

|  |
| --- |
| Norfolk County CouncilManagement of Norwich Bus Station and Park and Ride Sites – NCCT43085 |
| Facilities Management Short Contract |

Revision table

| **Revision** | **Date** | **Issued by** | **Comments** |
| --- | --- | --- | --- |
| A |  |  |  |

# The *Client’s* Contract Data

##### Details of client

The *Client* is

|  |  |
| --- | --- |
| Name: | Norfolk County Council |
| Address for communications: | County Hall, Martineau Lane, Norwich NR1 2DH, England for the attention of Niki Park |
| Address for electronic communications | ptgnetwork@norfolk.gov.uk |

##### Conditions of contract

The *conditions of contract* are the NEC4 Facilities Management Short Contract June 2021 (with amendments January 2023) and the additional conditions set out at clause Z below.

##### The *service*

The *service* is: Norwich Bus Station Operational Management and Site and Premises Maintenance, and Facilities Management and Maintenance of the Norwich Park and Ride Sites.

##### Contract term

The *starting date* is: Sunday 5 April 2026

The *service period* is 60 months with the option to extend for further periods of up to 60 months.

##### Period for reply

The *period for reply* is 2 weeks

##### Payment

The *assessment day* is the22nd of each month

The rates and Prices in the contract are adjusted for inflation. The index is the Consumer Price Index (CPI) published by the Office for National Statistics

The *law of the contract* is: the law of England and Wales.

The United Kingdom Housing Grants, Construction and Regeneration Act 1996 does apply.

The interest rate on late payment is $\frac{the Bank of England Rate plus 8\%}{52}$ per complete week of delay.

##### Limitation of liabilities

The *Adjudicator nominating body* is the Chartered Institute of Arbitrators

For any one event, the liability of the Service Provider to the Client for loss or damage to the Client’s property is limited to: £5,000,000 (five million pounds)

The Service Provider’s total liability to the Client which arises under or in connection with the contract is limited to: £5,000,000 (five million pounds)

Neither party shall be liable to the other for loss of profits, revenue, business, goodwill, reputation or indirect loss arising out of or in connection with this agreement.

##### Dispute resolution

The *tribunal* is the courts of England and Wales.

### Z Additional Conditions of Contract

The *additional conditions of contract* are as set out below:

#### General

##### Interpretation and the law

1. Replace the full stop at the end of clause 12.1 with a comma and add “and the word ‘they’ includes the singular of any gender.”
2. At the end of clause 12.2 remove the full stop and add “and any references to any 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.”
3. Amend clause 12.3 to read:

“No change to this contract, unless provided for by the conditions of contract, has effect unless it has been agreed, confirmed in writing and executed as a deed by the Parties.”

##### Corrupt acts

1. Insert additional clauses 17.4 -17.5 as follows:

“17.4 The *Service Provider* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 17.1, or has reason to believe that it, or any of its employees or the Subcontractors or, if it is a joint venture, any party to the joint venture:

* has committed a Corrupt Act
* has been subject to an investigation or prosecution which relates to an alleged Corrupt Act;
* has been listed by any UK 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 Corrupt Act; or
* has received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the contract or if it otherwise suspects that any person or party directly or indirectly connected with the contract has committed or attempted to commit a Corrupt Act.

17.5 If the *Service Provider* makes a notification to the *Client* pursuant to clause 17.4, or the *Client* becomes aware that any of the events listed in clause 17.4 have taken place or are alleged to have taken place, the *Service Provider* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with the contract. The *Service Provider* indemnifies the *Client* for any losses, damages and expenses (including legal fees and expenses) arising from and in connection with its breach of this clause 17.”

#### The Service Provider’s main responsibilities

##### Providing the Service

1. Insert new clauses 20.1 et seq as follows:

“

* 1. The *Service Provider* warrants and undertakes that in the provision of the *Service* there is no breach of Environmental Law and no Harm is caused to the Environment.

##### Subcontracting and people

Key people

1. Insert an additional second paragraph in clause 21.2 as follows:

“The *Service Provider* ensures that there is a seamless transfer of duties and responsibilities from the *key person* to the replacement person with no duplication of charges.

The defined cost for the new *key person* shall not exceed the cost of the original *key person*. The defined cost for the role shall only be charged once: the additional cost of the second person undertaking the role is to be disallowed”

Modern slavery, employment relations and ethical supply chain

1. Insert additional clauses 21.4, 21.5, 21.6, 21.7, 21.8, 21.9 and 21.10 and as follows:

“21.5 In Providing the Service, the *Service Provider*:

1. complies with the Ethical Supply Chain Policy;
2. does not engage in any activity, practice or conduct outside the United Kingdom that would if carried out in the United Kingdom constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015;
3. carries out a risk assessment of its supply chain for both goods and services and, in respect of categories of goods and services where there is a material risk of breach of the Ethical Supply Chain Policy, implements appropriate due diligence and audit procedures; and
4. permits the *Client* and its third-party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 21, to have access to and take copies of the *Service Provider’s* records and any other information and to meet with the *Service Provider’s* personnel to audit the *Service Provider’s* compliance with its obligations under this clause 21;
5. implements and maintains an effective whistleblowing policy and processes that:
* ensure that staff, Subcontractors and agency staff are aware of and able to trust the whistleblowing avenues;
* makes provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;
* makes clear that the *Service Provider* takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistleblowing concern from a grievance;
* gives staff the option to raise concerns outside of line management;
* makes clear that the organisation will, when requested, respect the confidentiality of a member of staff raising a concern;
* states when and how concerns may properly be raised outside the organisation (including with a regulator and with the *Client’s* whistleblowing hotline); and
* makes clear that it is a disciplinary matter to victimise a bona fide whistle-blower.

21.6 Where the *Service Provider* enters into a subcontract, the *Service Provider* includes in that subcontract:

* provisions having the same effect as clause 21.5 of the contract; and
* a provision requiring the counterparty to that subcontract to include in any subcontract which its awards provisions having substantially the same effect as this clause 21.6.

21.7 The *Service Provider* represents and warrants that at the Contract Date, neither the *Service Provider* nor any of its partners, directors or supervisory staff nor, if it is a joint venture, any party to the joint venture:

* has been convicted of any offence involving slavery or human trafficking; or
* so far as it is aware having made reasonable enquiries has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

21.8 The *Service Provider* notifies the *Client* as soon as it becomes aware of:

* any breach, or potential breach, of the Ethical Supply Chain Policy; or
* any actual or suspected slavery or human trafficking in a supply chain which has a connection with the contract.”

21.9 The *Service Provider* does not knowingly or negligently employ a Subcontractor that:

* has committed a Corrupt Act;
* has been convicted of a criminal offence relating to the conduct of its business or profession;
* has committed an act of grave misconduct that renders its integrity questionable in the course of its business or profession;
* has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
* has made serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation.”

21.10 To the extent that TUPE applies to the transfer of any staff at any time during the service period from the Employer and/or any existing contractor or their respective contractors or subcontractors to the *Service Provider* and to the extent that TUPE may apply at the end of the service period the provisions set out in Schedule 1 to the Terms and Conditions of Contracts – Staff Transfer

##### Other responsibilities

Records and audit

1. Insert new clause 22 as follows:

 **"22 Records and audit**

“22.1 The *Service Provider* retains for six years:

* copies of drawings, specifications, reports, calculations and other documents which record the provision of the *Service*; and
* documents and information obtained or prepared by the *Service Provider* or any Subcontractor in connection with the contract.

22.3 The *Service Provider* permits the *Client* and its statutory and internal auditors to examine documents held or controlled by the *Service Provider* or any Subcontractor pursuant to the contract.

22.4 Further to clause 22.3, the *Service Provider* provides such oral or written explanations as the *Client* or the auditors consider necessary.”

Assignment

1. Insert new clause 23 as follows:

**"23 Assignment**

23.1 The *Service Provider* does not, without the written consent of the *Client*, assign or transfer the contract, or any part of, share of or interest in it. In the absence of the *Client’s* written consent no sum of money becoming due under the contract is payable to any person other than the *Service Provider*. The *Client* gives or withholds consent at its sole discretion.

 23.2 Any change in the legal status of the *Client* such that it ceases to be a Contracting Authority does not affect the validity of the contract. In such circumstances, the contract binds and inures to the benefit of any successor body to the *Client*.

23.3 If the *Client’s* Passenger Transport functions are transferred to or taken over by another public body (for example, a new mayoral or unitary authority or a joint entity formed by two or more authorities), that does not affect the validity of the contract. In each of those circumstances, the contract binds and inures to the benefit of that body without further action by the Parties. In addition, in those circumstances or similar circumstances, the *Client* and the *Service Provider* may agree to enter into a novation of this contract using a form of novation agreement agreed at that time (in which case, the terms of any completed novation agreement take precedence).

 23.4 The *Client’s* right to assign the contract without the prior written consent of the *Service Provider* shall be limited to two assignments. “

##### Disclosure

1. Insert a new clause 24 as follows:

**“24 Disclosure**

24.1 Except to the extent set out in this clause 24 or where disclosure is expressly permitted elsewhere in the contract, each Party:

* + - * treats the other Party's Confidential Information as confidential and safeguards it accordingly;
			* uses it only for the purpose for which it was provided; and
			* does not disclose the other Party's Confidential Information to any other person (other than a Subcontractor or, if the *Service Provider* is a joint venture, a party to the joint venture) without the Confidential Information owner's prior written consent.

24.2 Clause 24.1 shall not apply to the extent that:

* + - * disclosure of the Confidential Information is a requirement placed upon the party making the disclosure by law, including any requirements for disclosure under FOIA or the Environmental Information Regulations 2004;
			* such Confidential Information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
			* such Confidential Information was obtained from Others without obligation of confidentiality;
			* such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of the contract; or
			* it was independently developed without access to the other Party's Confidential Information.

24.3 The *Client* may disclose the *Service Provider's* Confidential Information 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 24:

* + - * to any Crown body, and any Crown bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to Others which are not part of any Crown body;
			* to a professional adviser, service provider, supplier or other person engaged by itself or any Crown Body (including any benchmarking organisation) for any purpose connected with the contract or the Service;
			* to any contractor, service provider or other person engaged by the Client or any person conducting a gateway review pertaining to the contract or the *Service*;
			* for the purpose of the examination and certification of the Client's accounts;
			* for the purpose of the exercise of its rights under the contract;
			* 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 the contract.

24.4 Nothing in this clause 24 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 any intellectual property right.

24.5 The *Service Provider* acknowledges that the *Client* is subject to the requirements of FOIA and the Environmental Information Regulations 2004. The *Service Provider* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations pursuant to any Request for Information received from time to time.

24.6 The *Service Provider*:

* + - * transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information;
			* provides the *Client* with a copy of all Information in its possession or power in the form that the *Client* requires within five Business Days (or such other period as the *Client* may specify) of the *Client’s* request;
			* provides all necessary assistance as reasonably requested by the *Client* 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 2004; and
			* procures that its Subcontractors do likewise.

24.7 The *Service Provider* does not respond directly to a Request for Information unless instructed to do so by the *Client*.

24.8 The *Client* determines in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004.

24.9 The *Service Provider* hereby acknowledges that the *Client* may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of Public Authorities Functions 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 particular or negative views when consulted.

24.10 The *Service Provider* hereby acknowledges that the *Client* is subject to the Local Government Transparency Code 2015. The *Client* publishes data stipulated by the code and any successor code, including payments made to the *Service Provider* and metadata describing the contract.

24.11 The *Service Provider* retains all Information for disclosure throughout the *period for retention* and permits the *Client* to inspect such records as and when reasonably requested from time to time. “

#### Payment

##### Assessing the amount due

1. Insert a new clause 50.5A as follows:

“The *Client* may deduct set-off or extinguish in its assessments any sums losses or damages which the *Client* has suffered or incurred due to the *Service Provider* failing to comply with its obligations under or pursuant to this contract or any other contract entered into by the *Service Provider* with the *Client* let under the Framework Agreement.”

##### Payment

1. Insert additional clauses 51.4 to 51.13 as follows:

“51.4 If the *Service Provider* becomes insolvent as defined in clause 90.2 after the prescribed period, the *Client* is not required to pay the *Service Provider* the notified sum on or before the final date for payment.

51.5 The *Client* may set off any liability of the *Service Provider* to the *Client* arising under or in connection with the contract against any liability of the *Client*, liquidated or unliquidated, arising under or in connection with the contract.

51.6 The *Service Provider* hereby acknowledges that Regulation 68.2 of the Procurement Act 2023 requires the *Client* to incorporate provisions about prompt payment in the contract, including provisions that the *Service Provider* must pass down to its supply chain.

51.7 The *Service Provider* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Client*.

51.8 Further to clause 51.5, the *Service Provider* ensures the final date for payment of the amount due to the Subcontractors of any tier under the relevant contracts is not later than the final date for payment in the contract.

51.9 The *Service Provider* includes in the subcontract with each Subcontractor:

* a provision requiring the Subcontractor to assess the amount due to a sub-subcontractor without taking into account the amount paid by the *Service Provider*; and
* a provision requiring the sub-subcontractor to include terms to the same effect as clause 51.8 and this clause 51.9 in any sub-subcontract for any element of the Servicewhich it sub-subcontracts.

#### Compensation events

##### Compensation events

1. Delete the full stop at the end of clause 60.1(3) and insert the following: “except where the event or the instruction giving rise to the event is due to the *Service Provider* not complying with Applicable Law.”

#### Liabilities and insurance

##### *Service Provider’s* liabilities

1. Insert a new clause 81.2 as follows:

“If the *Service Provider* is a joint venture:

* each of the parties comprising the joint venture is jointly and severally liable to the *Client* for the performance of the contract and all liabilities, acts and omissions of the *Service Provider* under or in connection with the contract are the liabilities, acts or omissions of each party comprising the joint venture under or in connection with the contract,
* without limiting or prejudicing any other provisions of the contract, if any of the parties comprising the joint venture ceases to be a member of the joint venture or suffers one of the events described in clause 91.1, the other parties or party carry out and complete the *works* in accordance with the contract,
* the *Service Provider* gives notice to the *Client* and the *Client* as to which of the parties comprising the joint venture has the authority to bind the *Service Provider* for all the purposes of the contract, and
* the *Service Provider* keeps the *Client* and the *Client* informed promptly of any changes in the joint venture whether in relation to any incorporated entity or its constituent entities or the entities forming an unincorporated joint venture, including changes in legal status, the occurrence of any of the events described in clause 91.1, amalgamation, demerger, merger, deterioration in financial condition, de-ratings, major legal claims and suits, and any other matter or circumstance that could reasonably be deemed to be of concern to the *Client* or the *Client*.”

Insurance cover

1. In the insurance table delete “applicable law” and add “Applicable Law”.
2. Insert new clauses 83.4 to 83.7 as follows:

“83.4 The *Service Provider* ensures that Subcontractors and sub-subcontractors of every tier provide the third insurance stated in the Insurance Table in respect of their own employees.

83.6 The *Service Provider* notifies the *Client*:

* of any cancellation, suspension, termination or renewal of any of the insurance it is to provide under the contract at least twenty days before the cancellation, suspension, termination or renewal takes place or is required and
* if the insurance it is to provide ceases to be available or is not maintained or renewed or becomes void, non-renewable or unenforceable for any reason.

83.7 Nothing in this clause 83 relieves the *Service Provider* from any of its obligations and liabilities under the contract.

83.8 If the *Service Provider* is an unincorporated joint venture, each member of the joint venture shall be a named insured to the insurances that the *Service Provider* is required to provide under the contract. Such insurance is to expressly insure both (a) the liability of the member of the joint venture; and (b) the liability of the member of the joint venture for the liabilities, acts and omissions of the *Service Provider* and all other member(s) of the joint venture, such joint and several liability being set out in clause 81.2. The *Service Provider* is in breach of its obligation to procure insurance under clause 83 if there are any terms in the policy or exclusions for contractual liability to the contrary.”

#### Termination

##### Termination and reasons for termination

1. Insert an additional clause 90.5A as follows:

“The *Client* may terminate if:

* the *Service Provider* or, if the *Service Provider* is a joint venture, any party thereto:
	+ is convicted or has been convicted of any criminal offence prescribed within Schedule 6 of the Procurement Act 2023 (Reason 7A);
	+ commits or is found to have committed an act of grave misconduct in the course of its business or profession that renders its integrity questionable;
	+ fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (Reason 7B);
	+ has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (Reason 7C);
	+ fails to obtain any necessary licences or to obtain or maintain membership of any relevant body that is necessary to delivery, regulatory approval, acceptance or certification of the Service (Reason 7D);
	+ demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation Taxes Act and, in any such change of control, there are reasonable grounds relating to the financial standing of the new entity that is proposed to Provide the Service for the Client to withhold its consent (Reason 7E);
	+ the effect of a compensation event is to substantially modify the contract within the meaning of Regulation 74 of the Procurement Act 2023 and the Client is required to initiate a new procurement procedure (Reason 7F) ; or
	+ a set aside order in respect of the contract is made by a review body in accordance with Regulation 104 of the Procurement Act 2023 (Reason 7G).”
1. In clause 92.2, amend “Reason 1, 2, 3, 4, or 7” to read “Reason 1, 2, 3, 4, 7 or any of reasons 7A to 7E”.

### Appendix 1: Schedule of amendments and additions to the identified terms

Make the following amendments to clause 11.2:

1. In clause 11.2(6), delete “applicable law” and add “Applicable Law”.

Insert a new clause 11.3 as follows:

1. Applicable Law means any applicable statute, act, statutory rule, order or other law, directive, regulation or by-law or any rule, code, direction or other instrument having the force of law (including any directive or order promulgated by an competent national or supra-national body) or any regulatory licence, consent, permit, authorisation or other approval including any conditions attached thereto of the United Kingdom or any part thereof or of the European Union or of any public body, authority or regulatory body which has appropriate jurisdiction, for the time being in force.
2. A Business Day is any day other than a Saturday or Sunday or public holiday in England
3. Confidential Information means any information disclosed or obtained in connection with the Service and designated as such by the party disclosing that information
4. A Contracting Authority is any of the contracting authorities defined in Regulation 2(1) of the Public Contracts Regulations 2015 other than the *Client*.
5. Environment is any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or manmade structures, below or above ground), water (including drains and sewers), land (including under any water as described above or below the surface)
6. Environmental Law is any rule of common law, statute, code of practice, circular, guidance note, by-law or regulation having the force of law or any consent, license, permit, order notice, recording, registration or judgement whose breach can give rise, whether immediately or not, to criminal, civil or administrative, damages, sanctions or penalties for the failure to meet obligations relating to the presence, release, spillage, treatment, handling, deposit, escape or other mode of existence of any substance, the carrying out of any activity, or the existence of any condition or any phenomenon which has or could have a detrimental impact on the Environment and which in any such case has its primary purpose or effect the protection of the Environment generally or in any particular locality.
7. The Ethical Supply Chain Policy is the *Client*’s policy of that name included in the Scope.
8. FOIA means 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.
9. Good Environment Management is compliance by the Service Provider with
	1. all Applicable Law including Environmental Law,
	2. the Client’s policies in relation to its occupation and use of the Site and in the provision of the Service,
	3. the principles of BS EN ISO 14001 or its successors and
	4. ensuring that no act or omission of the Service Provider or any Subcontractor of which the Service Provider is aware or ought reasonably to be aware:
		1. puts the Client in breach of Environmental Law or
		2. is capable within one (1) year from Completion of putting the Client in breach of Environmental Law.
10. Harm is actual or potential harm, offence or damage to the environment, ecosystems, land, water, air, flora, fauna or any person (and/or property) (real or personal).
11. Information has the meaning given under section 84 of the Freedom of Information Act 2000.
12. Licence means any permit, consent, approval, authorisation, agreement order, permission, certificate, waiver or licence which must be obtained from any person (including both private persons and public sector entities) in order to lawfully Provide the Service and for any goods to be transported, imported or exported.
13. A Request for Information is a request or apparent request for information under FOIA or the Environmental Information Regulations 2004

# The *Service Provider’s* Contract Data

The *Service Provider* is

|  |  |
| --- | --- |
| Name: |  |
| Address for communications: |  |
| Address for electronic communications |  |

#### The *fee percentage* is:

**The *people rates* are**:

|  |  |  |
| --- | --- | --- |
| category of person | unit | Rate |
|  |  |  |
|  |  |  |

The *published List* of *Equipment* is: CECA (Civil Engineering Contractors Association) Schedules of Contractor Equipment Rates

The *percentage* *for adjustment for Equipment* is: 10% (state plus or minus)

# The *Service Provider’s* Offer and *Client’s* Acceptance

The *Service Provider* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with the *conditions of contract.*

The offered total of the Prices for part of the Service in Part 1 of the Price List is:

[ ]

The offered total of the Prices for part of the Service in Part 2of the Price List is:

[ ]

The total of the Prices from the Price List

[ ]

Signed on behalf of the *Service Provider*

Name:

Position:

Signature:

Date:

TheClient accepts the *Service Provider’s* Offer to Provide the Service

Signed on behalf of the *Client*

Name:

Position:

Signature:

Date

# Price List

Part 1 of the price list is in tabs 1-7 of Appendix 3 ‘Pricing Schedule’

Part 2 of the price list is in tabs 8-10 of Appendix 3 ‘Pricing Schedule’

# Scope

The Scope is in Appendix 6 ‘Scope of Services’