i> if, in the <i>Service Manager's</i> reasonable opinion, the Installation Works do not meet the requirements set out in the Scope (or elsewhere in the contract).
	72.2	If the <i>Service Manager</i> rejects the Installation Works in accordance with Clause 72.1(b), the <i>Service Provider</i> immediately rectifies or remedies any defects and if, in the <i>Service Manager's</i> reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Scope (or elsewhere in the contract), the <i>Client</i> may terminate the contract for reason R11 (and for the avoidance of doubt, the four week period in clause 91.2 is replaced with five (5) Working Days).
	72.3	The Installation Works are deemed complete when the <i>Service Provider</i> receives a notice issued by the <i>Client</i> in accordance with Clause 72.1(a). Notwithstanding the acceptance of any Installation Works in accordance with Clause 72.1, the <i>Service Provider</i> remains solely responsible for ensuring that the Plant and Materials and the Installation Works conform to the specification in the Scope (or elsewhere in the contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the <i>Service Manager</i> of the Installation Works.

8. LIABILITIES AND INSURANCE

Client's liabilities

80

80.1 The following are *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which are due to
 - use or occupation of the Affected Property for the purpose of the *service* which is the unavoidable result of the *service* or
 - negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Service Provider*.
- A fault of the *Client* or any person employed by or contracted to it, except the *Service Provider*.
- Loss of or damage to equipment and Plant and Materials supplied to the *Service Provider* by the *Client*, or by Others on the *Client's* behalf, until the *Service Provider* has received and accepted them.
- Loss of or damage to Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Service Provider's* employees or
 - radioactive contamination.
- Loss of or damage to any Equipment, Plant and Materials retained by the *Client* after a termination, except loss or damage due to the activities of the *Service Provider* in the Affected Property after the termination.
- Loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, unless the loss of or damage arises from or in connection with the *Service Provider* Providing the Service and the Contract Data states this as being a *Service Provider's* liability.
- Loss of or damage to the Affected Property unless the loss of or damage arises from or in connection with the *Service Provider* Providing the Service and the Contract Data states this as being a *Service Provider's* liability.
- Loss of or damage to any Plant and Materials after they have been included in the Affected Property.
- Additional *Client's* liabilities stated in the Contract Data.

Service Provider's liabilities

81

81.1 The following are *Service Provider's* liabilities unless they are stated as being *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Service Provider* Providing the Service.
- Loss of or damage to any
 - Plant and Materials before they are included in the Affected Property,
 - Equipment and
 - equipment provided by the *Client* to the *Service Provider*.
- Loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, which arises from or in connection with the *Service Provider* Providing the Service, if stated as being a *Service Provider's* liability in the Contract Data.

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

Recovery of costs**82**

- 82.1 Any cost which the *Client* has paid or will pay as a result of an event for which the *Service Provider* is liable is paid by the *Service Provider*.
- 82.2 Any cost which the *Service Provider* has paid or will pay to Others as a result of an event for which the *Client* is liable is paid by the *Client*.
- 82.3 The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.

Insurance cover**83**

- 83.1 The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.
- 83.2 The *Service Provider* provides the insurances stated in the Insurance Table except any insurances which the *Client* is to provide as stated in the Contract Data. The *Service Provider* provides additional insurances as stated in the Contract Data.
- 83.3 The *Service Provider* ensures that insurances in the Insurance Table except the third insurance stated contain an indemnity to principals clause under which the *Client* shall be indemnified in respect of claims made against the *Client* in respect of death or bodily injury or third-party property damage arising out of or in connection with the service and for which the *Service Provider* is legally liable. The insurances provide cover for events which are the *Service Provider's* liability from the *starting date* until the end of the *Service Period* or a termination certificate has been issued.

INSURANCE TABLE**INSURANCE AGAINST****MINIMUM AMOUNT OF COVER**

Loss of or damage to

- Plant and Materials,
- Equipment and equipment provided by the *Client* to the *Service Provider*

The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials and equipment provided by the *Client*

Loss of or damage to property (except Plant and Materials, Equipment and equipment provided by the *Client* to the *Service Provider*) and liability for bodily injury to or death of a person (not an employee of the *Service Provider*) arising from or in connection with the *Service Provider* Providing the Service

The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately

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

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

- | | |
|------|---|
| 83.4 | All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989. |
| 83.5 | Nothing in this clause relieves the <i>Service Provider</i> from any of its obligations and liabilities under this contract |
| | Professional Indemnity Insurance |
| 83.6 | If required to obtain professional indemnity insurance, the <i>Service Provider</i> obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable |

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

Insurance policies

84

- 84.1 Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Service Provider* submits to the *Service Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Service Provider's* insurer or insurance broker. The *Service Manager* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
- 84.2 Not Used.
- 84.3 The Parties comply with the terms and conditions of the insurance policies to which they are a party.
- 84.4 The *Service Provider* maintains the insurance required by the contract for at least six (6) years after the end of the Service Period.

If the <i>Service Provider</i> does not insure	85	
	85.1	The <i>Client</i> may insure an event or liability which the contract requires the <i>Service Provider</i> to insure if the <i>Service Provider</i> does not submit a required certificate. The cost of this insurance to the <i>Client</i> is paid by the <i>Service Provider</i> .

Insurance by the <i>Client</i>	86	
	86.1	The <i>Service Manager</i> submits certificates for insurance provided by the <i>Client</i> to the <i>Service Provider</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Service Provider</i> instructs. The <i>Service Provider</i> accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
	86.2	The <i>Service Provider's</i> acceptance of an insurance certificate provided by the <i>Client</i> does not change the responsibility of the <i>Client</i> to provide the insurances stated in the Contract Data.
	86.3	The <i>Service Provider</i> may insure an event or liability which the contract requires the <i>Client</i> to insure if the <i>Client</i> does not submit a required certificate. The cost of this insurance to the <i>Service Provider</i> is paid by the <i>Client</i> .

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9. TERMINATION

Termination

90

- 90.1 If either Party wishes to terminate the *Service Provider's* obligation to Provide the Service it notifies the *Service Manager* and the other Party giving details of the reason for terminating. If the reason complies with these *conditions of contract*, the *Service Manager* issues a termination certificate promptly or, if a *notice period* is required by these *conditions of contract*, at the end of the *notice period*.
- 90.2 A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1–R15, R18, R10A, R21, R24 or R25	P1, P2 and P3	A1 and A3
	R17, R20, R22 or R23	P1 and P4	A1 and A2
The <i>Service Provider</i>	R1–R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.
- If the *Client* terminates for one of reasons R1 to R15, R18 or R21 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.
- 90.4 After a termination certificate has been issued, the *Service Provider* does no further work necessary to Provide the Service.

Reasons for termination

91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented an application for bankruptcy (R1),
 - had a bankruptcy order made against it (R2),
 - had a receiver appointed over its assets (R3) or
 - made an arrangement with its creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it or had an administrator appointed over it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
- 91.1A applied to court for, or obtains, a moratorium under Part a1 of the Insolvency Act 1986 (R10A)

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- 91.2 The *Client* may terminate if the *Service Manager* has notified that the *Service Provider* has not put one of the following defaults right within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default.
- Without prejudice to (i) the *Client's* right to immediately terminate in the circumstances set out in clauses 91.8 and 91.9 substantially failed to comply with its obligations (R11).
 - Not provided a bond or guarantee which the contract requires (R12).
 - Appointed a Key Subcontractor for substantial work before the *Service Manager* has accepted the Key Subcontractor (R13).
- 91.3 The *Client* may terminate if the *Service Manager* has notified that the *Service Provider* has not stopped one of the following defaults within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default.
- Substantially hindered the *Client* or Others (R14).
 - Substantially broken a health or safety regulation (R15).
- 91.4 The *Service Provider* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Service Provider* should have been paid (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17).
- 91.6 If the *Service Manager* has instructed the *Service Provider* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing the work from the Scope has not been given within thirteen weeks,
- the *Client* may terminate if the instruction was due to a default by the *Service Provider* (R18),
 - the *Service Provider* may terminate if the instruction was due to a default by the *Client* (R19) and
 - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Client* may terminate if the *Service Provider* does a Prohibited Act, unless it was done by a Subcontractor or SubSubcontractor or supplier and the *Service Provider*
- was not and should not have been aware of the Prohibited Act or
 - informed the *Service Manager* of the Prohibited Act and took action to stop it as soon as the *Service Provider* became aware of it (R21).
-
- 91.8 The *Client* may terminate the *Service Provider's* obligation to Provide the Service on the 5th anniversary of the Contract Date by giving no less than 90 days' prior written notice to the *Service Manager* and *Service Provider* of its intention to do so (R22)
-
- 91.9 The *Client* may terminate the *Service Provider's* obligation to Provide the Service on the 6th anniversary of the Contract Date by giving no less than 90 days' prior written notice to the *Service Manager* and *Service Provider* of its intention to do so (R23)
-
- 91.10 The *Client* may terminate this contract if:
- (a) the *Client* discovers that the *Service Provider* was in one of the situations described in clause 57(1) or clause 57(2) of the Public Contracts Regulations 2015 Act and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) at the time the contract was awarded (R24); or
 - (b) the *Service Provider* or its Affiliates embarrass or bring Crown Commercial Service or the *Client* into disrepute or diminish the public trust in them (R25).

Procedures on termination

92

- 92.1 On termination, the *Client* may complete the service and may use any Plant and Materials provided by the *Service Provider*. The *Service Provider* provides to the *Client* information and other things which are in its possession at the time of termination which the Scope states are to be provided at the end of the Service

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Period (P1).

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.

- P2 The *Client* may instruct the *Service Provider* to remove any Equipment, Plant and Materials and assign the benefit of any subcontract or other contract related to performance of the contract to the *Client*.
- P3 The *Client* may use any Equipment to which the *Service Provider* has title to complete the *service*. The *Service Provider* promptly removes the Equipment when the *Service Manager* informs the *Service Provider* that the *Client* no longer requires it to complete the *service*.
- P4 The *Service Provider* leaves the Service Areas and removes the Equipment.

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Payment on termination	93
	93.1
	The amount due on termination includes (A1)
	<ul style="list-style-type: none">• an amount due assessed as for normal payments,• the Defined Cost for Plant and Materials which have been delivered and retained by the <i>Client</i>,• other Defined Cost reasonably incurred in expectation of completing the whole of the <i>service</i> and• any amounts retained by the <i>Client</i>.
	93.2
	The amount due on termination also includes one or more of the following as set out in the Termination Table.
	A2
	The forecast Defined Cost of removing Equipment and any other reasonable demobilisation costs.
	A3
	A deduction of the forecast of the additional cost to the <i>Client</i> of completing the whole of the <i>service</i> .
	A4
	The <i>fee percentage</i> applied to
	<ul style="list-style-type: none">• for Options A and C, any excess of the total of the Prices at the Contract Date over the Price for Service Provided to Date or• for Option E, any excess of the first forecast of the Defined Cost for the <i>service</i> over the Price for Service Provided to Date less the Fee.

Main Option Clauses

OPTION A: PRICED CONTRACT WITH PRICE LIST

Identified and defined terms	11	
	11.2	<p>(21) Defined Cost is the cost of the components in the Short Schedule of Cost Components.</p> <p>(24) The People Rates are the <i>people rates</i> unless later changed in accordance with the contract.</p> <p>(25) The Price for Service Provided to Date is the monthly payment for completed work calculated in accordance with contract Schedule 5 (Pricing Details).</p> <p>Completed work is work without notified Service Failures the correction of which will delay the work of the <i>Service Provider</i> or Others.</p> <p>(27) The Prices are the amounts stated in the price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.</p>
The <i>Service Provider's</i> plan	31	
	31.4	The <i>Service Provider</i> provides information which shows how each item description on the Price List relates to the plan submitted for acceptance.
The Price List	56	
	56.1	Information in the Price List is not Scope.
Compensation events	60	
	60.2	<p>A difference between the final total quantity and the quantity stated for an item in the Price List is a compensation event if</p> <ul style="list-style-type: none"> the difference does not result from a change to the Scope, the difference causes the Defined Cost per unit of quantity to change and the rate in the Price List for the item multiplied by the final total quantity which the <i>Service Provider</i> has completed is more than 0.5% of the total of the Prices at the Contract Date. <p>If the Defined Cost per unit of quantity is reduced, the Prices are reduced.</p>
Assessing compensation events	63	
	63.12	If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i> , which the <i>Service Provider</i> proposed and the <i>Service Manager</i> accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the <i>efficiency percentage</i> .
	63.14	Assessments for changed Prices for compensation events are in the form of changes to the Price List.
	63.15	If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the <i>Service Manager</i> and <i>Service Provider</i> may agree a new rate. If they do not agree the <i>Service Manager</i> assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.

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Resolving and Avoiding Disputes

OPTION W2

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

Resolving disputes	W2.1	<p>(1) Without prejudice to either Parties' right to refer a dispute to the <i>Adjudicator</i> at any time and <u>subject to the Parties first following the escalation process set out in Schedule 15</u>, if the Parties agree, a dispute arising under or in connection with the contract is referred to the <i>Senior Representatives</i>. If the dispute is not resolved by the <i>Senior Representatives</i>, it may by agreement between the Parties be referred to mediation pursuant to Clause W3 or otherwise the dispute is referred to and decided by the <i>Adjudicator</i>. A Party may replace a <i>Senior Representative</i> after notifying the other Party of the name of the replacement.</p> <p>(2) The Party referring a dispute notifies the <i>Senior Representatives</i>, the other Party and the <i>Service Manager</i> of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.</p> <p>(3) The <i>Senior Representatives</i> attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to ten days. At the end of this period the <i>Senior Representatives</i> produce a list of the issues agreed and issues not agreed. The <i>Service Manager</i> and the <i>Service Provider</i> put into effect the issues agreed.</p> <p>(4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the <i>Adjudicator</i> or the <i>tribunal</i>.</p>
The <i>Adjudicator</i>	W2.2	<p>(1) A dispute arising under or in connection with the contract is referred to and decided by the <i>Adjudicator</i>. A Party may refer a dispute to the <i>Adjudicator</i> at any time whether or not the dispute has been referred to the <i>Senior Representatives</i>.</p> <p>(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.</p> <p>(3) The Parties appoint the <i>Adjudicator</i> under the NEC Dispute Resolution Service Contract current at the <i>starting date</i>.</p> <p>(4) The <i>Adjudicator</i> acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.</p> <p>(5) If the <i>Adjudicator</i> is not identified in the Contract Data or if the <i>Adjudicator</i> resigns or becomes unable to act</p> <ul style="list-style-type: none"> • the Parties may choose an adjudicator jointly or • a Party may ask the <i>Adjudicator nominating body</i> to choose an adjudicator. <p>The <i>Adjudicator nominating body</i> chooses an adjudicator within four days of the request. The chosen adjudicator becomes the <i>Adjudicator</i>.</p> <p>(6) A replacement <i>Adjudicator</i> has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The <i>Adjudicator</i> deals with an undecided dispute as if it had been referred on the date of appointment as replacement <i>Adjudicator</i>.</p> <p>(7) A Party does not refer a dispute to the <i>Adjudicator</i> that is the same or substantially the same as one that has already been decided by the <i>Adjudicator</i>.</p> <p>(8) The <i>Adjudicator</i>, and the <i>Adjudicator's</i> employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.</p>
The adjudication	W2.3	<p>(1) Before a Party refers a dispute to the <i>Adjudicator</i>, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the <i>Adjudicator</i> to make. If the <i>Adjudicator</i> is named in the Contract Data, the Party sends a copy of the notice of adjudication to the <i>Adjudicator</i> when it is issued. Within three days of the receipt of the notice of adjudication, the <i>Adjudicator</i> informs the Parties that the <i>Adjudicator</i></p>

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

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

(2) Within seven days of a Party giving a notice of adjudication it

- refers the dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which it relies, including any supporting documents and
- provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) If a matter disputed by the *Service Provider* under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the *Service Provider* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.

(4) The *Adjudicator* may

- review and revise any action or inaction of the *Service Manager* related to the dispute and alter a matter which has been treated as accepted or correct,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time.

(5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Service Provider*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.

(8) The *Adjudicator* decides the dispute and informs the Parties and the *Service Manager* of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and expenses between the Parties.

(9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed.

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- (10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.
- (11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award..
- (12) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

The <i>tribunal</i>	<div data-bbox="438 611 518 638">W2.4</div> <div data-bbox="531 611 1452 1111"><ul style="list-style-type: none">(1) A Party does not refer any dispute under or in connection with the contract to the <i>tribunal</i> unless it has first been decided by the <i>Adjudicator</i> in accordance with the contract.(2) If, after the <i>Adjudicator</i> makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputed and state that it intends to refer the disputed matter to the <i>tribunal</i>. The dispute may not be referred to the <i>tribunal</i> unless this notification is given within four weeks of being informed of the <i>Adjudicator's</i> decision.(3) The <i>tribunal</i> settles the dispute referred to it. The <i>tribunal</i> has the powers to reconsider any decision of the <i>Adjudicator</i> and to review and revise any action or inaction of the <i>Service Manager</i> related to the dispute. A Party is not limited in <i>tribunal</i> proceedings to the information, evidence or arguments put to the <i>Adjudicator</i>.(4) If the <i>tribunal</i> is arbitration, the <i>arbitration procedure</i>, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.(5) A Party does not call the <i>Adjudicator</i> as a witness in <i>tribunal</i> proceedings.</div>
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OPTION W3

Mediation	W3.1	Any dispute or difference between the Parties arising out of or relating to this contract and which has not been resolved by the <i>Senior Representatives</i> can be referred to mediation with the agreement of the Parties in accordance with the provisions of this clause.
	W3.2	<p>The procedure and associated provisions for mediation pursuant to this clause are as follows:</p> <ul style="list-style-type: none"> a neutral adviser or mediator ('the Mediator') is chosen by agreement between the <i>Client</i> and the <i>Service Provider</i> or, if they are unable to agree upon the identity of the Mediator within ten Working Days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten Working Days from the date of the proposal to appoint a Mediator or within ten Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator; and the Parties meet with the Mediator within ten Working Days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.
	W3.3	Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.
	W3.4	In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the <i>Client</i> and a duly authorised senior officer of the <i>Service Provider</i> .
	W3.5	Failing agreement, the <i>Client</i> or <i>Service Provider</i> may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.
	W3.6	The <i>Client</i> and the <i>Service Provider</i> each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.
	W3.7	In the event that the <i>Client</i> and the <i>Service Provider</i> fail to reach agreement within forty Working Days after the Mediator's appointment, or such longer period as may be agreed, the dispute may be referred to the <i>tribunal</i> .

Secondary Option Clauses

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

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

Where Indexation applies, the relevant adjustment shall be:

- applied on the dates set out in the Order Form (each such date an "Adjustment Date"); and
- determined by multiplying the relevant amount or sum by the percentage increase between the Payment Index and the Payment Index published at the previous Adjustment Date provided that, where the percentage increase between the Payment Index and the Payment Index published at previous Adjustment Date (and where the Adjustment Date is the Full Service Commencement Date the previous Adjustment Date shall be the Bid Date) exceeds 3%, the *Service Provider* makes recommendations to the *Client* as to how the effects of the increase on the *Client* may be mitigated and the parties work collaboratively to agree reductions in service levels and/or create contract efficiencies to reduce inflationary cost (any such action to be agreed in writing by the *Client* prior to being implemented). If following completion of this process, the increase in any amounts or sums that are subject to Indexation as a result of an increase in the Payment Index since the previous Adjustment Date remain in excess of 3% such increase is shared:
 - a) in respect of the period between the Bid Date and the Full Service Commencement Date, in a ratio of 65% to the *Client* and 35% to the *Service Provider* (e.g. following a 4% increase in the Payment Index, the *Client* approves the increase in amounts determined by multiplying the relevant amounts by 3.65% and the *Service Provider* bears the cost of the increase in amounts determined by multiplying the relevant amounts by 0.35% (i.e. the above-mentioned ratio applicable to 1%); and
 - b) from the day following the Full Service Commencement Date, equally between the parties (e.g. following a 4% increase in the Payment Index, the *Client* approves the increase in amounts determined by multiplying the relevant amounts by 3.5% and the *Service Provider* bears the cost of the increase in amounts determined by multiplying the relevant amounts by 0.5% (half of 1% each)).

For the avoidance of doubt, this Clause X1 does not apply to applications for an increase in People Rates as a result of an increase in the Real Living Wage pursuant to Clause Z16.

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Except as set out in this Clause X1.1 and subject to Clause Z16, neither the Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the *Service Provider* or Subcontractors of the performance of their obligations.

If the Payment Index has not been published for the relevant month as required for this calculation then the last published value of the index available at the Adjustment Date shall be used.

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

OPTION X2: CHANGES IN THE LAW

Changes in the law X2

- X2.1 A change in the law of the country in which the Affected Property is located is a compensation event if:
- it occurs after the Contract Date
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for them to have allowed for it;
 - it relates specifically to the business of the *Client* and would not affect a Comparable Supply; and
 - it is not one of the other compensation events stated in this contract.
- If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

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OPTION X4: PERFORMANCE GUARANTEE

Performance guarantee	X4	
	X4.1	The <i>Service Provider</i> gives to the <i>Client</i> an ultimate holding company guarantee or a performance bond if stated in the Contract Data.
Ultimate holding company guarantee	X4.2	If the Contract Data states that the <i>Service Provider</i> gives an ultimate holding company guarantee, it gives to the <i>Client</i> a guarantee of the <i>Service Provider's</i> performance from the ultimate holding company of the <i>Service Provider</i> in the form set out in Schedule 11 (Parent Company Guarantee). If the guarantee was not given by the Contract Date, it is given to the <i>Client</i> within 60 days of the Contract Date.
	X4.3	The <i>Service Provider</i> may propose an alternative guarantor who is also owned by the ultimate holding company for acceptance by the <i>Service Manager</i> . A reason for not accepting the guarantor is that its commercial position is not strong enough to carry the guarantee.
Performance bond	X4.4	If the Contract Data states that the <i>Service Provider</i> gives to the <i>Client</i> a performance bond, it gives a performance bond, provided by a bank or insurer which the <i>Service Manager</i> has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 12 (Performance Bond) . 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 <i>Client</i> within four weeks of the Contract Date.

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OPTION X10: INFORMATION MODELLING

Defined terms	X10	
	X10.1	<p>(1) The Information Execution Plan is the <i>information execution plan</i> or is the latest Information Execution Plan accepted by the <i>Service Manager</i>. The latest Information Execution Plan accepted by the <i>Service Manager</i> supersedes the previous Information Execution Plan.</p> <p>(2) Project Information is information provided by the <i>Service Provider</i> which is used to create or change the Information Model.</p> <p>(3) The Information Model is the electronic integration of Project Information and similar information provided by the <i>Client</i> and other Information Providers and is in the form stated in the Information Model Requirements.</p> <p>(4) The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.</p> <p>(5) Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.</p>
Collaboration	X10.2	The <i>Service Provider</i> collaborates with other Information Providers as stated in the Information Model Requirements.
Early warning	X10.3	The <i>Service Provider</i> and the <i>Service Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.
Information Execution Plan	X10.4	<p>(1) If an Information Execution Plan is not identified in the Contract Data, the <i>Service Provider</i> submits a first Information Execution Plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p> <p>(2) Within two weeks of the <i>Service Provider</i> submitting an Information Execution Plan for acceptance, the <i>Service Manager</i> notifies the <i>Service Provider</i> of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that</p> <ul style="list-style-type: none"> • it does not comply with the Information Model Requirements or • it does not allow the <i>Service Provider</i> to Provide the Service. <p>If the <i>Service Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Service Provider</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further one week after the <i>Service Provider's</i> notification, it is treated as acceptance by the <i>Service Manager</i> of the Information Execution Plan.</p> <p>(3) The <i>Service Provider</i> submits a revised Information Execution Plan to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> • within the <i>period for reply</i> after the <i>Service Manager</i> has instructed it to and • when the <i>Service Provider</i> chooses to. <p>(4) The <i>Service Provider</i> provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.</p>
Compensation events	X10.5	If the Information Execution Plan is altered by a compensation event, the <i>Service Provider</i> includes the alterations to the Information Execution Plan in the quotation for the compensation event.
Use of the Information Model	X10.6	The <i>Client</i> owns the Information Model and the <i>Service Provider's</i> rights over Project Information except as stated otherwise in the Information Model Requirements. The <i>Service Provider</i> obtains from a Subcontractor equivalent rights for the <i>Client</i> over information prepared by the Subcontractor. The <i>Service Provider</i> provides to the <i>Client</i> the documents which transfer these rights to the <i>Client</i> .

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Liability	X10.7	<p>(1) The following are <i>Client's</i> liabilities.</p> <ul style="list-style-type: none"> • A fault in the Information Model not caused by a Service Failure in the Project Information. • A fault in information provided by Information Providers other than the <i>Service Provider</i>. <p>(2) The <i>Service Provider</i> is not liable for a Service Failure in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information.</p> <p>(3) The <i>Service Provider</i> provides insurance for claims made against it arising out of its failure to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the <i>starting date</i> until the end of the period stated in the Contract Data.</p>
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OPTION X11: TERMINATION BY THE *CLIENT* (NOT USED WITH OPTION X19)

Termination by the <i>Client</i>	X11	
	X11.1	Upon giving at least 90 days' prior notice, the <i>Client</i> may terminate the <i>Service Provider's</i> obligation to Provide the Service for a reason not identified in the Termination Table by notifying the <i>Service Manager</i> and the <i>Service Provider</i> .
	X11.2	If the <i>Client</i> terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and P4 and the amounts due on termination are A1, A2 and A4.

OPTION X12: MULTIPARTY COLLABORATION

Identified and defined terms	X12	
	X12.1	<p>(1) Partners are those who have a contract in connection with the subject matter of the contract which includes this multiparty collaboration Option or equivalent. The <i>Promoter</i> is a Partner.</p> <p>(2) The Schedule of Partners is a list of the Partners which is in the document the Contract Data states it is in and Partners subsequently added by agreement of the Partners. It sets out the objectives of the Partners and includes targets for performance.</p> <p>(3) An Own Contract is a contract between two Partners.</p> <p>(4) The Core Group comprises the Partners selected to take decisions on behalf of the Partners.</p> <p>(5) The Schedule of Core Group Members is a list of the Partners forming the Core Group.</p> <p>(6) Partnering Information is information which specifies how the Partners collaborate and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with the contract.</p> <p>(7) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.</p>
Actions	X12.2	<p>(1) The Partners collaborate with each other to achieve the <i>Promoter's objective</i> stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.</p> <p>(2) Each Partner nominates a representative to act for it in dealings with other Partners.</p> <p>(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.</p>

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(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Promoter's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in the contract.

Working together	X12.3	<p>(1) The Partners collaborate as stated in the Partnering Information and in a spirit of mutual trust and co-operation.</p> <p>(2) A Partner may ask another Partner to provide information which it needs to carry out the work in its Own Contract and the other Partner provides it.</p> <p>(3) Each Partner gives an early warning to the other Partners when it becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.</p> <p>(4) The Partners use common information systems as set out in the Partnering Information.</p> <p>(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.</p> <p>(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.</p> <p>(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The <i>Service Provider</i> changes its plan if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.</p> <p>(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.</p> <p>(9) A Partner notifies the Core Group before subcontracting any work.</p> <p>(10) A meeting of the Core Group is convened by the <i>Service Provider</i> at the request of any Core Group Member, at not less than five (5) Working Days' notice. Each such meeting is chaired by the <i>Service Provider</i>.</p> <p>(11) Decisions of the Core Group shall be by consensus of all Core Group members present at the meeting. A meeting of the Core Group does not take place without the <i>Service Provider</i> being present at the meeting.</p>
Incentives	X12.4	<p>(1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.</p> <p>(2) The <i>Promoter</i> may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.</p>

OPTION X15: THE SERVICE PROVIDER'S DESIGN

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

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

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

- X15.3 The *Service Provider* may submit its design for acceptance in parts if the design of each part can be assessed fully.
- X15.4 A part of the *service* designed by the *Service Provider* which is not in accordance with the Law or the *Service Provider's* design which the *Service Manager* has accepted is a Service Failure.
- X15.5 The *Client* may use and copy the *Service Provider's* design for any purpose connected with the Affected Property unless otherwise stated in the Scope and for other purposes as stated in the contract. The *Service Provider* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor.
- X15.6 The *Service Provider's* obligation in respect of design is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Service Provider's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope, character, and complexity as the *service*, herein referred to as the "Contract Standard". The *Service Provider* is not liable for a Service Failure which arose from its design unless it failed to carry out that design using the Contract Standard.
- X15.7 If the *Service Provider* corrects a Service Failure for which it is not liable under the contract it is a compensation event.
- X15.8 The *Service Provider* may use the material provided by it under the contract for other work unless
- the ownership of the material has been given to the *Client* or
 - it is stated otherwise in the Scope.
- X15.9 The *Service Provider* retains copies of drawings, specifications, reports and other documents which record the *Service Provider's* design for the *period for retention*. The copies are retained in the form stated in the Scope.
- X15.10 The *Service Provider* provides insurance for claims made against it arising out of its failure to meet the Contract Standard. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the *starting date* until the end of the period stated in the Contract Data.
- X15.11 Before the *starting date* and on each renewal of the insurance policy until the end of the Service Period, the *Service Provider* submits to the *Service Manager* for acceptance a certificate which states that the insurance required by this clause is in force.

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

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

OPTION X18: LIMITATION OF LIABILITY

Limitation of liability	X18
	X18.1 Each of the limits to the <i>Service Provider's</i> liability in this clause apply if a limit is stated in the Contract Data.
	X18.2 The Parties shall not be liable for any of the following types of loss or damage even if, in each case, that Party has been advised of the possibility of such loss or damage: (a) special, indirect or consequential loss;

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- (b) loss of profits (and anticipated profit) or loss of revenue;
- (c) loss of business or contracts;
- (d) loss of anticipated savings; or
- (e) loss of goodwill

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

- X18.3 If the *Service Provider* is liable for loss of or damage to any property owned or occupied by the *Client*, other than the Affected Property, the liability is limited to the amount stated in the Contract Data.
- X18.4 If the *Service Provider* is liable for loss of or damage to the Affected Property, the liability is limited to the amount stated in the Contract Data.

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- X18.5 If Option X15 applies, the *Service Provider's* liability to the *Client* for any claims made during a Contract Year in respect of a failure to achieve the Contract Standard specified in clause X15.6 is limited to the amount stated in the Contract Data.
- X18.6 The *Service Provider's* total liability to the *Client* for all claims made by the *Client* in respect of matters arising under or in connection with the contract in each Contract Year, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract. The excluded matters are amounts payable by the *Service Provider* as stated in the contract for
- delay damages if Option X27 applies,
 - payments stated in the Performance Table,
 - cases of fraud, deliberate default or reckless misconduct by the *Service Provider*, any liability in respect of death or personal injury resulting from negligence of the *Service Provider* or any person for whom the *Service Provider* is responsible,
 - indemnities given by the *Service Provider* to the *Client* under the contract,
 - claims for any costs and expenses incurred by the *Client* associated with the *Service Provider's* failure to remedy Service Failures in accordance with the terms of this contract; and
 - loss of or damage to
 - any property owned or occupied by the *Client* and
 - the Affected Property, which are subject to separate limitations on liability in accordance with clauses X18.3 and X18.4 above.
- X18.7 The *Service Provider* is not liable to the *Client* for a matter unless it is notified to the *Service Provider* before the end of liability date.
- X18.9 Not Used.
- X18.10 The *Client's* total liability to the *Service Provider* for all matters arising under or in connection with the contract is limited to the greater of £5,000,000 or the total of the Prices payable under the contract.

OPTION X21: WHOLE LIFE COST

Whole life cost

X21

- X21.1 The *Service Provider* may propose to the *Service Manager* that the Scope is changed in order to reduce the cost of operating and maintaining the Affected Property, other than a reduction to the amount the *Client* pays to the *Service Provider* for Providing the Service.
- X21.2 If the *Service Manager* is prepared to consider the change, the *Service Provider* submits a quotation which comprises
- a detailed description of the proposed change,
 - the forecast cost reduction to the *Client* of the Affected Property over its whole life,
 - an analysis of the resulting risks to the *Client*,
 - the proposed changes to the Prices and Performance Table and
 - a revised plan showing any changes to the timing of the service.
- X21.3 The *Service Manager* consults with the *Service Provider* about a quotation. The *Service Manager* replies within the period for reply. The reply is acceptance of the quotation or the reason for not accepting it. The *Service Manager* may give any reason for not accepting the quotation.

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X21.4 The *Service Manager* does not change the Scope as proposed by the *Service Provider* unless the *Service Provider's* quotation is accepted.

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- X21.5 When a quotation to reduce the costs of operating and maintaining the Affected Property is accepted the *Service Manager* changes the Scope, the Prices and the Performance Table accordingly and accepts the revised plan. The change to the Scope is not a compensation event.
- X21.6 The *Service Provider* produces at the start of each year of the Service Period a plan for improving the provision of the *service* and/or reducing the Prices (without adversely affecting the performance of this contract) during that year ("Continuous Improvement Plan") for the *Client's* approval.
- X21.7 Should the *Service Provider's* costs in Providing the Service be reduced and/or any savings generated by the *Client* as a result of any changes implemented pursuant to the Continuous Improvement Plan then without prejudice to Clause X21.8 below and subject to prior agreement in writing by the *Client* and the *Service Provider* during mobilisation all of the cost savings shall be shared between the *Client* and *Service Provider* in the ratio of 60% to the *Client* and 40% to the *Service Provider* or such other ratio as the Parties shall agree during mobilisation such agreement on any gainshare mechanism to consider (without limitation) the following matters:
- determination of the point at which savings are recognised
 - when and how often the savings are to be calculated
 - whether gainshare payments apply throughout the Service Period.
 - whether the *Service Provider* is required to pay back any gainshare in the event it fails to sustain the savings throughout the Service Period.
 - whether the gainshare mechanism is to incorporate inflation.
- X21.8 At any time during the Service Period, the *Service Provider* may make a proposal for a different gainshare mechanism to that detailed in Clause X21.7 or amendments to the gainshare mechanisms detailed in Clause X21.7 (provided in each case that the gainshare proposal does not propose to lower the quality of the service). If the *Client* deems the gainshare proposal to be acceptable then the *Service Provider* shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio

OPTION X24: THE ACCOUNTING PERIODS

Accounting periods

X24

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

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issued,

- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

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OPTION X27: PROJECT ORDERS

Identified and defined terms	<p>X27</p> <p>X27.1 (1) A Project is work included in the <i>service</i> which the <i>Service Manager</i> instructs the <i>Service Provider</i> to carry out and for which a Project Order programme is required.</p> <p>(2) Project Completion is when the <i>Service Provider</i> has done all the work in the Project and corrected Service Failures which would have prevented the <i>Client</i> or Others from using the Affected Property or Others from doing their work.</p> <p>(3) Project Completion Date is the date for completion stated in the Project Order unless later changed in accordance with the contract.</p> <p>(4) A Project Order is the <i>Service Manager's</i> instruction to carry out a Project.</p>
Project Orders	<p>X27.2 The <i>Service Manager</i> may issue a Project Order to the <i>Service Provider</i>. Before issuing a Project Order, the <i>Service Manager</i> instructs the <i>Service Provider</i> to submit a quotation for the Project. The instruction includes</p> <ul style="list-style-type: none"> • a detailed description of the work in the Project and • the Project starting date and Project Completion Date <p>and may also include</p> <ul style="list-style-type: none"> • a bonus rate for early Project Completion and • an amount of delay damages for late Project Completion. <p>The delay damages in a Project Order, if any, are not more than the estimated cost to the <i>Client</i> of late Project Completion.</p> <p>X27.3 The <i>Service Provider</i> submits a quotation for a Project within three weeks of being instructed to do so by the <i>Service Manager</i>. The <i>Service Provider</i> submits details of its assessment with the quotation. The <i>Service Manager</i> replies within two weeks of the submission. The reply is</p> <ul style="list-style-type: none"> • acceptance of the quotation and the issue of the Project Order, • an instruction to submit a revised quotation, • that the <i>Service Manager</i> will be making the assessment or • a notification that the Project will not be instructed. <p>X27.4 The <i>Service Manager</i> instructs the <i>Service Provider</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Service Provider</i>. The <i>Service Provider</i> submits the revised quotation within three weeks of being instructed to do so.</p> <p>X27.5 The <i>Service Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"> • the <i>Service Provider</i> to submit quotations for a Project or • the <i>Service Manager</i> to reply to a quotation <p>if the <i>Service Manager</i> and the <i>Service Provider</i> agree to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Service Provider</i> of the extension which has been agreed.</p> <p>X27.6 The <i>Service Manager</i> assesses the pricing for the Project if</p> <ul style="list-style-type: none"> • the <i>Service Provider</i> has not submitted a quotation and details of its assessment within the time allowed or • the <i>Service Manager</i> decides that the <i>Service Provider</i> has not assessed the Project correctly in a quotation and has not instructed the <i>Service Provider</i> to submit a revised quotation.

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

X27.7 The assessment of a Project is in the form of a Project price list. Where items of work in the Project price list are covered by rates in the Price List, the items are priced using those rates. The Prices for items in the Project price list which are not taken from the Price List are assessed in the same way as a compensation event is assessed.

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

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

If the Project Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.

X27.8A No claim may be made by the *Client* in relation to a Project after a period of 6 years following Project Completion.

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

X27.10 When a Project Order is issued

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

A Project is not a compensation event.

Starting and completion

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

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

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

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

Project Order programme

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

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

- the Project starting date and the Project Completion Date,
- planned Project Completion,
- the order and timing of the work of the *Client* and Others as last agreed with them by the *Service Provider* or, if not so agreed, as stated in the Scope,
- the order and timing of the operations which the *Service Provider* plans to do in order to complete the Project,
- provisions for
 - float,

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- time risk allowances,

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- health and safety requirements and
- the procedures set out in the contract,
- the dates when, in order to Provide the Service in accordance with the Project Order programme, the *Service Provider* will need
 - access to the Affected Property,
 - acceptances,
 - Plant and Materials, equipment and other things to be provided by the *Client* and
 - information from Others,
- for each operation, a statement of how the *Service Provider* plans to do the work identifying the principal Equipment and other resources which will be used and
- other information which the Scope requires the *Service Provider* to show on a Project Order programme submitted for acceptance.

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

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

- the *Service Provider's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Service Provider's* plans realistically or
- it does not comply with the Scope.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Service Provider* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Service Provider's* notification, it is treated as acceptance by the *Service Manager* of the Project Order programme.

Revising the Project Order programme

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

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- how the *Service Provider* plans to deal with any delays and to correct notified Service Failures and
- any other changes which the *Service Provider* proposes to make to the Project Order programme.

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

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

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

Access

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

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Compensation events	X27.19	<p>The following events are compensation events.</p> <p>(1) The <i>Client</i> does not provide the right of access to the Affected Property in accordance with the date for access shown on the latest accepted Project Order programme.</p> <p>(2) The <i>Client</i> does not provide something which it is to provide by the date shown on the latest accepted Project Order programme.</p> <p>(3) The <i>Service Provider</i> receives a Project Order after the starting date stated in the Project Order.</p> <p>(4) The <i>Client</i> or Others do not work in accordance with the latest accepted Project Order programme.</p> <p>(5) A change to the Affected Property as a result of a Project Order.</p> <p>(6) The <i>Service Manager</i> notifies the <i>Service Provider</i> that a Project will not be instructed.</p>
Quotations for compensation events	X27.20	<p>Quotations for a compensation event assessed by the <i>Service Provider</i> include any delay to a Project Completion Date. If the programme for remaining work is altered by the compensation event, the <i>Service Provider</i> includes the alterations to the Project Order programme in the quotation.</p>
Assessing compensation events	X27.21	<p>A delay to a Project Completion Date is assessed as the length of time that, due the compensation event, planned Project Completion is later than planned Project Completion as shown on the Project Order programme current at the dividing date. The assessment takes into account</p> <ul style="list-style-type: none"> any delay caused by the compensation event already in the Project Order programme and events which have happened between the date of the Project Order programme and the dividing date.
	X27.22	<p>Assessment of the effect of a compensation event on a planned Project Completion includes time risk allowances for matters which have a significant chance of occurring and are not compensation events.</p>
	X27.23	<p>Assessment of the effect of a compensation event on a planned Project Completion is based upon the assumptions that the <i>Service Provider</i> reacts competently and promptly to the event and that any time due to the event is reasonably incurred.</p>
	X27.24	.
The Service Manager's assessment	X27.25	<p>The <i>Service Manager</i> assesses a compensation event if</p> <ul style="list-style-type: none"> the compensation event affects planned Project Completion and the <i>Service Provider</i> has not submitted a Project Order programme or alterations to a Project Order programme which the contract requires it to submit or the <i>Service Manager</i> has not accepted the programme for one of the reasons stated in the contract.
	X27.26	<p>The <i>Service Manager</i> assesses the programme for the remaining work on the Project and uses it in the assessment of the compensation event if</p> <ul style="list-style-type: none"> there is no Project Order programme, the <i>Service Provider</i> has not submitted a Project Order programme or alterations to a Project Order programme for acceptance as required by the contract or the <i>Service Manager</i> has not accepted the <i>Service Provider's</i> latest Project Order programme for one of the reasons stated in the contract.

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Implementing compensation events	X27.27	When a compensation event is implemented the Project Completion Date is changed accordingly.
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OPTION X28: CHANGE OF CONTROL

Defined terms	X28	
	X28.1	<p>A Change of Control is where an individual, company or partnership, other than the <i>Service Provider</i>, has taken control of the <i>Service Provider</i> after the Contract Date so that the individual, company or partnership</p> <ul style="list-style-type: none"> • exercises, • is able to exercise or • is entitled to acquire <p>direct or indirect control over the <i>Service Provider's</i> affairs.</p>
Change of Control	X28.2	<p>The <i>Service Provider</i> notifies the <i>Service Manager</i> and the <i>Client</i> if a Change of Control is expected to occur, unless if it is prevented from doing so by a regulatory authority. The <i>Service Provider</i> notifies the <i>Service Manager</i> and the <i>Client</i> immediately if a Change of Control has occurred.</p>
Termination	X28.3	<p>The <i>Client</i> may terminate within eight weeks of becoming aware of a Change of Control if</p> <ul style="list-style-type: none"> • the financial position of the individual, company or partnership which has taken control of the <i>Service Provider</i> does not meet the financial position stated in the Contract Data, • the Change of Control contravenes the <i>ethical principles of the Client</i> or • there is a conflict of interest that cannot be resolved.
	X28.4	<p>If the <i>Client</i> terminates for a Change of Control the termination procedures followed are P1 and P4 and the amount due on termination is A1 and A2.</p>

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Option Y

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OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

The Housing
Grants,
Construction and
Regeneration Act
1996

Y(UK)2

Definitions	Y2.1	In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
Dates for payment	Y2.2	<p>The date on which a payment becomes due is the later of</p> <ul style="list-style-type: none"> the date of receipt by the Party making payment of an invoice, issued in accordance with these <i>conditions of contract</i> and fourteen days after the assessment date. <p>The date on which the final payment becomes due is the later of</p> <ul style="list-style-type: none"> the date of receipt by the Party making payment of an invoice, issued in accordance with these <i>conditions of contract</i> and <ul style="list-style-type: none"> if the <i>Service Manager</i> makes an assessment after the end of the Service Period, fifteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, if the <i>Service Manager</i> does not make an assessment after the end of the Service Period, two weeks after the <i>Service Provider</i> issues its assessment or if the <i>Service Manager</i> has issued a termination certificate, fifteen weeks after the issue of the certificate. <p>The final date for payment is seven days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data.</p> <p>The <i>Service Manager's</i> certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the <i>Service Manager</i> does not make an assessment at the end of the Service Period, the <i>Service Provider's</i> assessment is the notice of payment.</p>
Notice of intention to pay less	Y2.3	If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.
	Y2.4	<p>If the <i>Client</i> terminates for one of reasons R1 to R15, R18 or R21 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless</p> <ul style="list-style-type: none"> it has notified the <i>Service Provider</i> in accordance with the contract that it intends to pay less than the notified sum or the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the <i>Service Provider</i> in accordance with the contract that it intends to pay less than the notified sum.
Suspension of performance	Y2.5	If the <i>Service Provider</i> exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event.

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

Third party rights	Y(UK)3
	<div>Y3.1 A <i>beneficiary</i> may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.</div> <div>Y3.2 Other than the Parties or a <i>beneficiary</i>, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.</div> <div>Y3.3 If a <i>beneficiary</i> is identified by class or description and not as a named person or organisation, the <i>Client</i> notifies the <i>Service Provider</i> of the name of the <i>beneficiary</i> once it has been identified.</div> <div>Y3.4 The enforcement rights granted to Contracting Authorities under this clause are subject to the following provisions: the <i>Client</i> may enforce any provision of this contract on behalf of a Contracting Authority; any claim from a Contracting Authority under the Contracts (Rights of Third Parties) Act 1999 to enforce this contract shall be brought by the <i>Client</i> if reasonably practicable for the <i>Client</i> and the Contracting Authority to do so; and the <i>Service Provider's</i> limits and exclusions of liability in this contract shall apply to any claim to enforce this contract made by the <i>Client</i> on behalf of a Contracting Authority and to any claim to enforce this contract made by a Contracting Authority acting on its own behalf. If there is a breach or default by the <i>Service Provider</i> in relation to this contract any liability of the <i>Service Provider</i> as a result of such breach or default shall be resolved or determined between the <i>Service Provider</i> and the <i>Client</i> under the terms of this contract and any Service Order or Project Order regardless of whether the ultimate beneficiary is a Contracting Authority.</div>

OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions of contract	Z1
	<div>Z1.1 The <i>additional conditions of contract</i> stated in the Contract Data are part of the contract.</div>

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Short Schedule of Cost Components

The schedule is part of these *conditions of contract* only when Option A is used. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Service.

People	<p>1 The following components of the cost of</p> <ul style="list-style-type: none"> • people who are directly employed by the <i>Service Provider</i> and whose normal place of working is within the Service Areas, • people who are directly employed by the <i>Service Provider</i> and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas and • people who are not directly employed by the <i>Service Provider</i> but are paid for by it according to the time worked while they are within the Service Areas. <p>11 Amounts calculated by multiplying each of the People Rates by the total time appropriate to that rate spent within the Service Areas.</p>
Equipment	<p>2 The following components of the cost of Equipment which is used within the Service Areas.</p> <p>21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.</p> <p>22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.</p> <p>23 The time required is expressed in hours, days, weeks or months consistent with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.</p> <p>24 Unless the item is in the published list and the rate includes the cost component, payments for</p> <ul style="list-style-type: none"> • transporting Equipment to and from the Service Areas other than for repair and maintenance, • erecting and dismantling Equipment and • constructing, fabricating or modifying Equipment as a result of a compensation event. <p>25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.</p> <p>26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.</p> <p>27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.</p>
Plant and Materials	<p>3 The following components of the cost of Plant and Materials.</p> <p>31 Payments for</p> <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Service Areas,

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		<ul style="list-style-type: none"> • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Subcontractors	4	The following components of the cost of Subcontractors.
	41	Payments to Subcontractors for work which is subcontracted.
Charges	5	The following components of the cost of charges paid by the <i>Service Provider</i> .
	51	Payments for provision and use in the Service Areas of <ul style="list-style-type: none"> • water, • gas, • electricity, • telephone and • internet.
	52	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i> .
	53	Payments for <ul style="list-style-type: none"> (a) cancellation charges arising from a compensation event (b) buying or leasing land or buildings within the Service Areas (c) compensation for loss of crops or buildings (d) royalties (e) inspection certificates (f) charges for access to the Service Areas (g) facilities for visits to the Service Areas by Others (h) consumables and equipment provided by the <i>Service Provider</i> for the Service Manager's offices.
Manufacture and fabrication	6	The following components of the cost of manufacture and fabrication of Plant and Materials which are manufactured or fabricated by the <i>Service Provider</i> outside the Service Areas.
	61	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas.
Shared services outside the Service Areas	7	The following component of the cost of people who are providing a <i>shared service</i> outside the Service Areas.
	71	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a <i>shared service</i> outside the Service Areas.
Insurance	8	The following are deducted from cost <ul style="list-style-type: none"> • the cost of events for which the contract requires the <i>Service Provider</i> to insure and • other costs paid to the <i>Service Provider</i> by insurers.

Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

Z1

Defined Terms	
At the end of Clause 11.2 add the following new defined terms:	
1.1	Affiliate means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time.
1.2	Auditor is: the <i>Client's</i> internal and external auditors; the <i>Client's</i> statutory or regulatory auditors; the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; HM Treasury or the Cabinet Office; any party formally appointed by the <i>Client</i> to carry out audit or similar review functions; and successors or assigns of any of the above.
1.3	Bid Date means the date of submission of the Service Provider's tender which has been accepted by the Client in response to the Client's Invitation to Submit Final Bids;
1.4	Contract Year means twelve (12) consecutive calendar months starting on the Contract Date and each subsequent twelve (12) consecutive calendar month period.
1.5	Contracting Authority means the contracting authorities that are identified in the Scope.
1.6	The Call-Off Contract Management Process means the process set out in Schedule 8 (Call Off Contract Management).
1.7	A Central Government Body is a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency.
1.8	CDM Regulations means the Construction (Design and Management) Regulations 2015 and related code of practice together with any requirements issued from time to time by the Health and Safety Executive.
1.9	Client Confidential Information is all Personal Data and any information,

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however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Client*, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

- 1.10 Commercially Sensitive Information means the Service Provider's Confidential Information explicitly detailed in Joint Schedule 4 to the Framework Contract.
- 1.11 Comparable Supply means in relation to each of the services, goods and works included in *the service* a service provided to a third party by a supplier independent from the *Service Provider* and Sub-Contractor which is comparable with *service* provided by the *Service Provider*, including (without limitation) in terms of the nature, quality, technical complexity and quantity of the services and the commercial terms (including the service levels and other performance obligations).
- 1.12 Confidential Information means any information designated as such by the Party (including a Contracting Authority) disclosing that information.
- 1.13 Contracts Finder means the Government's publishing portal for public sector procurement opportunities.
- 1.14 Control means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly.
- 1.15 Crown Body means any department, office or agency of the Crown.
- 1.16 Data Protection Legislation means:
- (i) the UK GDPR as amended from time to time;
 - (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy;
 - (iii) all applicable Law about the processing of Personal Data and privacy.
- 1.17 Deleterious Materials are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's trade and/or the construction industry:
- to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person
 - to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the works or any part thereof and/or to other structures, finishes, plant and/or machinery
 - to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works
 - to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works

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	<ul style="list-style-type: none"> • not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices and/or • to be supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC)
1.18	Documents means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the <i>Service Provider</i> in relation to this contract.
1.19	DPA 2018 means the Data Protection Act 2018.
1.20	Due Diligence Information means any information supplied to the <i>Service Provider</i> by or on behalf of the <i>Client</i> prior to the Contract Date;
1.21	Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
1.22	FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
1.23	Full Service Commencement Date means 1 February 2024.
1.24	Good Industry Practice means the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.
1.25	<p>Government Data means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Client's Confidential Information, and which:</p> <ul style="list-style-type: none"> i) are supplied to the <i>Service Provider</i> by or on behalf of the <i>Client</i>; or ii) the <i>Service Provider</i> is required to generate, process, store or transmit pursuant to the contract.
1.26	Intellectual Property Rights or "IPRs" means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.
1.27	Installation Works means all works which the <i>Service Provider</i> is to carry out during the Service Period to install the Plant and Materials in accordance with the Scope.
1.28	Key Sub-contract means a subcontract with a Key Subcontractor.
1.29	Law is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court

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of law, or directives or requirements of any regulatory body with which the *Service Provider* is bound to comply under the *law of the contract*.

1.30 An Occasion of Tax Non-Compliance is:

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

(b) a Relevant Tax Authority successfully challenging the *Service Provider* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or

(c) the failure of an avoidance scheme which the *Service Provider* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime and

(d) where any tax return of the *Service Provider* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

1.31 Order Form means the completed CCS Order Form Template issued by the *Client* with the contract.

1.32 Personal Data has the meaning given to it in the UK GDPR.

1.33 A Prohibited Act is:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* and/or a Contracting Authority and/or any other public body a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;

(c) committing any offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)

(ii) under legislation or common law concerning fraudulent acts or anti-competitive behaviour; or

(iii) defrauding, attempting to defraud or conspiring to defraud the *Client* and/or a Contracting Authority or other public body; or

(d) any activity, practice or conduct which would constitute one of the offences or breaches of law listed under (c) above if such activity, practice or conduct had been carried out in the UK.

1.34 Real Living Wage means the real living wage as published yearly by the Living

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	Wage Foundation.
1.35	Relevant Conviction means other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).
1.36	Relevant Requirements are all Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
1.37	Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.
1.38	Security Management Plan means the <i>Service Provider's</i> security management plan prepared pursuant to Schedule 18 (Security).
1.39	Security Policy means the <i>Client's</i> security policy, referred to in the Scope, in force as at the <i>starting date</i> (a copy of which has been supplied to the <i>Service Provider</i>), as updated from time to time and notified to the <i>Service Provider</i> .
1.40	<i>Service Provider's</i> Confidential Information is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the <i>Service Provider</i> , including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
1.41	Service Provider Staff means all directors, officers, employees, agents, consultants and contractors of the <i>Service Provider</i> and/or of any Subcontractor engaged in the performance of the <i>Service Provider's</i> obligations under the contract.
1.42	SME means an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises.
1.43	Storage Media means the part of any device that is capable of storing and retrieving data.
1.44	Key Subcontractor means any Subcontractor or Sub-Subcontractor as set out in the Order Form or as may be amended from time to time pursuant to clause 24.4
1.45	A SubSubcontractor is a person or organisation who has a contract with a Subcontractor to provide a service which is necessary to Provide the Service, except for the <ul style="list-style-type: none"> (a) hire of Equipment or (b) supply of people paid for by the Subcontractor according to the time they work.
1.46	Supply Chain Information Report Template means the document in the form to be agreed by the Parties following the Contract Date.
1.47	Working Days means a day (other than a Saturday or Sunday) when banks

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Z2

in London are open for business.

- 1.48 UK GDPR is the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679).
- 1.49 VCSE means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

Key Roles and Key Staff

- 1) The Key Roles and names of the persons who the *Service Provider* shall appoint to fill those Key Roles at the *starting date* are set out in the Order Form.
- 2) The *Service Provider* ensures that the Key Staff fulfil the Key Roles at all times during the Service Period.
- 3) The *Client* may identify any further roles as being Key Roles and, following agreement to the same by the *Service Provider* the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 4) The *Service Provider* does not and procures that any Subcontractor does not remove or replace any Key Staff unless:
 - a) requested to do so by the *Service Manager* or the *Service Manager* approves such removal or replacement (not to be unreasonably withheld or delayed);
 - b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - c) the person's employment or contractual arrangement with the *Service Provider* or Subcontractor is terminated for material breach of contract by the employee.
- 5) The *Service Provider*:
 - a) notifies the *Service Manager* promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the *Service Provider* shall ensure appropriate temporary cover for *that* Key Role);
 - d) ensures that any Key Role is not vacant for any longer than ten (10) Working Days;
 - e) gives as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - f) ensures that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the *service*; and
 - g) ensures that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 6) The *Service Manager* may require the *Service Provider* to remove or procure that any Subcontractor shall remove any Key Staff that the *Client* considers in any

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Z3

respect unsatisfactory. The *Client* is not liable for the cost of replacing any Key Staff.

Not Used

Z4

Contract Risk Management

- 1) Both Parties pro-actively manage risks attributed to them under the terms of the contract.
- 2) The *Service Provider* develops, operates, maintains and amends, as agreed with the *Client*, processes for:
 - a) the identification and management of risks;
 - b) the identification and management of issues;
 - c) monitoring and controlling project plans; and
 - d) monitoring and disclosing to the *Client* any risks allocated by the *Service Provider* to their supply chain.
- 3) The *Service Provider* allows the *Client* to inspect at any time within working hours the accounts and records which the *Service Provider* is required to keep.

Z5

Subcontractors

Z5.1 The *Service Provider* includes in the subcontract with each Key Subcontractor (and each new or replacement subcontract):

- (i) substantially the same provisions set out in the contract;
- (ii) provisions which will enable the *Service Provider* to discharge its obligations under the contract;
- (iii) a right under the Contracts (Rights of Third Parties) Act 1999 for the *Client* and Contracting Authorities to take the benefit of and enforce all rights of the *Service Provider* under the subcontract as if the *Client* and Contracting Authorities were the *Service Provider*;
- (iv) a provision enabling the *Service Provider* to assign, novate or otherwise transfer any of its rights and/or obligations under the subcontract to the *Client* and/or relevant Contracting Authorities, a New Service Provider or a subcontractor of a New Service Provider without any payment of compensation or damages;
- (v) obligations no less onerous on the Key Subcontractor than those imposed on the *Service Provider* under the contract in respect of:
 - (A) the GDPR requirements set out in Schedule 3

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(GDPR);

- (B) the FOIA and other access request requirements set out in clause Z18 (Freedom of Information);
- (C) the obligation not to embarrass the *Client* or Contracting Authorities or otherwise bring the *Client* or Contracting Authorities into disrepute;
- (D) the keeping of records in respect of the goods and/or services being provided under the subcontract and the conduct of audits set out in clause Z27 (Records, audit access and open book data);
- (vi) provisions enabling the *Service Provider* to terminate the subcontract on notice on terms no more onerous on the *Service Provider* than those imposed on the *Client* under clause 9 (Termination) of the contract;
- (vii) step-in rights for the *Client* drafted in the same terms contained in the contract;
- (viii) a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Service provided to the *Service Provider* under the subcontract without first seeking the written consent of the *Client*;

Z5.2 Where the *Service Provider* is unable to procure that its Key Subcontractors enter into the terms set out in clause Z5.1 above after reasonable attempts to obtain such terms and the *Service Provider* demonstrates such attempts it immediately raises such issue with the *Service Manager* and the *Service Manager* decides whether to waive any such provisions. Such waiver only relates to such Key Subcontractor and is not be used as a precedent.

Z5.3 The *Service Provider* delivers to the *Service Manager* a copy of each Key Sub-Contract as soon as it is entered into (commercially sensitive information disclosure of which would prejudice the commercial interests of the Key Subcontractor may be redacted to the extent that it reveals information about the Key Subcontractor's costing mechanisms, profit margins and overheads and such information is not already within the public domain). The *Service Provider* does not allow a Key Subcontractor to commence performance until such copy has been delivered together with the signed collateral warranties required pursuant to clause Z6 in favour of the parties identified in the Contract Data.

Z5.4 Subject to clause Z5.5, the *Service Provider* does not:

- (i) terminate or agree to the termination of all or part of any Key Sub-contract;
- (ii) make or agree to any material variation of any Key Sub-contract;
- (iii) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Key Sub-contract; or

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- (iv) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Key Sub-contract,

unless the proposed course of action (and any relevant documentation) is submitted to the *Service Manager* for review and there is no objection within twenty (20) Working Days of receipt by the *Service Manager* of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties

Z5.5 Notwithstanding clause Z5.4, a Key Sub-contract may not be waived, assigned, transferred, subcontracted or terminated without the prior written consent of the *Client* (such consent to be withheld at its absolute discretion).

Z5.6 If the *Service Provider* fails to comply with the approvals process set out in clause 24 and/or the provisions of sub-clauses Z5.1 – Z5.8 the *Service Provider* shall not be entitled to claim any part of the Price applicable to the relevant subcontract until the *Service Provider* has remedied the failure.

Z5.7 The *Client* may terminate if the *Service Manager* has notified that the *Service Provider* has not complied with its payment obligations under any Key Subcontract and the *Service Provider* has not put the default right within four weeks of the date when the *Service Manager* notified the *Service Provider* of the default.

Z5.8 The *Service Provider* provides the *Client* with the following information in respect of the proposed Key Sub-contract:

- (i) the proposed Key Subcontractor's name, registered office and company registration number;
- (ii) the scope/description of any Services to be provided by the proposed Key Subcontractor;
- (iii) where the proposed Key Subcontractor is an Affiliate of the *Service Provider*, evidence that demonstrates to the reasonable satisfaction of the *Client* and that the proposed subcontract has been agreed on "arm's-length" terms;
- (iv) the subcontract price expressed as a percentage of the total projected Price over the Service Period; and
- (v) Credit Rating Threshold of the Key Subcontractor.

Z5.9 The *Service Provider* includes in the subcontract with each Subcontractor (and each new or replacement subcontract):

- (i) a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract;
- (ii) a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the

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Z6

	<p>period for payment is to be not greater than 9 days after the final date for payment in this contract; and</p> <p>(iii) a provision requiring the Subcontractor to assess the amount due to a Subsubcontractor without taking into account the amount paid by the <i>Service Provider</i>.</p> <p>Z5.10 The <i>Service Provider</i> assesses the amount due to a Subcontractor without taking into account the amount certified by the <i>Service Manager</i>.</p> <p>Z5.11 The <i>Service Provider</i> provides to the <i>Client</i> a list, updated quarterly, of all SubContractors and SubSubcontractors which may provide a service which is necessary to Provide the Service and/or work for any Project.</p>
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Z7

	<p>Collateral warranty agreements</p> <p>Z6.1 The <i>Service Provider</i> enters into the collateral warranty agreements in the formats appended in Contract Schedule 13 (Collateral Warranty) in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the <i>Service Manager</i> no later than ten Working Days after the <i>Service Manager</i> has provided the <i>Service Provider</i> with appropriate collateral warranty agreements suitable for execution.</p> <p>Z6.2 The <i>Service Provider</i> procures from the Subcontractors identified in the Contract Data collateral warranty agreements in the formats appended in Contract Schedule 13 (Collateral Warranty) in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the <i>Service Manager</i> no later than fifteen Working Days after the <i>Service Manager</i> has provided the <i>Service Provider</i> with appropriate collateral warranty agreements suitable for execution.</p> <p>Z6.3 If the <i>Service Provider</i> fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the <i>Service Provider</i> has remedied the failure."</p>
	<p>Small and Medium Sized Enterprises (SMEs)</p> <p>Z7.1 The <i>Service Provider</i> takes all reasonable steps to engage SMEs as Subcontractors and seeks to ensure that no less than 33% of the Subcontractors (the "SME Percentage") are SMEs or that a similar proportion of the Defined Cost of the service is undertaken by SMEs.</p> <p>Z7.2 The <i>Service Provider</i> reports to the <i>Service Manager</i> in the contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the service that has been undertaken by SMEs.</p> <p>Z7.3 The <i>Service Provider</i> ensures that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the <i>Service Manager</i> not accepting subcontract conditions proposed by the <i>Service Provider</i> is that they are unduly disadvantageous to the Subcontractor.</p>

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Visibility of Sub-Contract Opportunities in the Supply Chain

Z8.1 The *Service Provider* shall:

Z8.1.1 subject to Sub-clause Z8.1.8, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the *service* above a minimum threshold of £25,000 that arise during the Service Period;

Z8.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;

Z8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Service Period;

Z8.1.4 provide reports on the information at Sub-clause Z8.1.3 to the *Client* in the format and frequency as reasonably specified by the *Client*; and

Z8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

Z8.1.7 Each advert referred to at Sub-clause Z8.1.1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Service Provider*.

Z8.1.8 The obligation on the *Service Provider* set out at Z8.1 shall only apply in respect of Sub-Contract opportunities arising after the Contract Date.

Z8.1.9 Notwithstanding Sub-clause Z8.1, the *Client* may, by giving its prior approval, agree that a Sub-Contract opportunity is not required to be advertised by the *Service Provider* on Contracts Finder.

Z9

Visibility of Supply Chain Spend

Z9.1 In addition to any other management information requirements set out in the contract, the *Service Provider* agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the "SME Management Information Reports") to the *Client* which incorporates the data described in the Supply Chain Information Report Template which is:

- (a) the total contract revenue received directly on the Contract;
- (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

Z9.2 The SME Management Information Reports shall be provided by the *Service Provider* in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the *Client* from time to time. The *Service Provider* agrees that it shall use the Supply Chain Information Report Template to

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provide the information detailed at Paragraph Z9.1(a)–(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the *Client* issuing a replacement version. The *Client* agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

Z9.3 The *Service Provider* further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior approval of the *Client*.

Transparency Reports

Z10.1 The *Service Provider* recognises that the *Client* is subject to PPN 01/17 (Updates to transparency principles v1.1 <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The *Service Provider* complies with the provisions of this clause in order to assist the *Client* with its compliance with its obligations under that PPN.

Z10.2 Without prejudice to the *Service Provider's* reporting requirements set out in the Framework Contract, the parties agree the format of the Transparency Reports during the mobilisation period in line with the dates set out in and consistent with the content requirements and format set out in Contract Schedule 14 (List of Transparency Reports). The *Service Provider* provides the Transparency Reports at the frequencies detailed in Contract Schedule 14 (List of Transparency Reports).

Z10.3 If the *Client* rejects the format of any proposed Transparency Report or the subsequent submission of any Transparency Report submitted by the *Service Provider*, the *Service Provider* submits a revised version of the relevant report for further approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the *Client*. If the Parties fail to agree on a draft Transparency Report the *Client* determines what should be included. Any other disagreement in connection with Transparency Reports is treated as a dispute. Where requested by the *Client*, the *Service Provider* implements any changes to the content, requirements and format of a Transparency Report which the *Client* may require over time.

Z10.4 The *Service Provider* provides accurate and up-to-date versions of each Transparency Report (and any other report reasonably requested by the *Client* for any purpose to enable the *Client* to manage, monitor and report compliance by the *Service Provider*) to the *Client* (inclusive of all supporting information, documents, reports, backing information, and other requirements detailed in Contract Schedule 14 (List of Transparency Reports)) upon request and no less frequently than the minimum frequency referred to in Contract Schedule 14 (List of Transparency Reports).

Z10.5 The *Client* may vary the Transparency Reports from time to time, which the Supplier does not unreasonably refuse.

Z10.6 The requirements of this clause Z10 (Transparency Reports) are in addition to any other reporting requirement within this contract.

Z10.7 Where requested by the *Client*, the *Service Provider* provides the *Client* with access to raw data and interfaces with or uses *Client* systems to store raw data in a mutually accessible repository.

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Intellectual Property

Z11.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Service Provider* in relation to the contract and the work executed from them remains the property of the *Service Provider*. The *Service Provider* hereby grants to the *Client* and relevant Contracting Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the Affected Property. Such licence entitles the *Client* and/or Contracting Authority to grant sub-licences to third parties in the same terms as this licence provided always that the *Service Provider* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Service Provider*.

Z11.2 In the event that the *Service Provider* does not own the copyright or any Intellectual Property Rights in any Document, the *Service Provider* uses all reasonable endeavours to procure the right to grant such rights to the *Client* and relevant Contracting Authority to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Service Provider* is unable to procure the right to grant such rights to the *Client* and/or Contracting Authority in accordance with the foregoing the *Service Provider* procures that the third party grants a direct licence to the *Client* and/or Contracting Authority on industry acceptable terms.

Z11.3 The *Service Provider* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* and/or Contracting Authority or any licensee or assignee of the *Client* and/or Contracting Authority.

Z11.4 In the event that any act unauthorised by the *Client* and/or Contracting Authority infringes a moral right of the *Service Provider* in relation to the Documents the *Service Provider* undertakes, if the *Client* and/or Contracting Authority so requests and at the *Client's* and/or Contracting Authority's expense, to institute proceedings for infringement of the moral rights.

Z11.5 The *Service Provider* warrants to the *Client* and/or Contracting Authority that he has not granted and shall not (unless authorised by the *Client* and/or Contracting Authority) grant any rights to any third party to use or otherwise exploit the Documents.

Z11.6 The *Service Provider* supplies copies of the Documents to the *Service Manager* and to the *Client's* and/or Contracting Authority's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.

Z11.7 After the termination or conclusion of the *Service Provider's* employment hereunder, the *Service Provider* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Client* and/or Contracting Authority pays the *Service Provider's* reasonable costs for producing such copies or discs.

Z11.8 In Providing the Service the *Service Provider* does not infringe any Intellectual Property Rights of any third party. The *Service Provider* indemnifies the *Client* (and any assignees or licensees) against claims, damages, losses, proceedings, compensation and costs suffered by the *Client* (or its assignees or licensees) as a result of the *Client's* exercise of such Intellectual Property Rights or for which the *Client* is otherwise liable

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arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty or for any purpose connected with the Scope.

Z11.9 The *Service Provider* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to Z11.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Service Provider*.

Background Checks and Security Clearance

Z12.1 The *Service Provider* ensures that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the *service* without prior written consent from the *Client*.

Z12.2 Notwithstanding Clause Z12.1 for each member of Service Provider Staff who, in providing the *service*, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Client owes a special duty of care, the *Service Provider* must (and shall procure that the relevant Subcontractor must):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the *Service Provider* shall not (and shall ensure that any Subcontractor shall not) engage or continue to employ in the provision of the *service* any person who has a Relevant Conviction or an inappropriate record.

Z12.3 The Service Provider Staff involved in the performance of the contract must:

- (a) be appropriately trained and qualified;
- (b) be vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the security requirements set out in Annex A of the Scope and Schedule 18 (Security); and
- (c) comply with all reasonable requirements of the *Client* concerning conduct at the Affected Property, including the security requirements as set out in Annex A of the Scope and Schedule 18 (Security).

Z12.4 Where the *Client* decides for any reason whatsoever (at its sole discretion) that one of the Service Provider's Staff is not suitable to work on the contract, including (without limitation) where that member of the Service Provider's Staff has been declined the requisite security clearance required pursuant to clause Z12.3, the *Client* may:

- (a) refuse admission to the relevant person(s) to the Affected Property; and/or
- (b) direct the *Service Provider* to end the involvement in the provision of the *service* of the relevant person(s); and/or

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	<p>(c) require the <i>Service Provider</i> to replace those Service Provider Staff with individuals who have the appropriate qualifications, experience and vetting clearances to provide the <i>service</i> with reasonable skill, care and diligence.</p> <p>Z12.5 If requested, the <i>Service Provider</i> must replace any person whose acts or omissions have caused the <i>Service Provider</i> to breach Clause 18.</p> <p>Z12.6 The <i>Service Provider</i> shall provide in advance of any admission to Affected Property a list of the names of all Service Provider Staff requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the <i>Client</i> may reasonably require.</p> <p>Z12.7 The <i>Service Provider</i> indemnifies the <i>Client</i> against all claims brought by any person employed by the <i>Service Provider</i> caused by an act or omission of the <i>Service Provider</i> or any Service Provider Staff.</p>
Z13	<p>Z13.1 The <i>Service Provider</i> acknowledges it has all the information required to perform its obligations under the contract. The <i>Client</i> gives no warranty of the accuracy of such information to the <i>Service Provider</i>.</p> <p>Z13.2 The <i>Service Provider</i> will not be excused from any obligation, or be entitled to additional costs or charges because it failed to either:</p> <ul style="list-style-type: none"> (a) verify the accuracy of the Due Diligence Information; or (b) properly perform its own adequate checks. <p>Z13.3 The <i>Client</i> is not be liable for errors, omissions or misrepresentation of any information.</p>
Z14	<p>Z14.1 Additional conditions of contract are contained in Call-Off Schedules and Joint Schedules set out in Schedules 1-22</p>
Z15	<p>Contractual Right of Set Off</p> <p>Z15.1 The <i>Client</i> and/or a Contracting Authority may set off any liability of the <i>Service Provider</i> to:</p> <ul style="list-style-type: none"> (a) the <i>Client</i> and/or a Contracting Authority; (b) any Contracting Body; or (c) any Crown Body <p>against any liability of the <i>Client</i> and/or a Contracting Authority, any Contracting Body or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this contract. Where a Contracting Authority seeks to set off any liability, this must be with the prior written approval of the <i>Client</i>.</p>
Z16	<p>Real Living Wage</p> <p>Z16.1 The <i>Service Provider</i> pays the Real Living Wage to all of its employees engaged on this contract and requires its Subcontractors to do the same in respect of their employees engaged on this contract.</p> <p>Z16.2 Notwithstanding Option X2 (Changes in the Law), where the <i>Service Provider</i> can provide evidence that a percentage increase to the Real Living Wage in a given period has exceeded any percentage increase for the same period in the Prices as a result of adjustment pursuant to Option X1, the <i>Service Provider</i> may request (at any time) an increase in the People Rates</p>

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by submitting a quotation to the *Service Manager* for approval (such approval not to be unreasonably withheld or delayed).

Z16.3 The *Service Provider* includes in its quotation evidence of the:

Z16.3.1 *Service Provider* employees affected by the Real Living Wage increase and the element of the service that they provide;

Z16.3.2 affected *Service Provider* employees' current hourly rate of pay; and

Z16.3.3 the number of hours worked by each of the affected *Service Provider* employees.

Z16.4 The *Service Manager* has discretion to accept any quotation submitted under this Z16 and does not accept any quotation that:

Z16.4.1 exceeds the difference between the Prices as a result of adjustment pursuant to Option X1 and the current Real Living Wage rate increase for each of the *Service Provider* employees affected by the Real Living Wage increase;

Z16.4.2 seeks any increase in the Prices which goes beyond the part of the service affected by the Real Living Wage increase; and

Z16.4.3 increases the Prices in respect of those *Service Provider* employees on an hourly rate already in excess of the Real Living Wage (whether or not to maintain differentials between the affected *Service Provider* employees and higher paid *Service Provider* employees).

Legislation and Official Secrets

Z17.1 The *Service Provider* complies with Law in Providing the Service .

Z17.2 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to the contract.

Z17.3 The *Service Provider* notifies its employees and its Subcontractors of their duties under these Acts.

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Freedom of Information

Z 18.1 The *Service Provider* acknowledges that unless the *Service Manager* has notified the *Service Provider* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Service Provider* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

Z18.2 The *Service Provider*

- transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
- provides the *Service Manager* with a copy of all information in its possession, or power in the form that the *Service Manager* requires within five working days (or such other period as the *Service Manager* may

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specify) of the *Service Manager's* request,

- provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
- procures that its Subcontractors do likewise.

Z18.3 The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

Z18.4 The *Service Provider* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.

Z18.5 The *Service Provider* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose information without consulting or obtaining consent from the *Service Provider* or despite the *Service Provider* having expressed negative views when consulted.

Z18.6 The *Service Provider* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

Tax Compliance

Z19.1 The *Service Provider* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

Z19.2 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Service Provider* shall

- notify the *Client* in writing of such fact within 5 days of its occurrence and
- promptly provide to the *Client*
- details of the steps which the *Service Provider* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
- such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

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Apprenticeships

Z20.1 The *Service Provider* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *service*.

Z20.2 The *Service Provider* demonstrates to the *Client* how the *Service Provider* ensures its opportunities to recruit and employ apprentices attract and are inclusive to candidates from all backgrounds including those who face barriers to employment (e.g. those from deprived or underrepresented backgrounds, ex-military, ex-offenders). The *Service Provider* demonstrates evidence of how this approach is applied to wider training opportunities.

Z20.3 The *Service Provider* takes all reasonable steps to ensure that no less than a percentage of its people (agreed between the Parties) are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Service, (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes.

Z20.4 The *Service Provider* makes available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.

Z20.5 The *Service Provider* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Service.

Z20.6 The *Service Provider* provides a report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Service Manager*

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

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	<ul style="list-style-type: none"> a. work experience placements for 14 to 16 year olds, b. work experience /work trial placements for other ages, c. student sandwich/gap year placements, d. graduate placements, e. vocational training, f. basic skills training, g. on site training provision/ facilities, and h. training opportunities undertaken with schools or other educational facilities.
Z21	<p>GDPR</p> <p>The <i>Client</i> and the <i>Service Provider</i> comply with the provisions of Schedule 3 (GDPR)</p>
Z22	<p>Cyber Essentials</p> <p>The <i>Client</i> and the <i>Service Provider</i> comply with the provisions of Schedule 4 (Cyber Essentials)</p>
Z23	<p>The <i>Service Manager</i> is entitled, at its sole discretion, to require additions to the terms of clause X27 to govern individual Projects on a project by project basis including, without limitation, the incorporation of specific terms from any of the following contracts:</p> <ul style="list-style-type: none"> (a) NEC4 Professional Services Contract (b) NEC4 Professional Services Short contract (c) NEC4 Engineering and Construction Contract (d) NEC4 Engineering and Construction Short Contract (Project Adjustments); and/or (e) the inclusion of the following additional amount due on termination for the purposes of clause 93.2 to apply where the Client is the terminating party and the reason for termination is R1–R15, R18, R10A or R21: <p style="padding-left: 40px;"><i>“A3a A deduction by or payment to the Client of the additional cost to the Client of completing the Project other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the Client resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the Service Provider”</i></p> <p>The <i>Service Manager</i> and the <i>Service Provider</i> shall review and agree the Project Adjustments so that there is a clear understanding of the requirements for and the terms for delivery of a Project.</p>

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The *Service Provider* shall notify the *Service Manager* to either confirm its acceptance of the Project Adjustments or raise proposed amendments. The *Service Manager* may then revise the Project Adjustments and/or provide comments on the *Service Provider's* proposal or alternatively inform the *Service Provider* that the Project will not proceed. If the *Service Manager* has issued revised Project Adjustments and/or comments on the *Service Provider's* proposal, then the *Service Provider* must notify the *Service Manager* of its acceptance (or not) of the revised Project Adjustments. The process set out in this clause Z23 shall be repeated until either the *Service Provider* accepts the revised Project Adjustments or the *Service Manager* informs the *Service Provider* that the Project will not proceed.

Z25

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

Confidentiality and Information Sharing

Z25.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall

- treat the other Party's Confidential Information as confidential and safeguard it accordingly,
- not disclose the other Party's Confidential Information to any other person without prior written consent,
- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

Z25.2 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the other party's

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Confidential Information.

Z25.3 The *Service Provider* may only disclose the *Client's* Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

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

Z25.4 The *Service Provider* may only disclose the Client Confidential Information to *Service Provider's* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Service Provider's* people causes or contributes (or could cause or contribute) to the *Service Provider* breaching its obligations as to confidentiality under or in connection with this contract, the *Service Provider* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Service Provider's* people, the *Service Provider* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Service Provider* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Service Provider's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Service Provider's* people in connection with obligations as to confidentiality.

Z25.5 At the written request of the *Client*, the *Service Provider* shall procure that those members of the *Service Provider's* people identified in the *Client's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z25.6 Nothing in this contract shall prevent the *Client* from disclosing the *Service Provider's* Confidential Information

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
- for the purpose of the examination and certification of the *Client's* accounts,
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- for the purpose of the exercise of its rights under this contract or
- to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities

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under this contract,

and for the purposes of the foregoing, disclosure of the *Service Provider's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause Z25.

Z25.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the *Service Provider's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

Z25.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Z25.9 The *Client* may disclose the Confidential Information of the *Service Provider*

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

Z27

The *Client* and *Service Provider* (but not a Contracting Authority) may in accordance with the conditions of contract vary or terminate this contract or any part of it, without the consent of a Contracting Authority.

Where compliance with any obligation or responsibility of the *Client* in relation this contract is necessary in order to enable the *Service Provider* to fulfil an obligation to a Contracting Authority, responsibility for compliance shall remain with the *Client* but compliance by the Contracting Authority shall be deemed to be compliance by the *Client*.

Records, audit access and open book data

Z27.1 The *Service Provider* keeps and maintains for the period for retention full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the *Client*.

Z27.2 The *Service Provider*

- keeps the records and accounts referred to in clause Z27.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause Z27.1 at the *Service Provider's* premises and/or provides records and accounts (including copies of the *Service Provider's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Service Provider* Providing the Service and the liability period under the contract, but subject to allowing such access only in respect of one such Audit per year from the Contract Date unless the Parties are engaged in a dispute, in order that the Auditor may carry out an inspection to assess

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compliance by the *Service Provider* and/or its Subcontractors of any of the *Service Provider's* obligations under the contract including in order to:

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

Z27.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause Z27 unless the audit reveals a default by the *Service Provider* in which case the *Service Provider* reimburses the *Client* for the *Client's* reasonable costs incurred in relation to the audit.

Z27.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Service Provider* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Service Provider* is not a function exercisable under this contract.

Z28

Conflicts of Interest

Z28.1 The *Service Provider* discloses to the *Client* any actual or potential conflict of interest arising from the *Service Provider's* provision of the service as soon as practicable after becoming aware of such actual or potential conflict.

Z28.2 The *Service Provider* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Service Provider* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or anticipates may justify the

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Z29

Client taking action to protect its interests.

Z28.3 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right to terminate the contract whereupon the provisions of clause 93.2 apply to the termination.

Discrimination

Z29.1 The *Service Provider* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the "Discrimination Acts").

Z29.2 Where possible in Providing the Service, the *Service Provider* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z29.3 Where an employee or Subcontractor employed by the *Service Provider* is required to carry out any activity alongside the *Client's* employees in any premises, the *Service Provider* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z29.4 The *Service Provider* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Service Provider* under the Discrimination Acts in connection with the contract and

- a) provides any information requested by the investigating body, court or tribunal in the timescale allotted;
- b) attends (and permits a representative from the *Client* to attend) any associated meetings;
- c) promptly allows access to any relevant documents and information; and
- d) co-operates fully and promptly with the investigatory body, court or tribunal.

Z29.5 The *Service Provider* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Service Provider*.

Z29.6 The *Service Provider* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Z30

Security Requirements

The *Service Provider* complies with, and procures the compliance of the Service Provider Staff, with the security requirements set out in Contract Schedule 18 (Security).

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Z31

Financial Distress

The *Service Provider* complies with the provisions of Schedule 22 (Joint Schedule 7 - Financial Distress) in relation to the assessment of the financial standing of the *Service Provider*, Guarantor and Key Subcontractors and accepts the consequences of a change to that financial standing.

Z32

Admittance to Affected Property

Z32.1 The *Service Provider* submits to the *Service Manager* details of people who are to be employed by it and its Subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Service Manager*.

Z32.2 The *Service Manager* may instruct the *Service Provider* to take measures to prevent unauthorised persons being admitted to the Affected Property.

Z32.3 Employees of the *Service Provider* and its Subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Affected Property identified in the Scope.

Z32.4 The *Service Provider* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Service Manager* issues the passes to the *Service Provider*. Each pass is returned to the *Service Manager* when the person no longer requires access to that part of the Affected Property or after the *Service Manager* has given notice that the person is not to be admitted to the Affected Property.

Z32.5 The *Service Provider* does not take photographs of the Affected Property or of work carried out in connection with the service unless it has obtained the acceptance of the *Service Manager*.

Z32.6 The *Service Provider* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs.

Z33

Sustainability

The *Service Provider* complies with the provisions of Schedule 19 (Sustainability).

Z34

Publicity and Branding

Z34.1 The *Service Provider* does not

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

without approval of the *Client*.

Z34.2. The *Client* is entitled to publicise the contract in accordance with any legal obligation upon the *Client*, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

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Z35

Government Data

Z35.1 The *Service Provider* does not remove any ownership or security notices in or relating to the Government Data.

Z35.2 The *Service Provider* makes accessible back-ups of all Government Data, stored in an agreed off-site location and sends the *Client* copies every 6 Months.

Z35.3 The *Service Provider* ensures that any *Service Provider* system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan.

Z35.4 If at any time the *Service Provider* suspects or has reason to believe that the Government Data provided under the contract is corrupted, lost or sufficiently degraded, then the *Service Provider* notifies the *Client* and immediately suggests remedial action.

Z35.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the *Client* may either or both:

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

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

Z35.6 The *Service Provider* pays each Party's reasonable costs of complying with Clause Z35 unless the *Client* is at fault.

Z35.7 The *Service Provider*:

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

(b) has documented processes to guarantee prompt availability of Government Data if the *Service Provider* stops trading;

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

(d) securely erases all Government Data and any copies it holds when asked to do so by the *Client* unless required by Law to retain it; and

(e) indemnifies the *Client* against any and all losses incurred if the Supplier breaches Clause Z35 and any Data Protection Legislation.

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Annex 1
The Scope

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Annex 2
The Price List

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This contract has been executed and is delivered and takes effect on the date stated at the beginning of it.

Signed for and on behalf of DEFRA

Signature:

buyer_signature

DocuSigned by:

N [Redacted]

Full Name: [Redacted]

[Redacted]

Date Signed: 31 May 2023

Signed by: _____ (name of signatory) for and on behalf of ISS
Mediclean Limited

.....

supplier_signature

DocuSigned by:

[Redacted]

[Redacted]

Signed by: _____ (name of signatory 2) for and on behalf of ISS
Mediclean Limited
Job Title/Role: [Redacted]

Date Signed: 31/5/2023

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.....

supplier_signature2

DocuSigned by:

RY 2]

1E9791298750456...

Full Name:

Job Title/Role:

Date Signed: 31/5/2023

