

Short Contract

A contract
between

The Department for Environment, Food and Rural
Affairs

and Interserve (Facilities Management) Ltd

for Supply and installation of temporary boilers and
supply and installation of replacement temporary
boiler works at Riversmeet House, Tewkesbury.

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Appendix 1 General Data Protection Regulation (GDPR)
Requirements

Notes about this contract are printed in boxes like this one. They
are not part of the contract.

Contract Data

The *Employer* is
Name Department for Environment, Food and Rural Affairs
Address Nobel House, 17 Smith Square, London, SW1P 3JR

The *works* are The supply, installation of a temporary boiler system and supply, install new boilers with associated works

The *site* is Riversmeet House, Tewkesbury.

The *starting date* is 25/03/2019

The *completion date* is 31/05/2019

The *period for reply* is 1 week.

The *defects date* is 52 weeks after Completion

The *defect correction period* is 1 week.

The *delay damages* are Nil per day.

The *assessment day* is the 23rd of each month

The *retention* is 0 %.

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply?

Yes

The *Adjudicator* is

Name The Royal Institution of Chartered Surveyors

The interest rate on late payment is 0.5% per complete week of delay.

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions:

Option X7: Delay damages

Delay damages for Completion of the whole of the works are Nil.

Contract Data

Option X15: Limitation of the Contractor's liability for his design to reasonable skill and care

Applies

Option X16: Retention

The retention free amount is 0%. The retention percentage is 0%

Option X18: Limitation of liability

X18.1 The Contractor's liability to the Employer for indirect or consequential loss is limited to Nil

X18.2 For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property, loss of damage to the Works, Plan and Materials and Equipment or liability for bodily injury or death for a person (not an employee of the Contractor) is limited to £1,000,000

X18.3 The Contractor's liability for Defects due to his/her design which are not listed on the Defects Certificate is limited to £1,000,000

X18.4 The Contractor's {Subcontractors} total employer liability, other than excluded matters detailed in Schedule 16 - Insurance, is limited to £10,000,000 in respect of each claim.

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

The period for payment is 30 days from the date of valuation.

Option Z

Option Z: Additional conditions of the Contract

The *additional conditions of contract* are described below. Each Option Z provision will apply as set out below.

Option Z1

Option Z1: Amending the Interpretation Provisions

Option Z1.1

Delete existing clause 12.1 and replace with:

"In this contract, except where the context shows otherwise

- words in the singular also mean in the plural and the other way round,
- words in the masculine also mean in the feminine and neuter and the other way round,
- references to a document include any revision made to it in accordance with this contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to a standard include any current relevant standard that replaces it."

Option Z2

Option Z2: Confidentiality

Contract Data

Option Z2.1	<p>For the purpose of this contract, Personal Data is information collected by the Contractor on behalf of the Employer in relation to this contract, which relates to living individuals who can be identified:</p> <ul style="list-style-type: none">• from that information• from that information combined with other details in (or likely to come into) the possession of the Employer.
Option Z2.2	<p>The Contractor keeps (and ensures that its employees and Subcontractors keep) confidential and does not disclose to any person, including, without limitation, Others:</p> <ul style="list-style-type: none">• the terms of this contract and• any confidential or proprietary information (including Personal Data) provided to or acquired by the Contractor in the course of Providing the Works <p>except that the Contractor may disclose information</p> <ul style="list-style-type: none">• to its legal or other professional advisers,• to its employees and Subcontractors as needed to enable the Contractor to Provide the Works,• where required to do so by law or by any professional or regulatory obligation or by order of any court or government agency, provided that (unless the Contractor is prohibited by law from doing so) prior to disclosure the Contractor consults the Project Manager and takes full account of the Employer's views about whether (and if so to what extent) the information should be disclosed,• which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,• which is in the public domain at the time of disclosure other than due to the fault of the Contractor or with the consent of the Project Manager.
Option Z2.3	<p>The Contractor does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.</p>
Option Z3	Option Z3: Security
Option Z3.1	<p>Without limiting this clause Z3, the Contractor fully complies with all security requirements stated in the Works Information.</p>

Contract Data

Option Z3.1	<p>Site admittance</p> <p>The Contractor submits to the Project Manager details of people who are to be employed by it and its Subcontractors in connection with the works. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the Project Manager.</p>
Option Z3.2	<p>The Project Manager may instruct the Contractor to take measures to prevent unauthorised persons being admitted on to the Site. The instruction is a compensation event if the measures are additional to those required by the Works Information.</p>
Option Z3.3	<p>Passes</p> <p>Employees of the Contractor and its Subcontractors are to carry an Employer's pass whilst they are on the parts of the Site stated in the Contract Data.</p>
Option Z3.4	<p>The Contractor submits to the Project Manager for acceptance a list of the names of the people for whom passes are required.</p>
Option Z3.5	<p>Photographs</p> <p>The Contractor does not take photographs of the Site or the works or any part of them unless he has obtained the acceptance of the Project Manager.</p>
Option Z3.6	<p>The Contractor takes the measures needed to prevent its Subcontractors' people taking, publishing or otherwise circulating such photographs.</p>
Option Z4	<p>Option Z4: Data Protection</p>
Option Z4.1	<p>The Data Protection Acts are the Data Protection Act 2018 and any other laws or regulations relating to privacy or personal data.</p>
Option Z4.2	<p>For the purposes of this contract and the Data Protection Acts</p> <ul style="list-style-type: none">• the Employer is the Data Controller and• the Contractor is the Data Processor.
Option Z4.4	<p>The Contractor processes the Personal Data in accordance with (and so as not to put the Employer in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this contract.</p>

Option Z4.5	<p>The Contractor has in place and maintains until the defects date</p> <ul style="list-style-type: none">• appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and• adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process Personal Data.
Option Z4.6	<p>The Contractor immediately notifies the Project Manager if it receives</p> <ul style="list-style-type: none">• a request from any person whose Personal Data it holds to access his Personal Data or• a complaint or request relating to the Employer's obligations under the Data Protection Acts.
Option Z4.7	<p>The Contractor assists and co-operates with the Project Manager in relation to any complaint or request received, including</p> <ul style="list-style-type: none">• providing full details of the complaint or request,• complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the Project Manager and• promptly providing the Project Manager with any Personal Data and other information requested by him.
Option Z4.8	<p>The Contractor allows the Employer to conduct periodic audits of the Contractor's compliance with the Data Protection Acts. The Contractor complies with the instructions of the Project Manager to enable such audits to be carried out.</p>
Option Z4.9	<p>The Contractor complies with the requirements of the Employer in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.</p>
Option Z4.10	<p>The Contractor immediately notifies the Project Manager on becoming aware of any breach of this clause or of the Data Protection Acts by the Contractor or any Subcontractor.</p>

Contract Data

Option Z4.11	<p>The Contractor does not process the Personal Data outside the European Economic Area without the agreement of the Project Manager. Where the Project Manager agrees, the Contractor complies with the instructions of the Project Manager and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 2018.</p>
Option Z5	<p>Option Z5: Disclosure of Information</p>
Option Z5.1	<p>A Disclosure Request is a request for information relating to this contract received by the Employer pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.</p>
Option Z5.2	<p>The Contractor acknowledges that the Employer may receive Disclosure Requests and that the Employer may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the Employer consults with the Contractor before doing so in accordance with the relevant Code of Practice. The Contractor uses its best endeavours to respond to any such consultation promptly and within any deadline set by the Project Manager and acknowledges that it is for the Employer to determine whether or not such information should be disclosed.</p>
Option Z5.3	<p>When requested to do so by the Project Manager, the Contractor promptly provides information in its possession relating to this contract and assists and co-operates with the Project Manager to enable the Employer to respond to a Disclosure Request within the time limit set out in the relevant legislation.</p>
Option Z5.4	<p>The Contractor promptly passes any Disclosure Request which it receives to the Project Manager. The Contractor does not respond directly to a Disclosure Request unless instructed to do so by the Project Manager.</p>
Option Z6	<p>Option Z6: Copyright</p>
Option Z6.1	<p>Material means all materials prepared by or on behalf of the Contractor for the works and all updates, additions and revisions to them and any designs or inventions incorporated in them.</p>

Contract Data

Option Z6.2	Permitted Uses means the design, construction, completion, reconstruction, modification, extension, refurbishment, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information, modelling and repair of the works.
Option Z6.3	The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of the Material for any purpose, including without limitation any of the Permitted Uses.
Option Z6.4	The Employer's licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor and survives termination (for any reason) of the Contractor's employment under this contract.
Option Z6.5	The Contractor is not liable for use of the Material for any purpose other than that for which it was prepared or provided.
Option Z7	Option Z7: Discrimination
Option Z7.1	The Contractor 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").
Option Z7.2	Where possible in Providing the Works, the Contractor co-operates with and assists the Employer 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.
Option Z7.3	Where an employee or Subcontractor employed by the Contractor is required to carry out any activity alongside the Employer's employees in any premises, the Contractor ensures that each such employee or Subcontractor complies with the Employer's employment policies and codes of practice relating to discrimination and equal opportunities.
Option Z7.4	

	<p>The Contractor notifies the Project Manager in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with this contract and</p> <ul style="list-style-type: none">• provides any information requested by the investigating body, court or tribunal in the timescale allotted,• attends (and permits a representative from the Employer to attend) any associated meetings,• promptly allows access to any relevant documents and information and• co-operates fully and promptly with the investigatory body, court or tribunal.
Option Z7.5	<p>The Contractor indemnifies the Employer against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Employer arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the Contractor.</p>
Option Z7.6	<p>The Contractor includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.</p>
Option Z8	<p>Option Z8: Quality Management and Audit</p>
Option Z8.1	<p>The Contractor operates a quality management system for Providing the Works which</p> <ul style="list-style-type: none">• complies with the relevant parts of ISO 9001:2015 and ISO 9001:2008/Cor 1:2009,• incorporates an environmental management system consistent with ISO 14001:2004,• includes processes for delivering continual improvement following the guidance in ISO 9004:2009,• has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the Contract Date• complies with good industry practice and• otherwise fully complies, and is consistent with the requirements set out in the Works Information.

Contract Data

Option Z8.2	<p>The Contractor provides to the Project Manager, within one week of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Works Information and are sufficiently detailed to demonstrate how the Contractor will Provide the Works in accordance with this contract.</p>
Option Z8.3	<p>The Contractor keeps a controlled copy of the quality plan available for inspection by the Project Manager at all times.</p>
Option Z8.4	<p>The Contractor complies with an instruction from the Project Manager to</p> <ul style="list-style-type: none">• change the quality plan so that it complies with the requirements of this contract or• correct a failure of the Contractor to comply with the quality plan.
Option Z8.5	<p>The Project Manager and other persons authorised by him may carry out periodic audits of the Contractor's quality management system as specified in the Works Information. The Contractor allows access to the Working Areas and other premises used by the Contractor to Provide the Works and provides all facilities and assistance necessary to enable such audits to be carried out.</p>
Option Z9	<p>Option Z9: Compliance with Legislation</p>
Option Z9.1	<p>The Contractor Provides the works:</p> <ul style="list-style-type: none">• in a proper and workmanlike manner, and• in compliance with<ul style="list-style-type: none">○ all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the works or performance of any obligations under this contract, and○ any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the works or with whose systems the works are, or are to be, connected.
Option Z9.2	<p>The project that comprises or includes the works is not notifiable for the purposes of the Construction (Design and Management) Regulations 2015 (the "CDM</p>

Contract Data

Option Z10	<p>Regulations”). The Contractor is the principal contractor under the CDM Regulations in respect of the works and performs all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.</p> <p>Option Z10: Fair Payment</p>
Option Z10.1	<p>The Contractor assesses the amount due to a Subcontractor without taking into account the amount certified by the Project Manager.</p>
Option Z10.2	<p>The Contractor includes in the contract with each Subcontractor</p> <ul style="list-style-type: none">• a period for payment of the amount due to the Subcontractor not greater than 19 days after the due date 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,• a provision requiring the Subcontractor to include in each sub-contract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract and• a provision requiring the Subcontractor to assess the amount due to a sub-contractor without taking into account the amount paid by the Contractor.
Option Z10.3	<p>The due date in this contract is the date on which the Project Manager certifies payment.</p>
Option Z10.4	<p>The Contractor notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The Contractor includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subcontract.</p>
Option Z11	<p>Option Z11: Assignment</p>
Option Z11.1	<p>The Contractor does not assign its interest in or any rights arising under this contract without the consent of the Employer.</p>
Option Z11.2	<p>The Employer may assign, charge or transfer its interest in this contract or any rights arising under it at any time without the consent of the Contractor. The Employer notifies the Contractor of any such assignment, charge or transfer.</p>

Option Z11.3	The Contractor does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.
Option Z12	Option Z12: Contractor's Design Submission Procedure
Option Z12.1	Insert a new definition in clause 11.2: "Contractor's Design Documents are drawings, design details and specifications of work, Plant and Materials prepared by the Contractor for the works".
Option Z12.2	Delete clauses 21.2 and 21.3 and replace with the following: "21.2 The Contractor submits the Contractor's Documents to the Supervisor for acceptance at the times and in the manner and format stated in the Works Information. 21.3 The Supervisor returns each Contractor's Document to the Contractor marked either 'A' (accepted), 'B' (accepted with comments) or 'C' (rejected). If the Supervisor marks a Contractor's Document 'B' or 'C', he will state his reasons. A reason for not accepting a Contractor's Document is that it does not comply with: <ul style="list-style-type: none">• the Works Information,• any previous Contractor's Document which:<ul style="list-style-type: none">- the Supervisor has returned marked 'A', or- the Supervisor has returned marked 'B' and the Contractor has amended to incorporate the Supervisor's comments,• the applicable law or• any other provision of this contract. 21.4 If the Supervisor does not return a Contractor's Document within the period for reply, it is treated as having been returned marked 'A'. 21.5 Where a Contractor's Document is returned marked 'A', the Contractor proceeds with the relevant work in accordance with the Contractor's Design Document. 21.6 Where a Contractor's Document is returned marked 'B', the Contractor

Option Z14	<ul style="list-style-type: none">• amends the Contractor’s Document to incorporate the Supervisor’s comments,• submits the Contractor’s Document as so amended to the Supervisor and• proceeds with the relevant work in accordance the Contractor’s Document as so amended. <p>21.7 Where a Contractor’s Design Document is returned marked ‘C’, the Contractor</p> <ul style="list-style-type: none">• amends the Contractor’s Document to incorporate the Supervisor’s comments,• re-submits it to the Supervisor for acceptance and• does not proceed with the relevant work until the Supervisor has returned it marked ‘A’ or ‘B’ and, where it is marked ‘B’, it has complied with clause 21.6 <p>21.8 If the Contractor disagrees with the comment of the Supervisor on a Contractor’s Document marked ‘B’ or ‘C’, he notifies the Supervisor within one week of receipt stating his reasons and that in his opinion compliance with the comment will give rise to a change in the Works Information. The Supervisor replies within one week of receipt of the Contractor’s notice either confirming or withdrawing his comment. A confirmation or withdrawal by the Supervisor is not an acceptance of the Contractor’s opinion.</p> <p>21.9 If the Contractor does not notify the Supervisor within one week that he disagrees with a comment of the Supervisor, compliance with the comment does not give rise to a change in the Works Information.”</p> <p>Option Z14: New Clause 60.1 (20)</p> <p>60.1 (20) Provisional Sums referred to in the Activity Schedule will be dealt with as a Compensation Event.</p>
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The Contractor's Offer

The Contractor is

Name Interserve (Facilities Management) ltd

Address Capital Tower, Waterloo Road, London

The percentage for overheads and profit added to the Defined Cost for people is [REDACTED] (as per the ECC fees referenced in Schedule 31B of the Defra/Interserve Contract).

The percentage for overheads and profit added to other Defined Cost is [REDACTED]

The Contractor offers to Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

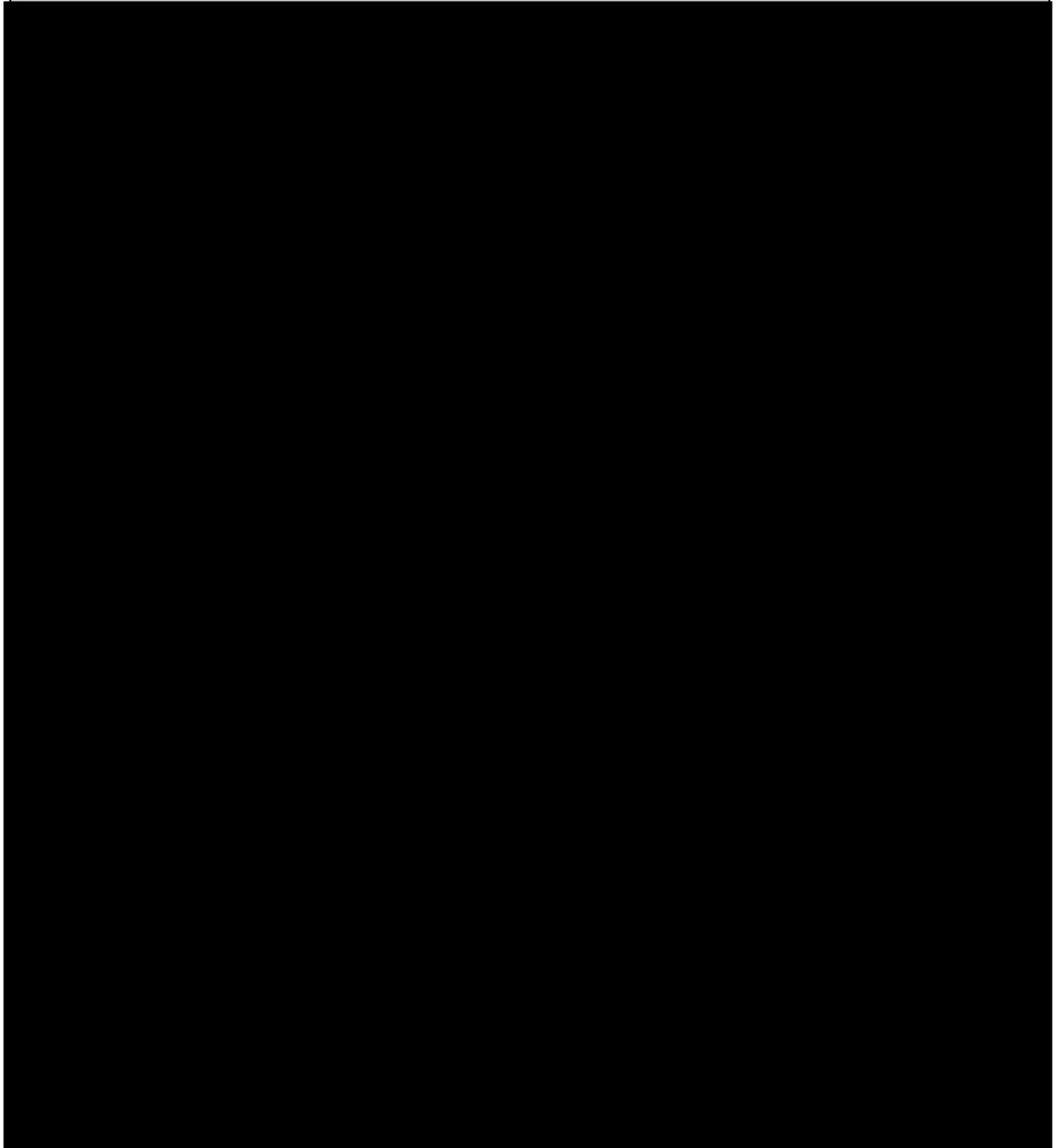
The offered total of the Prices is £239,639.

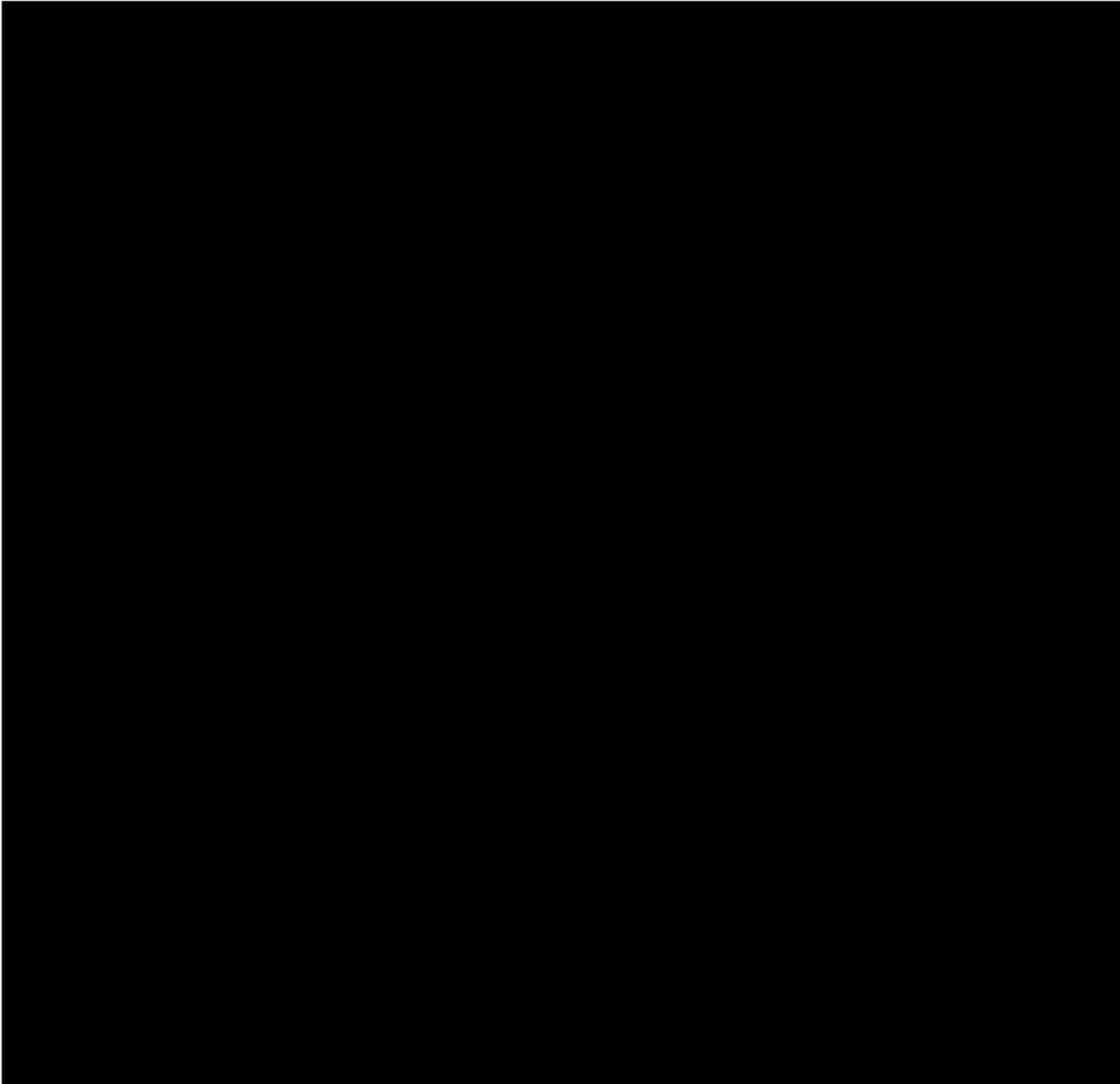
SUMMARY	
ITEM	COST
[REDACTED]	
Total Cost of works ex-VAT	£239,639.48

The Employer's Acceptance

Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93(Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. **This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').**

Price List





Works Information

The Works Information should be a complete and precise statement of the *Employer's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer's* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer's* requirements and is consistent with the other parts of the Works Information.

1 Description of the works

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

Interserve shall carry works as detailed within the works information and will be agreed prior to start with 'Employer' PM. For the avoidance of doubt the Contractor shall be responsible for all the design work required in delivering of all the works.

2 Drawings

List the drawings that apply to this contract.

Drawing number	Revision	Title
227294-FCG-MB-SC-DR-M-5001-D2-C02.		Mechanical Services Proposed Heating Plantroom Schematic
227294-FCG-XX-X-SH-MEP-0000		Information Issue Record
227294-FCG-ZZ-XX-SP-E-0208-S2-C02		ELECTRICAL SERVICES TENDER BREAKDOWN
227294-FCG-ZZ-XX-SP-M-0207-S2-C01		MECHANICAL SERVICES TENDER BREAKDOWN
227294-FCG-ZZ-XX-SP-M-0209-D2-C02		MECHANICAL SERVICES (PLANTROOM REFURBISHMENT) PARTICULAR SPECIFICATION
227294-FCG-ZZ-XX-SP-M-0210-S2-C03		MECHANICAL SERVICES (PLANTROOM REFURBISHMENT) TENDER BREAKDOWN

Works Information

Contract Data

3 Specifications

List the specifications which apply to this contract.

Title	Date or revision	Tick if publicly available
227294-FCG-ZZ-XX-SP-M-0211-S2-C02, AFTER CARE / DEFECTS	21.02.2019 Rev A	
Mechanical Services Tender breakdown return.	21.02.2019 Rev A	
Electrical services Tender breakdown return	21.02.2019 Rev A	

4 Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.

Contractor is permitted to sub-contract the works, provided the sub-contractor works off a back-to-back contract with this one, and whose appointment has been approved by the Employer.

Contractor must ensure that all design and deliverables complies with all relevant standards and guidance (such as ISO or BS standards for design, construction and commissioning)

Contractor shall be required to submit a weekly progress report. The Contractor shall be required to attend a progress meeting with the Employer, at least weekly, and discuss progress against the Programme and any issues and risks that may prevent completion.

While on the Site, the Contractor complies with any Health and Safety measures implemented by the Employer in respect of Contractor's Personnel and other persons working on the Site. This includes health screening and all relevant SOPs.

While on site, the Contractor will promptly notify the Employer of any Health and Safety hazards which may arise in connection with the performance of the Contract.

Works Information

5 Requirements for the programme

A programme is required. This should be in the form of a Gant Chart (preferably via Microsoft Project), containing information relating to the deliverables at a macro level as well as the supporting actions/deliverables that they are made up of. Information should include elements such as price, dates and duration of the tasks/sub-tasks.

As per Defra - Works Information.

As agreed in (NEC 3) Project Programme:

6 Services and other things provided by the *Employer*

Describe what the *Employer* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

Item	Date by which it will be provided
Access to the working areas	25/03/19

Site Information

Give information about the *site* such as the ground conditions and any other information which is likely to affect the *Contractor's* work such as limitations on access and the position of adjacent structures.

Any sub-contractors (if appointed) will need to comply with the Employer's access requirements in order to be allowed on site to work. Interserve (the Contractor) will be responsible for ensuring the compliance of the sub-contractor with the Employer's access regulations.

APPENDIX 1

GENERAL DATA PROTECTION REGULATION (GDPR) REQUIREMENTS

ADDITIONAL DEFINITIONS

Agreement: this contract;

Contractor Personnel: means all directors, officers, employees, agents, Contractors and Contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] 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;

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

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

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

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

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

DATA PROTECTION REQUIREMENTS

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The Contractor processes data only as authorised in Appendix 2 (Schedule of Processing, Personal Data and Data Subjects) by the Employer and may not be determined by the Contractor.
- 1.2 The Contractor notifies the Project Manager immediately if it considers that any of requirement of the documents forming part of this contract infringe the Data Protection Legislation.
- 1.3 The Contractor provides all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 In relation to any Personal Data processed in connection with its obligations under the documents forming part of this contract the Contractor:
 - (a) processes that Personal Data only in accordance with Appendix 2 (Schedule of Processing, Personal Data and Data Subjects), unless otherwise required by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law;
 - (b) ensures that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensures that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Employer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

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

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

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

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

- 1.5 Subject to clause 1.6, the Contractor shall notify the Project Manager immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Employer in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:
- (a) the Employer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Employer following any Data Loss Event;
 - (e) assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Employer in phases, as details become available.

- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:
- (a) the Employer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Employer following any Data Loss Event;
 - (e) assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Employer determines that the processing is not occasional;
 - (b) the Employer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Employer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Employer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Employer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
 - (d) provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Employer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Employer may on not less than 30 Working Days' notice to the Contractor amend

this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.