

**Ashurst**

# Land and Property Services Agreement – East West Rail

(Based on The NEC4 Professional Service Contract June  
2017 edition, as amended)

[Name of Party]

the *Client*

and

[Name of Party]

the *Consultant*

Relating to the development of the East West Railway

Date:

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**THIS AGREEMENT** is made on

**BETWEEN:**

- (1) **[CLIENT]** (Company no. [●]) whose registered office is at [●] (the "**Client**", which expression includes its legal successors in title and permitted assignees); and
  - (2) **[CONSULTANT]** (Company no. [●]) whose registered office is at [●] (the "**Consultant**", which expression includes its legal successors in title and permitted assignees),
- each a '**Party**' and together, the '**Parties**'.

**RECITALS:**

- (A) The *Client* intends to undertake the design, engineering, construction, commissioning, operation, maintenance, of the East West Railway (the "**Project**").
- (B) The *Client* wishes to appoint the *Consultant* and the *Consultant* has agreed to be appointed in accordance with the terms and conditions set out below to Provide the Service in connection with the Project.
- (C) The terms and conditions of the contract have been fully negotiated between the *Client* and the *Consultant* as parties of competent capacity and equal standing.

**ARTICLES:**

The Parties agree as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires:
  - (a) any word or term beginning with a capital letter has the meaning given to it in the *conditions of contract*; and
  - (b) any italicised term has the meaning given to it in the Contract Data.
- 1.2 In the contract, article and clause headings are for information purposes only and do not affect the interpretation of the contract.

**2. The Contract**

- 2.1 The *Consultant* is required to Provide the Service in accordance with the contract and all applicable Statutory Requirements.
- 2.2 The *Client* pays the *Consultant* the amount due in accordance with the contract at the times and in the manner prescribed by the contract.
- 2.3 The contract consists of the following Contract Documents which, save as set out in article 2.4 and 2.5 below, apply in the following order of priority:
  - (a) this Agreement;
  - (b) the following Schedules:

**Schedule 1: Conditions of Contract**

The NEC4 Professional Services Contract June 2017 edition (with amendments January 2023):

- (i) Core clauses;
- (ii) Main Option E clauses;
- (iii) Dispute Resolution Option W2 clauses; and
- (iv) Secondary Option clauses X2, X4, X9, X11, X18, X20 and Y(UK)2,

in each case as amended and supplemented by the *additional conditions of contract* Z1-Z18;

**Schedule 2: Contract Data**

Part One: Data Provided by the *Client*; and

Part Two: Data Provided by the *Consultant*;

**Schedule 3: Schedule of Cost Components;**

**Schedule 4: Scope**

**Schedule 5: Activity Schedule**

- 2.4 With respect to any ambiguity or inconsistency between the different sections which comprise the Scope, the following order of priority shall apply:

- (a) Scope Document (main body); and
- (b) Annexes to the Scope Document:

**3. Contract Term**

- 3.1 Subject to article 3.2, the rights and obligations of the Parties under this Agreement begin on the *starting date* and continue for:

- (a) the Initial Term; and
- (b) the Additional Term (if any), provided that 30 days prior to the expiry of the Initial Term, the *Client* gives the *Consultant* written notice that the Initial Term is to be extended for the Additional Term.

- 3.2 Notwithstanding article 3.1, the Parties' rights and obligations under this Agreement shall cease upon the earlier of:

- (a) termination of this Agreement in accordance with clause 90.1 or clause X11.1 (whichever is applicable); or
- (b) expiry of the Term.

**4. Directions to Provide the Service**

- 4.1 The *Consultant* and the Consultant Personnel will comply with all lawful and reasonable directions of the *Client* given from time to time to perform the nature or scope of the services set out in the Scope.

- 4.2 Nothing in this clause 4 will affect the *Consultant's* right to exercise its own judgment and to utilise its skills as it considers most appropriate to achieve compliance with the

*Client's* directions and its obligations under this contract (including its obligation to Provide the Service in accordance with Good Industry Practice).

**5. Nature of the relationship between the Consultant Personnel and Client**

5.1 Any Consultant Personnel will for all purposes including remuneration, tax, any applicable pension contributions, annual and personal leave, and disciplinary action, remain an employee of the *Consultant* (or Subcontractor, where the relevant Consultant Personnel is a Subcontractor employee) at all times during the Term and the *Consultant* will be responsible for:

- (a) payment of each Consultant Personnel's employment entitlements directly to the Consultant Personnel including (as applicable) base salary, pension contributions, annual leave, parental leave, and personal leave; and
- (b) payroll taxes, withholding taxes or any other form of cost or charge required by law or otherwise assessed by any government department or agency in respect of each Consultant Personnel, regardless of whether the *Consultant* is the party liable at law for such tax, cost or charge.

5.2 Without limiting any other right of the *Client* under this Agreement, if any Consultant Personnel is determined under any applicable law to be employed by the *Client* at any time during the Term, the *Client* may terminate its employment of the Consultant Personnel, and the *Consultant* or Subcontractor (as applicable) shall offer the Consultant Personnel employment on the terms that applied immediately before that termination of employment. The *Consultant* shall indemnify and keep indemnified the *Client* against any liabilities, losses, damages, expenses or costs suffered by the *Client* arising from the employment or termination of any Consultant Personnel, or otherwise arising during the Consultant Personnel's engagement.

**6. Relationship with Others**

6.1 The *Consultant* will co-operate and work with the *Client's* other contractors and consultants in relation to the Project to develop a culture of collaboration, transparency in dealings, innovation and outstanding performance in delivering the Project.

**7. Non-exclusive provision of the service**

7.1 The appointment by the *Client* of the *Consultant* to Provide the Service under this Agreement is not exclusive and the *Client* may itself or via additional consultants undertake the work or provide services similar to the service as set out in the Scope at any time.

**8. Execution**

8.1 Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the contract and the transactions contemplated by it.

8.2 This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts each of which, when executed and delivered, shall be deemed to be an original, but all the counterparts taken together shall constitute one and the same Agreement.

**IN WITNESS** whereof this Agreement has been executed and delivered as a deed by the Parties on the date first before written.

***[Note: Execution blocks to be inserted]***

# Amendments to Core Clauses

11.2

Amendments to existing definitions:

(5) **Corrupt Act:** Delete definition and replace with "A Corrupt Act is a Prohibited Act".

(6) **Defect:** At the end of the definition, insert " or any other requirement of the contract"

(9) **Key Date:** Delete both references to "Contract Data" and replace with "Task Order".

(13) **Scope:** In the final line, insert at the end "including any Task Orders".

(17) **Defined Cost:**

Insert the word "Short" prior to the words "Schedule of Cost Components".

Insert at the end of the definition:

"The parties acknowledge and agree that:

- notwithstanding the use of Option E, the Short Schedule of Cost Components is incorporated as part of the conditions of contract and the Schedule of Cost Components shall not apply; and
- the components of the cost of Subcontractors shall be determined as follows:
  - in respect of Scope forming part of the Contract at the Contract Date, the components of the cost of Subcontractors shall be calculated on the basis of the People Rates or the pass-through of Subcontractor costs with a % management mark-up as agreed with the Service Manager and Consultant; and
  - in respect of additional Scope instructed after the Contract Date and which is agreed by the Service Manager to be a compensation event, the components of the cost of Subcontractors shall be determined as set out in the Short Schedule of Cost Components."

(18) **Disallowed Cost:**

In the third bullet point:

- replace the first sub-bullet with "follow an acceptance, review or procurement procedure referred to in the Scope",
- add a new sub-bullet and insert "act in accordance with Good Industry Practice".

(21) **Price for Service Provided to Date:** Delete definition and replace with:

"The Price for Service Provided to Date is:

- the total of the Lump Sum Service Prices payable in accordance with the payment milestones set out in any Task Order; and
- the total Reimbursable Service Prices which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date."

(23) **Prices:** Delete definition and replace with:

"The Prices is the total of the Lump Sum Service Prices; and the forecast of the total Defined Cost for the whole of the *service*."

11.3

Insert a new clause as follows:

- (1) **Additional Term** means the period by which the Client extends the term of the contract beyond the Initial Term, which cannot exceed two years in duration (unless otherwise agreed between the Parties in writing).
- (2) **Agreement** means the form of agreement to which these *conditions of contract* are attached.
- (3) **Anti-Slavery Policy** means a policy implemented by the *Consultant* which sets out the procedures the *Consultant* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.
- (4) **Associated Person** has the meaning given to it by section 26 of the Procurement Act 2023.
- (5) **Business Day** is any day which is not a Saturday, a Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.
- (6) **Certified Ethical Labour Provider** means a labour provider who meets the

qualifying requirements of a Certified Ethical Labour Scheme and who is verified, at or within six months (or such longer period as the Client agrees, acting reasonably) of the starting date, by a competent and independent third party as meeting such qualifying requirements.

(7) **Certified Ethical Labour Scheme** means any of the following:

- the BRE Ethical Labour Sourcing standard BES 6002 (BRE Standard),
- the Clearview Global Labour Provider Certification Scheme (Clearview Scheme), or
- an alternative standard or scheme, which in the reasonable opinion of the Client, is an acceptable substitute to the BRE Standard or Clearview Scheme (Alternative Labour Scheme),

and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time.

(8) **Cessation Plan** means a plan agreed between the Parties or determined by the Employer in accordance with clause Z14 to give effect to a Set Aside Order or a Public Procurement Termination Event.

(9) **Change of Ownership** means in respect of the *Consultant*:

- a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- a sale, transfer or disposal of any legal, beneficial or equitable interest in 25% or more of its shares (including control over the right to appoint or remove directors or the rights to dividends); or
- any other arrangements that have or may have or which result in the same effect as paragraphs (a) or (b) above,

other than a change in the legal or beneficial ownership of shares that: (i) are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or (ii) arises out of or in connection with any such listing on a recognised investment exchange.

(10) **Commencement Date** means the date which occurs on expiry of the [●] period following the Contract Date.

(11) **Client Confidential Information** is all Personal Data and any information, 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.

(12) **Commercially Sensitive Information** is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the *Consultant*, the charges for the *services*, its IPR or its business or which the *Consultant* has indicated to the *Client* that, if disclosed by the Client, would cause the *Consultant* significant commercial disadvantage or material financial loss.

(13) **Confidential Information** is the Client's Confidential Information and/or the *Consultant's* Confidential Information.

(14) **Connected Persons** has the meaning given to it in paragraph 45, Part 3, Schedule 6 of the Procurement Act 2023.

(15) **Consent** is any permit, approval or consent required pursuant to the provisions of any Statutory Requirement or otherwise necessary to be obtained from a third party for the *Consultant* to Provide the Service in accordance with the contract.

(16) **Consultant Group Company** means, in relation to the Consultant, any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company.

(17) **Contract Documents** has the meaning given in article 2.3 in the Agreement.

(18) **Contracting Authority** has the meaning given to it in section 2 of the Procurement Act 2023.

(19) **Crown Body** is any department, office or agency of the Crown in the United Kingdom.

(20) **Debarment List** has the meaning given to it in section 57 of the Procurement Act 2023.

(21) **DOTAS** is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those



arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

- (22) **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.
- (23) **Excludable Supplier** has the meaning given to it by section 57 of the Procurement Act 2023.
- (24) **Excluded Supplier** has the meaning given to it by section 57 of the Procurement Act 2023.
- (25) **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.
- (26) **Force Majeure Event** is the occurrence, after the Contract Date, of:
- war, civil war, rebellion, revolution, insurrection, military or usurped power, armed conflict or terrorism;
  - nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach of the contract by the *Consultant* or any Subcontractor;
  - strikes, riots, Protestor Action and civil commotion, in each case not confined to the *Consultant's* employees, Subcontractors or suppliers; or
  - earthquake, flood or fire;
- which:
- stops the *Consultant* completing the whole of the service; or
  - stops the *Consultant* completing the whole of the service by the date for planned Completion shown on the Accepted Programme,
- and which:
- neither Party could prevent; and
  - an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it;
- (27) **General Anti-Abuse Rule** is the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
- (28) **Halifax Abuse Principle** is the principle explained in the CJEU Case C-255/02 Halifax and others.
- (29) **Initial Term** means the period commencing on the Contract Date and expiring four years thereafter.
- (30) **Intellectual Property Rights** or **IPRs** means patents, design rights, petty patents, design patents, utility models, copyrights, database rights, electronic files, rights in computer programs, rights to inventions, confidential technical and scientific information and all other intellectual or industrial property rights including, where such rights are obtained or enhanced by registration, any registration of such rights (including the right to apply for such registrations) and applications therefor (including the right to claim priority from patent applications) but excluding any trade marks (registered or unregistered).
- (31) **KPI Schedule** means the schedule of Key Performance Indicators included in section [●] of the Scope.
- (32) **Lump Sum Service** means Tasks which are priced on a fixed lump sum basis in respect of which the *Consultant* may only claim a specified sum (subject to adjustment in accordance with the contract).
- (33) **Lump Sum Service Prices** is the lump sum prices for Tasks payable on a lump sum basis as agreed in the relevant Task Order.
- (34) **Mandatory Flow Down Provisions** means:
- an acknowledgment from the Subcontractor that its personnel will comply with any direction given to them by the Client or the Client personnel in relation to the obligation to Provide the Service; and
  - clauses Z4 (Prevention of fraud and bribery), Z6 (Modern Slavery), Z11

(Confidential Information) and Z15 (Conflict of Interest).

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

- a Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
- the failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime and

where any tax return of the Consultant 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.

(36) **Personal Data** has the meaning given to it in the Data Protection Act 2018.

(37) The **People Rates** are the *people rates* unless changed in accordance with the contract. If, when assessing a *compensation event*, the people rates do not include a rate for a category of person required, the *Service Manager* and *Consultant* may agree a new category of person and the applicable rate. If they do not agree, the *Service Manager* shall assess the rate based on the people rates. The agreed or assessed rate becomes the people rate for that category of person.

(38) **Prohibited Act** is

- to directly or indirectly offer, promise or give any person working for or engaged by the Client or other Contracting Authority or any other public body a financial or other advantage to
  - induce that person to perform improperly a relevant function or activity or
  - reward that person for improper performance of a relevant function or activity,
- 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,
- committing any offence
  - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
  - under legislation or common law concerning fraudulent acts or
- defrauding, attempting to defraud or conspiring to defraud the Client or
- any activity, practice or conduct which would constitute one of the offences listed above

if such activity, practice or conduct had been carried out in the UK.

(39) **Project** is the project known as East West Railway.

(40) **Public Procurement Termination Event** means the Employer considers that this contract was awarded or modified in material breach of the Procurement Act 2023 for the purposes of section 78(2)(a) of the Procurement Act 2023.

(41) **Rate Card** means the table of rates set out in the Schedule of Cost Components.

(42) **Reimbursable Service** are Tasks which are priced on a cost reimbursable basis in respect of which the *Consultant* is paid its Defined Cost.

(43) **Reimbursable Service Prices** is the forecast of the total Defined for the *service* (except any Tasks agreed between the Parties to be priced on a fixed lump sum basis).

(44) **Relevant Requirements** are all applicable 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.

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

(46) **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.

(47) **Set Aside Order** means an order setting aside this contract, any part of this contract or any modification of this contract, in each case made by a court of

competent jurisdiction in accordance with section 104 of the Procurement Act 2023.

- (48) **Statutory Requirement** means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law or any regulation or by-law of any local authority or statutory undertaker which has any jurisdiction with regard to the services and any notices or permissions (including planning permissions) served or granted under any such statute, statutory instrument, regulation, rule or order, regulation or by-law.
- (49) **Subcontract** means a contract between the *Consultant* and a Subcontractor.
- (50) **Task** means work included in the *service* which the *Service Manager* or the *Client* (or their employees) instructs the *Consultant* to carry out.
- (51) **Task Completion** is when the *Consultant* has finished each component of the *service* in the Task and corrected any Defects.
- (52) **Task Completion Date** is the date for completion stated in the Task Order (if any) unless changed in accordance with the contract.
- (53) **Task Order** is the *Service Manager's* instructions to the *Consultant* to carry out a Task in accordance with clause 19.4.
- (54) **Term** means the Initial Term as may be extended by the Additional Term in accordance with article."

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- 12.4 Delete and replace with the following:

"The contract constitutes the entire and only agreement between the Parties relating to the subject matter of the contract and each Party acknowledges that it has not been induced to enter into it in reliance upon, nor has any such Party been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in the Contract Documents and, to the extent that either of them has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto. Nothing in this clause 12.4 shall exclude liability in respect of any misrepresentations made fraudulently."

Insert new clauses 12.5 to 12.11 as follows:
- 12.5 "Reference to any Statutory Requirement or any *Client* policy or procedure in the contract shall be construed as including a reference to any modification, extension or re-enactment of it and in the case of any Statutory Requirement includes any orders, regulations, directions, schemes, guidance and rules made under it.
- 12.6 In the contract, the words "including", "includes" or "include" are to be construed without limitation.
- 12.7 If any provision of the contract shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from the contract and shall be deemed to be deleted from the contract and the validity, legality and enforceability of the remaining provisions shall not be affected. In the event that any provision of the contract is held to be illegal, invalid or unenforceable in whole or in part, the Parties shall negotiate in good faith to reach an equitable agreement which reflects the intent of the Parties as set out in the contract.
- 12.8 The headings in the contract are for information only and are to be ignored in construing it.
- 12.9 Failure by the *Client* to exercise its rights under the contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Consultant* from any of its obligations under the 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.
- 12.10 Save as expressly set out in the contract, the rights, power and remedies of each Party under the contract are in addition to, and do not exclude or limit any right, power or remedy provided by law or by any other agreement.

	12.11	No provision of this contract will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this contract or that provision."
<b>Communications</b>	13	
	13.2	<p>In the second paragraph:</p> <ul style="list-style-type: none"> <li>• After the words "If the Scope does not specify a communication system" insert the words "and subject to clause 13.7"</li> <li>• Insert at the end of the paragraph "or if none is stated, at the registered office of the recipient."</li> </ul>
	13.3	<p>Insert the following new sentence at the end of the clause:</p> <p>"Where a reply is required in connection with a request issued via a contract management system, the <i>period for reply</i> commences on the date and time of the issue of that request as shown in the contract management system."</p>
	13.4	<p>Delete the final sentence and replace with the following:</p> <p>"Reasons for withholding acceptance are that:</p> <ul style="list-style-type: none"> <li>• more information is needed in order to assess the <i>Consultant's</i> submission fully; and</li> <li>• the proposal in the communication is not in accordance with the requirements of the contract." </li></ul>
	13.7	<p>Insert the following at the end of the clause:</p> <p>"Any notification to be given under or in connection with the contract shall be in writing and shall be delivered by hand or by courier or by e-mail or Recorded Signed for or Special Delivery post or prepaid first class post and shall be deemed to have been duly given as follows:</p> <ul style="list-style-type: none"> <li>• if delivered by hand or by courier, upon delivery at the address of the relevant party referred to in clause 13.2;</li> <li>• if sent by post, two Business Days after the date of posting; and</li> <li>• if sent by electronic mail/electronic communication when actually received by the intended recipient in readable form,</li> </ul> <p>provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day."</p>
	13.9	In the first sentence after the words "which record the <i>service</i> ", insert "or which contain Confidential Information".
<b>The Service Manager</b>	14	
	14.1	<p>Insert the following at the end of the clause:</p> <p>"No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the <i>Service Manager</i> or the <i>Client</i>, or any enquiry or inspection which the <i>Service Manager</i> or the <i>Client</i> makes or has carried out for its benefit or on its behalf at any time operates to reduce, extinguish, exclude, limit or modify the <i>Consultant's</i> duties and obligations under the contract in any way unless it is in writing from the <i>Service Manager</i> or the <i>Client</i>, refers to the contract and clearly identifies the duty or obligation and the extent to which it is to be reduced, extinguished, excluded, limited or modified."</p>
	14.3	In the first sentence after the words "which changes the Scope", insert the words "of any Task Order, or the access date"
<b>Early warning</b>	15	
	15.1	<p>Insert the following new bullet points in the first paragraph:</p> <ul style="list-style-type: none"> <li>• "lead to a breach of any Consent,</li> <li>• adversely affect the <i>Client</i> (including by increasing the monies payable by the <i>Client</i> to Others engaged on the Project) and/or cause any disruption to any ongoing <i>Client</i> operations,"</li> </ul> <p>Delete the final bullet point of the first paragraph and replace with the following:</p>

- "adversely affect the work of the *Client*, a *Client's* contractor or another consultant, or any Other."

In the final paragraph, insert the following after the first sentence:

"In the notification, the Consultant and the Service Manager state whether the early warning must be dealt with immediately or can wait until the next scheduled early warning meeting."

- 15.4 Insert the following at the end of the clause:
- "For the avoidance of doubt, the Consultant's only entitlement to a change in the Prices, the Completion Date, a Key Date or a Task Completion Date as a result of any revision to the Early Warning Register is in accordance with clauses 60 and 65."

## Prevention

- 18
- 18.1 Delete clause and replace with:
- "If a Force Majeure Event occurs, the *Service Manager* gives an instruction to the *Consultant* stating how the event is to be dealt with."

## Task Orders

- 19 Insert the following new clauses 19.1 to 19.11:
- 19.1 "At any time during the Term, the *Client* or the *Service Manager* (on the *Client's* behalf) may direct the *Consultant* to provide services by way of a Task Order.  
Such direction must be in writing and clearly identify:
- the Scope for the relevant Task; and
  - the basis upon which the *Consultant* shall submit a quotation in accordance with clause 19.2 (whether it will be cost-reimbursable or fixed price),
- (an "**Initial Task Notice**").
- 19.2 No later than [●] Business Days from an Initial Task Notice, the *Consultant* submits a quotation for a Task, which includes:
- the anticipated total Prices associated with performance of the Task;
  - details of the Consultant's employees who will carry out the relevant service;
  - if the Consultant proposes to subcontract the performance the services, information relating to any Subcontract which is required under clause 23; and
  - if applicable to the nature of the service (as notified by the *Service Manager*), a programme which meets the requirements of clause 19.6.
- 19.3 If required by the *Service Manager*, the *Consultant* shows on each Task programme submitted for acceptance:
- the Task *starting date* and Task Completion Date (if applicable);
  - the planned date for Task Completion;
  - the order and timing of the operations which the *Consultant* plans to do to complete the Task;
  - any Key Dates; and
- the dates when, in order to Provide the Service in accordance with the Task programme, the *Consultant* will need information from Others.
- 19.4 The *Service Manager* replies within [●] Business Days of the quotation submission. The reply is:
- the issue of the Task Order confirming the quotation (which may be subject to conditions);
  - a notification that the Task Order will not be issued; or
  - on one occasion only, an instruction to submit a revised quotation, for any reason, including:
    - if the quotation is prepared on a fixed lump sum basis, that the *Service Manager* does not agree to the price specified therein; or
    - that the *Service Manager* does not approve the personnel proposed to perform the Task.

- 19.5 The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within [●] Business Days of being instructed to do so.
- 19.6 If the quotation re-submitted in accordance with clause 19.2 is not agreed for a second time the *Client* is deemed to have notified the *Consultant* that the Task Order will not be issued.
- 19.7 The *Service Manager* extends the time allowed for:
- the *Consultant* to submit quotations for a Task; or
  - the *Service Manager* to reply to a quotation,
- if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.
- 19.8 If the *Service Manager* directs the *Consultant* to submit a quotation on a fixed sum basis, and the *Client* subsequently issues a Task Order in respect of the same, the amount payable in respect of that Task is fixed and the *Consultant* shall not, in the absence of a compensation event, be entitled to any additional payment in respect of that Task above the Lump Sum Service Prices.
- 19.9 If the *Service Manager* directs the *Consultant* to submit a quotation on a cost-reimbursable basis, this figure is indicative only and the *Consultant* will be entitled to claim its Defined Costs associated with the performance of the Task in accordance with clause 50 and the Schedule of Cost Components. The *Consultant's* quotation will
- 19.10 Unless otherwise agreed by the *Client* in accordance with this clause 19.10, the assessment of a Task is priced using the rates in the applicable Rate Card.
- If a Task is to be performed by:
- a Subcontractor; or
  - a member of Consultant Personnel for which there is not a relevant rate set out in the Rate Card,
- the *Consultant* uses reasonable endeavours to assess the Subcontractor's costs using the rates in the Rate Cards.
- Where this cannot be agreed or there is no equivalent rate in the Rate Card, the *Consultant* notifies the *Service Manager* and proposes additional rates against which the relevant Task should be assessed together with an explanation for the necessity of such rates. The *Service Manager* and the *Consultant* act reasonably to agree any additional rates which apply only to assessment of the relevant Task performed by those Consultant Personnel.
- 19.11 The *Client* is under no obligation to issue any Task Order pursuant to this contract. Notwithstanding any other provision of the contract, the *Consultant* acknowledges and agrees that the *Client* may, at any time by way of a written instruction to the *Consultant*, remove or omit all or part of the *service*.
- The total of the Prices is reduced to reflect such removal or omission, calculated by reference to the *Client's* determination of the value attributable to such omitted part(s) (acting reasonably) or by such other sum as otherwise agreed between the Parties.
- The *Client* has no liability whatsoever to the *Consultant* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), which shall not give rise to any entitlement for the *Consultant* to claim for Indirect Loss or for any other amount under the contract.
- The *Consultant* is not entitled to any adjustment to the Completion Date or a Task Completion Date arising out of or in connection with any instruction(s) issued by the *Client* pursuant to this clause 19.11,
- Nothing in this clause 19.11 affects the entitlement of the *Consultant* to be paid for any services properly performed in accordance with the contract prior to the date of such reduction or omission."

## 2. THE CONSULTANT'S MAIN RESPONSIBILITIES

<b>Providing the Service</b>	20	
	20.2	Delete and replace with: "The <i>Consultant's</i> obligation is to use Good Industry Practice."
	20.3	Delete and replace with: "The <i>Consultant</i> is not liable for a Defect unless it failed to carry out the <i>service</i> using Good Industry Practice."
	20.5	In the first sentence after "forecasts of the total", insert the words "Defined Cost and".
<b>Working with the Client and Others</b>	22	
	22.1	Insert the following at the end of the clause: "The Consultant co-operates with Others and co-ordinates its activities with them in accordance with the Scope."
<b>Subcontracting</b>	23	
	23.2	Delete the second sentence and replace with: "A reason for not accepting the Subcontractor is that <ul style="list-style-type: none"> <li>the <i>Service Manager</i> is not satisfied, acting reasonably, that the proposed Subcontractor is suitable and capable of performing the subcontracted scope in accordance with the requirements of this contract based on the information the <i>Consultant</i> provided pursuant to this clause,</li> <li>the appointment will not allow the <i>Consultant</i> to Provide the Service, or</li> <li>the proposed Subcontract Rate Card or fixed lump sum price (as applicable) is not reasonable or in-line with current industry practice."</li> </ul> In the final paragraph insert the following new bullet point after the first bullet point: <ul style="list-style-type: none"> <li>"they do not include the Mandatory Flow Down Provisions, subject to any deviations approved by the Client or"</li> </ul>
	23.3	In the second line after the words "for each subcontract", insert the words "by inclusion in the Task Order quotation pursuant to clause 19". •
	23.4	Delete and replace with: "The <i>Consultant</i> submits the pricing information in the proposed subcontract documents as follows: <ul style="list-style-type: none"> <li>if the Task Order quotation relates to a Lump Sum Service, the <i>Consultant</i> shall submit to the <i>Client</i> the Subcontractor's proposed lump sum price for the relevant Task; or</li> <li>if the Task Order quotation relates to a Reimbursable Service and clause 19.10 applies, the <i>Consultant</i> submits to the <i>Client</i> the Subcontractor's Rate Card, which shall contain rates which are inclusive of overhead and profit."</li> </ul>
<b>Other responsibilities</b>	24	
	24.1	Insert the following at the end of the clause: "The <i>Consultant</i> co-operates with Others and the <i>Client</i> and the <i>Service Manager</i> in obtaining and providing information which Others need in connection with the <i>services</i> and the works and services of <i>Others</i> and the Project. The <i>Consultant</i> co-operates with Others as directed by the <i>Service Manager</i> and consults and co-operates with the <i>Client</i> , the <i>Service Manager</i> and Others as required to Provide the Service, and in the planning and programming of the <i>services</i> the <i>Consultant</i> : <ul style="list-style-type: none"> <li>where necessary to Provide the Service, holds or attends meetings with Others. The <i>Consultant</i> informs the <i>Client</i> and the <i>Service Manager</i> of these meetings beforehand and the <i>Client</i> and the <i>Service Manager</i> may attend them and</li> <li>attends all meetings which the <i>Service Manager</i> requests it to attend."</li> </ul>

### 3. TIME

<b>Starting, Completion and Key Dates</b>	30	
	30.1	<p>Delete the words "does the work" and replace with "proceeds regularly and diligently with the <i>service</i> and uses its reasonable endeavours to prevent and/or reduce any delay in the progress of the work".</p> <p>Insert the following at the end of the clause:</p> <p>"The <i>Consultant</i> does not start work included in a Task until the <i>Service Manager</i> has issued the Task Order and does the work so that the Task Completion is on or before the Task Completion Date (if applicable)."</p>
	30.2	<p>Insert the following at the end of the clause:</p> <p>"The <i>Consultant</i> notifies the <i>Service Manager</i> when in its opinion the <i>service</i> will have been completed or a Condition satisfied in accordance with the contract.</p> <p>The <i>Consultant</i> provides all information and evidence listed or identified in the Scope as being required to demonstrate that the <i>service</i> has been so completed or the Condition has been so satisfied. If the <i>Service Manager</i> is satisfied that the <i>service</i> has been so completed or that the Condition has been so satisfied, it decides the date of Completion or satisfaction. The <i>Service Manager</i> certifies Completion or satisfaction within one week of Completion or satisfaction, as the case may be. If the <i>Service Manager</i> is not so satisfied, it notifies the <i>Consultant</i> of its reasons for not accepting that the <i>service</i> has been completed or the Condition satisfied and the <i>Consultant</i> notifies the <i>Service Manager</i> when the necessary corrective action has been taken."</p>
<b>The programme</b>	31	
	31.2	In the first bullet point, insert "Task Completion Dates" prior to "and Completion Date".
<b>Access to people, places and things</b>	33	
	33.1	<p>Insert the following at the end of the clause:</p> <p>If access and use of a Site is given to the <i>Consultant</i> it is subject to and in accordance with the provisions of any Site access protocol included within the Scope.</p> <p>The <i>Client</i> does not guarantee uninterrupted or exclusive access to or use of a Site or any part of it and access is limited in accordance with the contract.</p>
<b>Instructions to stop or not to start work</b>	34	
	34.1	After the words "instruction to the <i>Consultant</i> ", insert "(to which clause 60.1(4) applies)".
<b>Acceleration</b>	35	
	35.1	<p>In the second line, after the words "Completion Date", insert "or Task Completion before a Task Completion Date".</p> <p>In the second bullet point, after the words "Completion Date", insert "and/or Task Completion Dates".</p>
	35.2	In the second line, after the words "Completion Date", insert "and/or Task Completion Dates".
	35.3	In the second line, after the words "Completion Date", insert "and/or Task Completion Dates".



4. QUALITY MANAGEMENT

Accepting Defects 42

- 42.2
- In the second line, after the words "Completion Date", insert "and/or any Task Completion Date".  
In the fourth line, after the words "Completion Date", insert "and/or any Task Completion Date".

## 5. PAYMENT

Assessing the amount due	50	
	50.2	At the end of the first sentence, insert "with timesheets evidencing hours worked in respect of <i>Consultant</i> personnel."
	50.8	Delete the final sentence.
Payment	51	
	51.1	<p>In the first sentence, delete "one week of each assessment date" and replace with "ten Business Days of the later of the relevant assessment date or receipt of the <i>Consultant's</i> application for payment submitted in accordance with clause 50.2".</p> <p>Insert the following at the end of the clause:</p> <p>Not later than 5 Business Days after receipt of the payment certificate the <i>Consultant</i> delivers to the <i>Client</i> (copied to the <i>Service Manager</i>) a VAT invoice in the amount of the certificate with a copy of the certificate attached.</p>
	51.2	<p>Delete the first sentence and replace with:</p> <p>"Each certified payment is made on or before the final date for payment specified in clause Y2.2."</p>
Defined Cost	52	
	52.1	<p>Insert the following at the end of the clause:</p> <p>"The Fee does not apply to that part of the Defined Cost comprising <i>people rates</i>."</p>
Insert the following new clauses 54 and 55:		
Set Off	54	
	54.1	<p>"In addition to any other rights of the <i>Client</i> whether at law or equity under the contract, whenever:</p> <ul style="list-style-type: none"> <li>under the contract or any other contract between the <i>Client</i> and the <i>Consultant</i> any sum of money is recoverable from or payable by the <i>Consultant</i>; or</li> <li>any Losses are reasonably and properly owed to, or incurred by, the <i>Client</i> under or arising out of the contract or any other contract between the <i>Client</i> and the <i>Consultant</i>,</li> </ul> <p>the same may, subject to service of a pay less notice in accordance with clause Y2.3, be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the <i>Consultant</i> under the contract."</p>
Early payment discount	55	
	55.1	<p>"An early payment discount of [●]% applies for invoices paid within 7 days of the payment due date ("<b>Early Payment Discount</b>"). The Early Payment Discount applies on a per invoice basis. Invoices are submitted as if the Early Payment Discount applies, and the Early Payment Discount is recorded as a separate line item on the relevant invoice. If payment is not made within 7 days of the payment due date, then the amount of the un-invoiced Early Payment Discount is included within the <i>Consultant's</i> next invoice."</p>

## 6. COMPENSATION EVENTS

<b>Compensation events</b>	60	
	60.1	<p>(2) Delete and replace with "The <i>Client</i> does not allow access to a person, place or thing in accordance with and to the extent required by clause 33.1 by the later of its <i>access date</i> and the date for access shown on the Accepted Programme."</p> <p>(4) After the words "The <i>Service Manager</i> gives an instruction" insert the words "under clause 34".</p> <p>(9) Insert at the end of the sentence "unless and to the extent caused by a Force Majeure Event."</p> <p>(11) Insert at the end of the sentence "or an act of prevention by the <i>Client</i> which does not arise as a consequence of the <i>Client's</i> exercise of its rights and/or the discharge of its obligations under and in accordance with the contract."</p> <p>(12) Delete and replace with "A Force Majeure Event."</p> <p>(16) Renumber existing sentence as (17) and insert the following as (16): "The <i>Consultant</i> receives a Task Order after the <i>starting date</i> stated in the Task Order."</p>
	60.2	<p>Insert the following new clause:</p> <p>"The <i>Consultant</i> takes all reasonable steps to mitigate the effects of any compensation event."</p>
<b>Notifying compensation events</b>	61	
	61.2	At the end of the second bullet point, insert: "or Task Completion Date."
	61.3	<p>In the second paragraph:</p> <ul style="list-style-type: none"> <li>after the words "becoming aware", insert "or the date on which it ought reasonably to have become so aware";</li> <li>after the words "Completion Date" insert ", any Task Completion Date".</li> </ul>
	61.4	<p>In the first bullet point of the first paragraph, delete "one week" and replace with "ten Business Days.</p> <p>In the fourth bullet point of the second paragraph after "Completion", insert ", Task Completion".</p> <p>In the postamble to the second paragraph after "Completion Date", insert ", any Task Completion Dates".</p>
<b>Quotations for compensation events</b>	62	
	62.2	After the words "Completion Date", insert "any Task Completion Date".
<b>Assessing compensation events</b>	63	
	63.1	<p>Insert the following at the end of the clause:</p> <p>"Notwithstanding the provisions of clauses 60-66 and without prejudice to its entitlement to be paid its additional Defined Cost incurred as a result of the occurrence of a Force Majeure Event, the <i>Consultant</i> is not entitled to any change in the Prices as a result of the occurrence of a Force Majeure Event.</p> <p>This shall not restrict the <i>Service Manager</i> from assessing a delay to the Completion Date, a Task Completion Date and any Key Dates in accordance with clause 63.5, as a result of the occurrence of a Force Majeure Event."</p>
	63.5	<p>Insert the following after the second paragraph:</p> <p>"A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Completion as shown on the Task programme current at the dividing date."</p>
	63.6	After the words "Completion Date" insert "and/or the Task Completion Dates".
	63.10	<p>Delete and replace with:</p> <p>"Where more than one event causes concurrent delays and the cause of at least one of</p>

those events, but not all of them, is not a cause referred to in clause 60.1, then to the extent that the delays are concurrent, the *Consultant*:

- will be entitled to be paid its additional incurred Defined Cost as a result of such events, but will not be entitled to any change in the Prices, and
- will not be entitled to any adjustment to the Completion Date or any Key Date."

**The Service  
Manager's  
assessments**

64

Insert the following new clause 64.5:

64.5

The *Consultant* notifies the *Service Manager* if it does not accept the *Service Manager's* assessment and, at the same time, of its reasons for not accepting the *Service Manager's* assessment. If the *Consultant* does not provide this notification within four weeks of notification of the *Service Manager's* assessment, the *Consultant* is treated as having accepted the *Service Manager's* assessment.

**Implementing  
compensation  
events**

66

66.2

After the words "Completion Date", insert ", any Task Completion Dates".

7. RIGHTS TO MATERIAL

The Parties' use of material 70

70.3 After the words "The *Consultant* may", insert the word "not".

## 8. LIABILITIES AND INSURANCE

<b>Client's liabilities</b>	80	
<b>Consultant's liabilities</b>	81	
	81.1	<p>Delete and replace with:</p> <p>"The <i>Consultant's</i> liabilities, from the <i>starting date</i> until the <i>defects date</i>, are the liabilities not stated as being the <i>Client's</i> liabilities including (but not limited to) the following liabilities:</p> <ul style="list-style-type: none"> <li>• Claims and proceedings from Others and compensation and costs payable to Others to the extent that the same: <ul style="list-style-type: none"> <li>◦ arise at law and not solely pursuant to the terms of any contractual arrangements entered into by the <i>Client</i> with such Others, and</li> <li>◦ arise from or in connection with the <i>Consultant</i> Providing the Service.</li> </ul> </li> <li>• Costs incurred by the <i>Client</i> which arise from a failure by the <i>Consultant</i> to use Good Industry Practice in the provision of the <i>service</i>.</li> <li>• Death or bodily injury to the employees of the <i>Consultant</i>." </li></ul>
<b>Insurance cover</b>	83	
	83.3	<p>In the first row of the first column of the Insurance Table, delete "the skill and care normally used by professionals providing services similar to the <i>service</i>" and replace with "Good Industry Practice".</p>
<b>Insurance policies</b>	84	
	84.1	<p>Delete and replace with the following:</p> <p>"On the Contract Date and on each renewal of the insurance policy until the <i>defects date</i> and otherwise upon reasonable request, the <i>Consultant</i> submits to the <i>Service Manager</i> for acceptance suitable evidence (including brokers' certificates) confirming that the insurance required by the contract is in force."</p>
	84.2	<p>Insert at the end of the clause: "and the <i>Consultant</i> ensures that all Subcontractors comply with the terms and conditions of the insurance policies."</p>
<b>Limitation of liability</b>	87	
	87.1	<p>At the beginning of the first paragraph, delete "The" and insert "Notwithstanding any other provision of the contract, the".</p> <p>Delete the second paragraph and replace with the following:</p> <p>"The excluded matters are amounts recovered by the <i>Consultant</i> via insurance proceeds or which would have been so recovered had the <i>Consultant</i> complied with the insurance requirements under the contract and amounts payable by the <i>Consultant</i> as stated in the contract for</p> <ul style="list-style-type: none"> <li>• an infringement by the <i>Consultant</i> of the rights of Others (including Intellectual Property Rights) or pursuant to clause 82.1, in respect of liability which the Client incurs to Others,</li> <li>• in respect of which the Contractor makes recovery (or would have made such recovery but for its own default) under any of the insurance policies to be maintained by the Client in accordance with the contract,</li> <li>• loss of or damage to third party property and death of or bodily injury to a person other than an employee of the <i>Consultant</i>,</li> <li>• in accordance with clause X20 (Key Performance Indicators),</li> <li>• in the event of the Contractor's failure to comply with Statutory Requirements relating to health and safety and the environment,</li> <li>• as a result of any fraud, fraudulent misrepresentation, corruption, breaches of clause 17 (Corrupt Acts) or Z4 (Prohibited Acts) and/or wilful default (including abandonment of the service),</li> <li>• in respect of legal costs and interest awarded on any judgement; and</li> <li>• any liability which cannot be excluded or limited at law." </li></ul>

## 9. TERMINATION

### Termination 90

- 90.2 Delete clause and replace with the following:  
 "A Party may terminate for a reason identified in the Termination Table. The Client may additionally terminate in accordance with clause X11.1.

The procedures followed and the amounts due on termination are in accordance with clause X11.2 or the Termination Table, as the case may be.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1-R18, R21 or R25-R26	P1 and P2	A1 and A2
	R20 or R23-24	P1	A1
The <i>Consultant</i>	R1-R10, R19 or R22	P1	A1 and A3
	R17 or R23	P1	A1"

- 90.3 In the second paragraph, delete R1 to R15, R18 or R22" and replace with "R1 to R18, R21 or R25 to 26".

- 91.3 Delete and insert the following:

"The *Client* may terminate if:

- the *Consultant* undergoes a *Change of Ownership* in relation to which it does not obtain the *Client's* consent thereto (in accordance with clause Z2 (Change of Ownership) (R14),
- the *Consultant* breaches a Statutory Requirement relating to health and/or safety (R15),
- the *Client's* right to terminate has arisen under and in accordance with clause Z6.4 (Modern Slavery) (R16),
- the *Consultant* becomes liable to the *Client* for Key Performance Indicator for service credits in accordance with:
  - clause 1.5 of the KPI Schedule in two consecutive quarters; or
  - clause 1.6 of the KPI Schedule on two consecutive occasions (each comprising two quarters
 (R17),
- the *Service Manager* has notified that the *Consultant* has substantially hindered the *Client* or Others and has not stopped the default within four weeks of the date when the *Service Manager* notified the *Consultant* of the default. (R18)."

- 91.4 Delete "(R16)" and replace with "(R19)".

- 91.5 Delete "the law" and replace with "any Statutory Requirement".  
 Delete "(R17)" and replace with "(R20)".

- 91.6 After the words "substantial work or all work", insert "due to any reason other than a Force Majeure Event".  
 Delete "(R18)" and replace with "(R21)".  
 Delete "(R19)" and replace with "(R22)".  
 Delete "(R20)" and replace with "(R23)".

- 91.7 Delete and replace with:  
 "The *Client* may terminate if a Force Majeure Event substantially prevents performance of the *service* for a continuous period of 60 days (R24)."

	91.8	In the second bullet point, insert the words <ul style="list-style-type: none"> <li>insert the words "reasonable, prompt and appropriate" before the word "action";</li> <li>delete "R22" and replace with "(R25)".</li> </ul>
	Insert the following new clauses 91.9 and 91.10:	
	91.9	"The <i>Client</i> may terminate if either: <ul style="list-style-type: none"> <li>a court makes a Set Aside Order, or</li> <li>there is a Public Procurement Termination Event,</li> </ul> and in accordance with clause Z14 (R26)."
	91.10	"Each Party's rights to terminate the <i>Consultant's</i> appointment under the contract as set out or referred to in this clause 91 are its sole and exclusive rights to terminate the <i>Consultant's</i> appointment under the contract, whether in respect of the other Party's breach of contract or otherwise."
<b>Procedures on termination</b>	92	
	92.1	Delete the second sentence and replace with: <p>"The <i>Consultant</i> gives to the <i>Client</i> information resulting from work carried out to date and all information, drawings, documents, models, reports, computer programmes, software, manuals and other items of any kind whatsoever relating to the <i>service</i> which are in the <i>Consultant's</i> control, custody or possession has obtained which it has a responsibility to provide under the contract immediately upon receipt of the <i>Client's</i> request to do so (P1)."</p>
	92.3	Insert the following new clause 92.3: <p>"On termination, the <i>Consultant</i> may, if directed by the <i>Client</i>, complete any <i>service</i> associated with any Task Order for which Task Completion has not occurred at the date of termination."</p>
<b>Payment on termination</b>	93	
	93.1	Delete the second bullet point of paragraph A1.
	93.2	Delete paragraph A3.
	Insert the following new clauses 93.3 and 93.4:	
	93.3	"For the purposes of calculating the A2 amount due on termination: <ul style="list-style-type: none"> <li>if the <i>Client</i> elects to complete a Task comprising the <i>service</i> from an issued Task Order and/or arrange for any other entities to do so, the <i>Consultant</i> is liable to the <i>Client</i> for: <ul style="list-style-type: none"> <li>the additional costs incurred by the <i>Client</i> in procuring completion of the <i>service</i>,</li> <li>damages for any associated delay to completion of the <i>service</i>, and</li> <li>all other direct costs thereby incurred by the <i>Client</i>,</li> </ul> and the <i>Client</i> withholds any further payment to the <i>Consultant</i> under the contract after termination pending ascertainment of the sums due to the <i>Client</i> pursuant to this clause and sets off any sums so ascertained against any such further payment; and</li> <li>if the <i>Client</i> elects not to complete the <i>service</i> which forms part of an issued Task Order and/or arrange for any other entities to do so, the <i>Consultant</i> is liable for any direct or indirect costs incurred by the <i>Client</i>."</li> </ul>
	93.4	"Each Party's rights to compensation pursuant to this clause 93 are (without prejudice to its rights in relation to any antecedent breach of contract by the other Party) its sole and exclusive right to compensation in relation to termination of the <i>Consultant's</i> appointment under the contract in accordance with clause 91."



# Amendments to Option W clauses

## OPTION W2

<b>Resolving Disputes</b>	W2 W2.1	<p>In paragraph (3):</p> <ul style="list-style-type: none"><li>• insert the words "in good faith" after the words "resolve the dispute".</li><li>• At the end of the first sentence, insert "once both Parties have submitted to the other their statement of case pursuant to clause W2.1(2)".</li></ul>
<b>The adjudication</b>	W2.3	<p>Insert a new paragraph 4A as follows:</p> <p>"(4A) If a matter disputed under or in connection with the contract raises the same or similar issues to a related dispute between the <i>Client</i> and one of the <i>Client's</i> other contractors or consultants, the <i>Client</i> may refer the related dispute to the Adjudicator at the same time as the referral under the contract. The Adjudicator then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the <i>Client's</i> other contractors or consultants."</p>
<b>The <i>tribunal</i></b>	W2.4	<p>In paragraph (1) after the words "to the <i>tribunal</i> unless", insert:</p> <p>"the Parties have agreed in writing to refer any such dispute to the Tribunal without reference to the Adjudicator or"</p>

# Amendments to Secondary Option Clauses

## OPTION X4: ULTIMATE HOLDING COMPANY GUARANTEE

Ultimate holding company guarantee	X4	
	X4.1	Delete the second sentence and replace with: "The guarantee is given on the Contract Date and the <i>Client</i> is not liable to make any payment under the contract until the <i>Consultant</i> has complied with this clause."
	X4.2	The <i>Consultant</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.
	X4.5	Insert the following new clause: "The <i>Consultant</i> ensures that any guarantee provided in relation to the contract remains in full force and effect from the date of its provisions until the date that is 12 years after the Completion Date, failing which the <i>Consultant</i> procures, within 20 Business Days, the issue of a replacement guarantee in the same form and issued by a guarantor with a credit rating approved by the <i>Client</i> ."

## OPTION X9: TRANSFER OF RIGHTS

Transfer of rights	X9	
	X9.1	In the first sentence, insert the words "including, for the purposes of this clause X9, the Intellectual Property Rights over such material" prior to the words "except as stated otherwise in the Scope."  Insert the following new clauses X9.2 to X9.5:
	X9.2	To the extent that the <i>Consultant</i> does not have ownership of the material prepared for the contract by or on behalf of the <i>Consultant</i> and it is not possible to procure ownership for the <i>Client</i> , the <i>Consultant</i> procures from the owner of the material an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence to copy and use the material and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, operation, maintenance, sale, promotion, advertisement, expansion, upgrade, reinstatement, refurbishment, repair and decommissioning of the Project. The <i>Consultant</i> also agrees that the <i>Client</i> may grant sub-licences to other persons to use and to reproduce the material and the designs and content of them for any such purposes.
	X9.3	The <i>Consultant</i> is not liable for any use made of the materials for any purpose other than for which it was prepared and/or provided.
	X9.4	The <i>Consultant</i> indemnifies the <i>Client</i> from and against any and all Losses arising as a result of any infringement of any Intellectual Property Rights of any third parties caused by the use or reproduction of the material.  If a claim is made or proceedings are commenced against the <i>Client</i> to which the indemnity set out in this clause X9.4 applies, the <i>Client</i> promptly notifies the <i>Consultant</i> and the <i>Consultant</i> : <ul style="list-style-type: none"> <li>• immediately discusses with the <i>Client</i>, the action(s) that the <i>Consultant</i> intends to take in dealing with such claim and in conducting any such proceedings;</li> <li>• notifies the <i>Client</i> whether it intends to deal with such claim and conduct such proceedings at its own expense, in the <i>Client's</i> name; and</li> <li>• at all times keeps the <i>Client</i> fully informed as to its progress in dealing with such claim or conducting such proceedings.</li> </ul> If within twenty-one days of receipt of the <i>Client's</i> notice the <i>Consultant</i> fails to notify the <i>Client</i> that it intends to deal with such claim or conduct such proceedings then the <i>Client</i> is free to deal with such claim or conduct such proceedings on its own behalf. Unless

the *Consultant* has failed to notify the *Client* within the period stated above, or fails at any time to comply with the other requirements of this clause X9.4, the *Client* shall not make any admission prejudicial to such proceedings.

- X9.5 The *Client* provides a royalty-free, non-exclusive licence to copy and use the material and content of them as required for the provision of the *service*. The *Client* also agrees that the *Consultant* may grant sub-licences on the same terms to Subcontractors that have transferred ownership of the relevant material to the *Client*.

## OPTION X18: LIMITATION OF LIABILITY

### Limitation of liability

X18

X18.2

Delete and replace with the following:

"Neither Party shall be responsible or held liable to the other Party under contract, tort, (including but not limited to negligence) misrepresentation, in debt, by way of reimbursement or under strict liability or other theory of law for any loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any indirect loss of any nature, except:

- as a result of any fraud, fraudulent misrepresentation, corruption, breaches of clause 17 (Corrupt Acts) or Z4 (Prohibited Acts) and/or wilful default (including abandonment of the service),
- in relation to the liability of either Party on any termination of the contract; or
- in accordance with clause X20 (Key Performance Indicators)."

X18.3

Delete and replace with "Not used."

## OPTION X20: KEY PERFORMANCE INDICATORS (NOT USED WITH OPTION X12)

### Key Performance Indicators

X20

X20.1

In the left column of X20, delete the heading "Incentives" and replace with "Key Performance Indicators".

X20.1

Delete and replace with:

"A Key Performance Indicator is an aspect of performance by the *Consultant* which is set out in the KPI Schedule within the Scope."

X20.2

Delete and replace with:

"From the *starting date* until the *defects date* and in accordance with the KPI Schedule, the *Consultant* reports to the *Service Manager* its performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the KPI Schedule and include the forecast measurement against each indicator in the following period."

X20.3

In the first line, delete the word "final".

In the second line, delete the words "Incentive Schedule" and replace with "KPI Schedule".

X20.4

Delete and replace with:

"The *Service Manager* assesses the *Consultant's* performance against each of the Key Performance Indicators and, in accordance with the KPI Schedule, assigns a performance level against each of them. Subject to a submission by the *Consultant* in accordance with clause X20.5, the *Service Manager's* assessment is final and binding."

X20.5

Delete and replace with:

"If the *Consultant*:

- disagrees with the *Service Manager's* assessment of its performance against under clause X20.4; or
- considers that the *Client's* acts or omissions directly impacted on the *Consultant's* performance,

the *Consultant* may within two weeks of such assessment make submissions (with reasonable supporting evidence) to the *Service Manager* and the *Client* in respect of adjustments that it considers should be made to the assessment. The *Consultant* may not make any such submissions after the expiry of this period. The *Service Manager* and the *Client* consider the submissions made by the *Consultant*, and the *Client* may at its sole discretion reassess the *Consultant's* achievement.

Whether or not the *Client* reassesses the *Consultant's* achievement against the relevant Key Performance Indicators under this clause X20.5, its decision is final and binding."

X20.6

Insert the following new clause:

"The *Consultant* will liable to the *Client* for payment of service credits for failure to meet Key Performance Indicators in accordance with the process set out in the KPI Schedule. The *Client* will be entitled to set off such amounts due to it pursuant to the KPI Schedule in accordance with clause 54.1."

X20.7

Insert the following new clause:

"The *Consultant's* liability for service credits pursuant to this clause X20 and the KPI Schedule in respect of any three-month period referred to in the KPI Schedule is limited to 5% of the total amounts assessed as due to the *Consultant* under this contract over the relevant three month period (provided that where the Early Payment Discount applies to any monthly payment pursuant to clause 55.1, the discounted amount applies to that month for the purposes of assessing the amount due for the purposes of this clause X20.7)."

# Amendments to Option Y clauses

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

The Housing Grants,  
Construction and  
Regeneration Act  
1996

Y(UK)2

Dates for  
payment

Y2.2

In the first paragraph, delete the words from "the later of" and replace with:  
"ten Business Days after receipt by the Service Manager of the Consultant's application  
for payment, submitted in accordance with the requirements of clause 50.1."  
In the third paragraph, delete "seven days" and replace with "ten Business Days".

Y2.4

In the first line of the clause, delete "R1 to R15, R18 or R22" and replace with:  
"R1 to R18, R21 or R25-26"

# Z. ADDITIONAL CONDITIONS OF CONTRACT

Z Clause	Amendment
<b>Z1</b>	<b>Third Party Rights</b>
	Nothing in the contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) , provided that this clause Z1 does not affect any right or action of a person to whom the contract is lawfully assigned or otherwise transferred.
<b>Z2</b>	<b>Change of Ownership</b>
	<p>No Change of Ownership occurs before the expiry of the Term without the prior written consent of the <i>Client</i> (which is not unreasonably withheld or delayed).</p> <p>The <i>Client</i> provides written consent under this clause Z2 if:</p> <ul style="list-style-type: none"> <li>the Change of Ownership in respect of the relevant party is intra-group (unless the relevant party is an ultimate parent company); and</li> <li>the Change of Ownership in respect of the relevant party does not give rise to any deterioration in the financial stability of that party.</li> </ul>
<b>Z3</b>	<b>Client Enterprise Agreement</b> <p>The <i>Consultant</i> will after the Contract Date and acting in a spirit of mutual trust and co-operation required by this contract, use all reasonable endeavours to agree with the <i>Client</i> and the <i>Client's</i> other contractors and consultants on the terms of a client enterprise agreement relating to the Project and to agree with the <i>Client</i> any necessary amendments to this contract to accommodate and require the <i>Consultant</i> to comply with the client enterprise agreement. The client enterprise agreement will include provisions and principles relating to the following matters:</p> <p><i>To be updated at ITT Stage (see Working with Others section of Statement of Requirements documents for background)</i></p>
<b>Z4</b>	<b>Prevention of fraud and bribery</b>
<b>Z4.1</b>	<p>The <i>Consultant</i> represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the Contract Date</p> <ul style="list-style-type: none"> <li>committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act or</li> </ul>

	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
Z4.2	<p>During the carrying out of the <i>services</i> the <i>Consultant</i> does not</p> <ul style="list-style-type: none"> <li>• commit a Prohibited Act or</li> <li>• do or suffer anything to be done which would cause the <i>Client</i> or any of the <i>Client's</i> 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.</li> </ul>
Z4.3	<p>In Providing the Service the <i>Consultant</i></p> <ul style="list-style-type: none"> <li>• 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,</li> <li>• keeps appropriate records of its compliance with this contract and make such records available to the Client on request and</li> <li>• provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Consultant's people or any person acting on the Consultant's behalf from committing a Prohibited Act.</li> </ul>
Z4.4	<p>The Consultant immediately notifies the <i>Client</i> in writing if it becomes aware of any breach of clause Z4.1, or has reason to believe that it has or any of its people or subcontractors have</p> <ul style="list-style-type: none"> <li>• 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 or</li> <li>• 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.</li> </ul>
Z4.5	<p>If the <i>Consultant</i> makes a notification to the <i>Client</i> pursuant to clause Z4.4, the <i>Consultant</i> responds promptly to the <i>Client's</i> enquiries, co-operates with any investigation, and allows the <i>Client</i> to audit any books, records and/or any other relevant documentation in accordance with this contract.</p>
Z4.6	<p>If the <i>Consultant</i> breaches Clause Z4.3, the <i>Client</i> may by notice require the <i>Consultant</i> to remove from carrying out the <i>services</i> any person whose acts or omissions have caused the <i>Consultant's</i> breach.</p>
<b>Z5</b>	<b>Freedom of Information</b>

Z5.1	The <i>Consultant</i> acknowledges that unless the <i>Client</i> has notified the <i>Consultant</i> that the <i>Client</i> is exempt from the provisions of the FOIA, the <i>Client</i> is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The <i>Consultant</i> cooperates with and assists the <i>Client</i> so as to enable the <i>Client</i> to comply with its information disclosure obligations.
Z5.2	<p>The <i>Consultant</i></p> <ul style="list-style-type: none"> <li>transfers to the <i>Client</i> 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,</li> <li>provides the <i>Client</i> with a copy of all information in its possession, or power in the form that the <i>Client</i> requires within five Business Days (or such other period as the <i>Client</i> may specify) of the <i>Client's</i> request,</li> <li>provides all necessary assistance as reasonably requested by the <i>Client</i> to enable the <i>Client</i> 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</li> <li>procures that its Subcontractors do likewise.</li> </ul>
Z5.3	The <i>Client</i> 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.
Z5.4	The <i>Consultant</i> does not respond directly to a Request for Information unless authorised to do so by the <i>Client</i> .
Z5.5	The <i>Consultant</i> acknowledges that the <i>Client</i> 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 <i>Consultant</i> or despite the <i>Consultant</i> having expressed negative views when consulted.
Z5.6	The <i>Consultant</i> ensures that all information is retained for disclosure throughout the period for retention and permits the <i>Client</i> to inspect such records as and when reasonably requested from time to time.
<b>Z6</b>	<b>Modern Slavery</b>
Z6.1	<p>In performing its obligations under this contract, the <i>Consultant</i></p> <ul style="list-style-type: none"> <li>complies with the Anti-Slavery Policy,</li> <li>complies, and procures that its subcontractors comply, with the Modern Slavery Act 2015, and</li> <li>unless otherwise agreed in writing by the <i>Client</i> (at the <i>Client's</i> sole and absolute discretion), only procures and ensures that its subcontractors only procure labour from a Certified Ethical Labour Provider.</li> </ul>



Z6.2	Where the <i>Consultant</i> or a subcontractor is procuring labour from a Certified Ethical Labour Provider who prepares audit reports, such reports are made available to the <i>Client</i> (at no additional cost).
Z6.3	On each 12 month anniversary of the starting date, the <i>Consultant</i> submits a report to the <i>Client</i> which confirms that all labour used to provide the <i>services</i> has been procured from a Certified Ethical Labour Provider and includes such evidence as the <i>Client</i> may reasonably require to evidence compliance.
Z6.4	A failure by the <i>Consultant</i> to comply with its obligations under clauses Z6.1 and Z6.2 constitutes a material breach of its obligations by the <i>Consultant</i> and entitles the <i>Client</i> to terminate the <i>Consultant's</i> obligation to provide the <i>services</i> in whole or in part with immediate effect in accordance with clause 91.3.
Z6.5	The <i>Client</i> may refuse any person employed or engaged by the <i>Consultant</i> or a subcontractor entry onto any property that is owned, occupied or managed by the <i>Client</i> if that person has not been procured from a Certified Ethical Labour Provider or if the <i>Client</i> has reasonable grounds to suspect that such person has not been procured from a Certified Ethical Labour Provider. Any Losses arising from such refusal of entry do not constitute a compensation event.
<b>Z7</b>	<b>Tax Compliance</b>
Z7.1	The <i>Consultant</i> represents and warrants that at the Contract Date, it has notified the <i>Client</i> 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.
Z7.2	<p>If, at any point prior to the defects date, an Occasion of Tax Non-Compliance occurs, the <i>Consultant</i> shall</p> <ul style="list-style-type: none"> <li>• notify the <i>Client</i> in writing of such fact within 5 days of its occurrence and</li> <li>• promptly provide to the <i>Client</i> <ul style="list-style-type: none"> <li>○ details of the steps which the <i>Consultant</i> 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</li> <li>○ such other information in relation to the Occasion of Tax Non-Compliance as the <i>Client</i> may reasonably require.</li> </ul> </li> </ul>
<b>Z8</b>	<b>Fair payment</b>
Z8.1	<p>The <i>Consultant</i> assesses the amount due to a subcontractor without taking into account the amount certified by the <i>Client</i>.</p> <p>The <i>Consultant</i> includes in the contract with each Subcontractor</p> <ul style="list-style-type: none"> <li>• 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,</li> </ul>

	<ul style="list-style-type: none"> <li>• a provision requiring the Subcontractor to include in each sub-subcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and</li> <li>• a provision requiring the Subcontractor to assess the amount due to a sub-subcontractor without taking into account the amount paid by the <i>Consultant</i>.</li> </ul>
<b>Z9</b>	<b>Not used</b>
<b>Z10</b>	<b>GDPR</b>
Z10.1	The <i>Client</i> and the <i>Consultant</i> shall comply with the provisions of Schedule 2 (GDPR).
<b>Z11</b>	<b>Confidential Information</b>
Z11.1	<p>Except to the extent set out in this clause Z11 or where disclosure is expressly permitted elsewhere in this contract, each Party shall</p> <ul style="list-style-type: none"> <li>• treat the other Party's Confidential Information as confidential and safeguard it accordingly</li> <li>• not disclose the other Party's Confidential Information to any other person without prior written consent,</li> <li>• immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and</li> <li>• 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.</li> </ul>
Z11.2	<p>Clause Z11.1 above shall not apply to the extent that</p> <ul style="list-style-type: none"> <li>• 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 Z5 (Freedom of Information),</li> <li>• such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,</li> <li>• such information was obtained from a third party without obligation of confidentiality,</li> <li>• such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or</li> <li>• it is independently developed without access to the other party's Confidential Information.</li> </ul>
Z11.3	The <i>Consultant</i> may only disclose the <i>Client's</i> Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall

	<p>ensure that such people are aware of and shall comply with these obligations as to confidentiality.</p> <p>The <i>Consultant</i> shall not, and shall procure that the <i>Consultant's</i> people do not, use any of the <i>Client</i> Confidential Information received otherwise than for the purposes of this contract.</p>
Z11.4	<p>The <i>Consultant</i> may only disclose the <i>Client</i> Confidential Information to <i>Consultant's</i> 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 <i>Consultant's</i> people causes or contributes (or could cause or contribute) to the <i>Consultant</i> breaching its obligations as to confidentiality under or in connection with this contract, the <i>Consultant</i> 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 <i>Consultant's</i> people, the <i>Consultant</i> shall provide such evidence to the <i>Client</i> as the <i>Client</i> may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the <i>Consultant</i> is taking appropriate steps to comply with this clause Z11, including copies of any written communications to and/or from <i>Consultant's</i> people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with <i>Consultant's</i> people in connection with obligations as to confidentiality.</p>
Z11.5	<p>At the written request of the <i>Client</i>, the <i>Consultant</i> shall procure that those members of the <i>Consultant's</i> people identified in the <i>Client's</i> request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.</p>
Z11.6	<p>Nothing in this contract shall prevent the <i>Client</i> from disclosing the <i>Consultant's</i> Confidential Information</p> <ul style="list-style-type: none"> <li>• to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities 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 Authority,</li> <li>• to a professional adviser, contractor, consultant, supplier or other person engaged by the <i>Client</i> 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,</li> <li>• for the purpose of the examination and certification of the <i>Client's</i> accounts,</li> <li>• for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the <i>Client</i> has used its resources,</li> <li>• for the purpose of the exercise of its rights under this contract or</li> <li>• to a proposed successor body of the <i>Client</i> in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,</li> </ul> <p>and for the purposes of the foregoing, disclosure of the <i>Consultant's</i> 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 <i>Client</i> under this clause Z11.6.</p>

Z11.7	The <i>Client</i> shall use all reasonable endeavours to ensure that any government department, Contracting Authority, people, third party or subcontractor to whom the <i>Consultant's</i> Confidential Information is disclosed pursuant to the above clause Z11.6 is made aware of the <i>Client's</i> obligations of confidentiality.
Z11.8	Nothing in this clause Z11 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.
Z11.9	<p>The <i>Client</i> may disclose the Confidential Information of the <i>Consultant</i></p> <ul style="list-style-type: none"> <li>• to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,</li> <li>• to the extent that the <i>Client</i> (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.</li> </ul>
Z12	<b>Supplier Exclusion Notification</b>
Z12.1	<p>The <i>Consultant</i> promptly notifies the <i>Service Manager</i> and the <i>Client</i>:</p> <ul style="list-style-type: none"> <li>• if any of the <i>Consultant</i>, the <i>Consultant's</i> Associated Persons or any Subcontractor is or is placed on the Debarment List, and</li> <li>• if any of the <i>Consultant</i>, the <i>Consultant's</i> Associated Persons or any Subcontractor is or becomes an Excluded Supplier or Excludable Supplier (including in each case by reference to their Connected Persons)</li> </ul> <p>and promptly provides any further information the <i>Client</i> reasonably requires in this regard.</p>
Z12.2	The <i>Consultant</i> notifies the <i>Service Manager</i> and the <i>Client</i> as soon as reasonably practicable and in any event within fourteen days of any changes to the <i>Consultant's</i> Connected Persons together with information regarding any new Connected Persons.
Z13	<b>Supplier Exclusion Ground</b>
Z13.1	<p>In the event that the <i>Client</i> considers that a Supplier Exclusion Ground applies, the <i>Client</i>:</p> <p>(a) may notify the <i>Service Manager</i> and the <i>Consultant</i> of its intention to terminate this contract and in any such notice:</p> <ul style="list-style-type: none"> <li>(i) specifies which Supplier Exclusion Ground the <i>Client</i> considers applies and the reasons for the <i>Client</i> deciding to terminate on that basis,</li> <li>(ii) invites the <i>Consultant</i> to make representations to the <i>Client</i> about the existence of the Supplier Exclusion Ground and the <i>Client's</i> decision to terminate,</li> <li>(iii) specifies a reasonable period (determined at the sole discretion of the <i>Client</i>) within which the <i>Consultant</i> is to make such representations, and</li> <li>(iv) if applicable, specifies a reasonable period (determined at the sole discretion of the <i>Client</i>) within which the <i>Consultant</i> is to have, or procure that its Subcontractors (or sub-subcontractors of any tier) have, ceased subcontracting to the Excluded Supplier or Excludable Supplier and, if the <i>Client</i> considers necessary, appoint an alternative Subcontractor (or sub-subcontractor of any tier) who is approved by the <i>Client</i>, and</li> </ul>

	(b) on expiry of the period specified for the purposes of clause Z13.1(a)(iii) (and, where applicable, clause Z13.1(a)(iv)), then, if after considering the <i>Consultant's</i> representations (if any), the <i>Client</i> is satisfied that the termination ground applies, it may terminate this contract in accordance with clause 91.8.
Z14	<b>Set Aside Order and Public Procurement Termination Event</b>
Z14.1	<p>In the event of a Public Procurement Termination Event, the <i>Client</i>:</p> <p>(a) may notify the <i>Service Manager</i> and the <i>Consultant</i> of its intention to terminate this contract and in any such notice:</p> <ul style="list-style-type: none"> <li>(i) provides the <i>Client's</i> reasons for considering that a Public Procurement Termination Event has occurred and the reasons for the <i>Client</i> deciding to terminate on that basis,</li> <li>(ii) invites the <i>Consultant</i> to make representations to the <i>Client</i> about the occurrence of the Public Procurement Termination Event and the <i>Client's</i> decision to terminate, and</li> <li>(iii) specifies a reasonable period (determined at the sole discretion of the <i>Client</i>) within which the <i>Consultant</i> is to make such representations, and</li> </ul> <p>on expiry of the period specified for the purposes of clause Z14.1(a)(iii), then if after considering the <i>Consultant's</i> representations (if any) the <i>Client</i> is satisfied that a Public Procurement Termination Event occurred may terminate this contract in accordance with clause Z14.2.</p>
Z14.2	<p>In the event that a court makes a Set Aside Order or the circumstances set out in clause Z14.1(b) apply, the <i>Client</i> notifies the <i>Service Manager</i> and the <i>Consultant</i> of the Set Aside Order or termination as a result of the Public Procurement Termination Event in accordance with clause 91.9 (such termination to take effect immediately or on such notice as the <i>Client</i> considers appropriate). Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 (inclusive) and this clause Z14 or the Cessation Plan, the provisions of this clause Z14 and the Cessation Plan prevail.</p>
Z14.3	<p>The Set Aside Order or termination as a result of the Public Procurement Termination Event does not prejudice or affect any right, liability or remedy which has accrued or which accrues to either Party prior to or after such Set Aside Order or termination.</p>
Z14.4	<p>Following the date on which the <i>Consultant</i> is notified under clause Z14.2 the Parties agree or, in the absence of such agreement, the <i>Client</i> reasonably determines an appropriate Cessation Plan with the object of:</p> <ul style="list-style-type: none"> <li>(a) achieving an orderly and efficient cessation of, or (at the <i>Client's</i> request) a transition to the <i>Client</i> (or such other entity as the <i>Client</i> may specify) of either, at the <i>Client's</i> election: <ul style="list-style-type: none"> <li>(i) the <i>services</i>, or</li> <li>(ii) if applicable, any part of the <i>services</i> which is affected by the Set Aside Order or the Public Procurement Termination Event,</li> </ul> </li> <li>(b) achieving minimal disruption or inconvenience to the <i>Client</i> or to public passenger transport services or facilities, and</li> <li>(c) giving effect to any terms of the Set Aside Order (if applicable).</li> </ul>
Z14.5	<p>Upon agreement, or determination by the <i>Client</i> of the Cessation Plan the Parties comply with their respective obligations under the Cessation Plan.</p>

Z14.6	The <i>Client</i> pays the <i>Consultant's</i> reasonable costs in assisting the <i>Client</i> in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the <i>Client</i> . Provided that the <i>Client</i> is not liable to the <i>Consultant</i> for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of the <i>Consultant's</i> obligation to Provide the <i>services</i> in accordance with this clause Z14.
Z14.7	The provisions of this clause Z14 (and applicable definitions) survive any termination of this contract following a Set Aside Order or Public Procurement Termination Event.
Z15	<b>Conflict of interest</b>
Z15.1	For the purposes of this clause Z15, an "interest" includes an interest as defined in Section 81(4) of the Procurement Act 2023.  The <i>Consultant</i> acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the <i>Client</i> or with Providing the Service, save to the extent fully disclosed to and approved in writing by the <i>Client</i> .
Z16.2	The <i>Consultant</i> completes an assessment for any conflict of interest throughout the duration of this contract <ul style="list-style-type: none"> <li>• at regular intervals (not less than once in every six months), and</li> <li>• on further occasions as reasonably required by the <i>Client</i>,</li> </ul> and provides the <i>Client</i> with any information it requests (including declarations provided by the <i>Consultant</i> and its subcontractors of any tier and their respective employees and agents) in relation to each assessment completed.
Z17.3	The <i>Consultant</i> notifies the <i>Client</i> in writing immediately on becoming aware of any actual or potential conflict of interest with the <i>Client</i> or with Providing the Service under this contract, and works with the <i>Client</i> to do whatever is necessary (including the separation of staff working and/or data relating to the works from the matter in question) to manage such conflict to the <i>Client's</i> satisfaction, provided that, where the <i>Client</i> is not so satisfied (in its absolute discretion), the <i>Client</i> will be entitled to terminate the contract.
Z18	<b>TUPE &amp; employees</b>
Z18.1	Save as expressly set out in this clause Z18 the <i>Client</i> shall have no liability to the <i>Consultant</i> arising out of or in connection with the application of the Transfer Regulations to the commencement or cessation of the Service (in whole or part).  The provisions of this clause Z18 (and applicable definitions) survive any expiry or termination of this contract for any reason.
Z18.2	<b>Entry</b>  TBC

Z18.3	<p><b>Exit</b></p> <p>(a) On request by the <i>Client</i> at any time during the term of this agreement, the <i>Consultant</i> shall provide to the <i>Client</i> the following data:</p> <ol style="list-style-type: none"> <li>the number of Consultant Personnel, broken down by location and role;</li> <li>the average salary or other remuneration and benefits of the Consultant Personnel, broken down by location and role, together with information about future pay settlements and redundancy entitlements; and</li> <li>the average length of service of the Consultant Personnel, broken down by location and role.</li> </ol> <p>(b) It is agreed that after the <i>Consultant</i> commences providing the Service the identity of the provider of all or part of the Service may change as a result of the expiry or termination of this agreement in whole or part or a change to Scope, resulting in all or part of the Service (or services which are fundamentally or essentially the same as all or part of the Service) being performed by the <i>Client</i> or a Replacement Consultant (a <b>Service Transfer</b>) and that such Service Transfer may constitute a relevant transfer for the purposes of the Transfer Regulations.</p> <p>(c) The <i>Consultant</i> agrees that:</p> <ol style="list-style-type: none"> <li>within twenty (20) Business Days of the earliest of: <ol style="list-style-type: none"> <li>receipt of a notification from the <i>Client</i> of a Service Transfer or intended Service Transfer;</li> <li>the giving of notice by either party of termination of this agreement in whole or part; or</li> <li>the date which is six (6) months before the expiry of the Initial Term and any Additional Term,</li> </ol> <p>it shall provide the Consultant's Provisional Staff List and the Staffing Information (together with such further information as the <i>Client</i> may reasonably require) to the <i>Client</i> or, at the direction of the <i>Client</i>, to a Replacement Consultant and it shall provide an updated Consultant's Provisional Staff List when reasonably requested by the <i>Client</i> or any Replacement Consultant;</p> </li> <li>at least twenty eight (28) days before the Service Transfer Date, the <i>Consultant</i> shall prepare and provide to the <i>Client</i> and/or, at the direction of the <i>Client</i>, to the Replacement Consultant, the Consultant's Final Staff List, which shall be complete and accurate in all material respects. The Consultant's Final Staff List shall identify which of the Consultant Personnel named are Transferring Employees; and</li> <li>the <i>Client</i> shall be permitted to use and disclose the Consultant's Provisional Staff List, the Consultant's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Consultant and for ensuring an effective handover of any work in progress as at the Service Transfer Date, subject to anonymisation where required by Data Protection Legislation, and otherwise subject to obtaining confidentiality undertakings.</li> </ol> <p>(d) The <i>Consultant</i> warrants the completeness and accuracy of the Staffing Information, Consultant's Provisional Staff List and the Consultant's Final Staff list on each occasion on which such information is provided and the <i>Client</i> may assign the benefit of this warranty to a Replacement Consultant. The <i>Consultant</i> will promptly notify the <i>Client</i> or, at the direction of the <i>Client</i>, the Replacement Consultant of any notice to terminate employment or engagement received from any persons listed on the Consultant's Provisional Staff List regardless of when such notice takes effect. If the <i>Consultant</i> becomes aware that any information it has provided pursuant to this clause Z18 is or has become inaccurate or misleading, it shall notify the <i>Client</i> as soon as reasonably practicable and provide updated information.</p> <p>(e) From the date of the earliest event referred to in clause Z18.3(c)(a), the <i>Consultant</i> agrees that it shall not (and shall procure that any relevant Consultant Group Company and Subcontractor shall not) without the prior written consent of the <i>Client</i> do any of the following:</p> <ol style="list-style-type: none"> <li>assign any person to the provision of the Service (or the relevant part which is the subject of a Service Transfer) who is not listed in the Consultant's Provisional Staff List;</li> </ol>
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	<ul style="list-style-type: none"> <li>b. increase the total number of persons listed on the Consultant's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Client;</li> <li>c. make, propose or permit any material changes to the terms and conditions of employment or engagement of any person listed on the Consultant's Provisional Staff List, it being agreed that any change to pay or benefits shall constitute a material change;</li> <li>d. increase the proportion of working time spent on the Service (or the relevant part) by any Consultant Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Client;</li> <li>e. introduce any new contractual or customary practice concerning the making of any payment on the termination of employment or engagement of any person listed on the Consultant's Provisional Staff List; and</li> <li>f. replace any of the Consultant's Personnel listed on the Consultant's Provisional Staff List or deploy any other person to perform the Service (or the relevant part) or increase the number of Consultant Personnel or terminate or give notice to terminate the employment or engagement of any person on the Consultant's Provisional Staff List, save for the situation where the Consultant would have had reason to terminate any of the persons on the Consultant's Provisional Staff List in the ordinary course of business, for example, in the case of misconduct or gross misconduct.</li> </ul> <p>(f) In relation to any Service Transfer, the <i>Consultant</i> shall, and shall procure that any Subcontractor will, provide the <i>Client</i> and Replacement Consultant with such assistance as it reasonably requests.</p> <p>(g) At least fourteen (14) days before the expected Service Transfer Date, the <i>Consultant</i> shall provide to the <i>Client</i> or any Replacement Consultant, in respect of each person on the Consultant's Final Staff List who is a Transferring Employee, their:</p> <ul style="list-style-type: none"> <li>a. pay slip data for the most recent month;</li> <li>b. cumulative pay for tax and pension purposes;</li> <li>c. cumulative tax paid;</li> <li>d. tax code;</li> <li>e. voluntary deductions from pay; and</li> <li>f. bank or building society account details for payroll purposes.</li> </ul> <p>(h) The parties shall co-operate (and the Consultant shall procure that any relevant Consultant Group Company and Subcontractor shall co-operate) to ensure that any requirement to inform and consult with any persons and/or employee representatives in relation to any Service Transfer will be fulfilled and the <i>Consultant</i> shall enable and assist the <i>Client</i> and/or any Replacement Consultant to inform and consult or communicate with the Transferring Employees or their representatives prior to the Service Transfer Date.</p> <p>(i) In connection with a relevant transfer to which the Transfer Regulations apply, the Parties agree that the <i>Consultant</i> shall perform and discharge (or procure that the Consultant Group Company or Subcontractor shall perform and discharge) all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The <i>Consultant</i> shall indemnify the <i>Client</i> and any Replacement Consultant in full for and against all Costs suffered by the <i>Client</i> or any Replacement Consultant in relation to:</p> <ul style="list-style-type: none"> <li>a. the employment of any of the Transferring Employees at any up to and including the Service Transfer Date including without limitation any claim or demand by any Consultant Personnel arising directly or indirectly from any act, fault or omission of the <i>Consultant</i> (or any personnel of the <i>Consultant</i> or any Consultant Group Company or Subcontractor or its or their personnel);</li> <li>b. the termination of the employment of any Transferring Employees at any time up to and including the Service Transfer Date;</li> <li>c. any resignation by a Transferring Employee after the Service Transfer Date which is or is alleged to be wholly or partly related to or a consequence of any act or omission of the <i>Consultant</i>, any Consultant Group Company or any Subcontractor or its or their personnel;</li> <li>d. any claim (including any individual entitlement under or consequent on such a claim) by any trade union or other body or person representing any</li> </ul>
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	<p>Consultant Personnel arising from or connected with any failure to comply with any legal obligation to such trade union, body or person;</p> <ul style="list-style-type: none"> <li>e. all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, holidays and holiday pay, pension contributions and otherwise) accrued and/or payable in respect of any period up to and including the Service Transfer Date;</li> <li>f. any claim arising out of the provision of, or proposal by the <i>Consultant</i>, any Consultant Group Company or any Subcontractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising at any time up to and including the Service Transfer Date;</li> <li>g. the provision of information under clause Z18.2(c) and (d);</li> <li>h. any act or omission of the <i>Consultant</i>, any Consultant Group Company or any Subcontractor in relation to its obligations under regulations 11, 13 and 14 of the Transfer Regulations, or in respect of an award of compensation under regulation 12 of the Transfer Regulations except to the extent that the liability arises from the <i>Client</i> or Replacement Consultant's failure to comply with regulation 13(4) of the Transfer Regulations.</li> </ul> <p>(j) The <i>Client</i> shall, or shall procure that any Replacement Consultant shall, indemnify the <i>Consultant</i> against all costs arising in respect of:</p> <ul style="list-style-type: none"> <li>a. the employment of any of the Transferring Employees by the Replacement Consultant at any time after the Service Transfer Date;</li> <li>b. the termination of the employment of any of the Transferring Employees by the Replacement Consultant after the Service Transfer Date, subject to clauses Z18.3(h)(b) and Z18.3(h)(c);</li> <li>c. failure to comply with any requirement of regulation 13(4) of the Transfer Regulations in respect of the Transferring Employees;</li> <li>d. any claim arising out of the provision of, or proposal by the <i>Client</i> or any Replacement Consultant to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising at any time after the Service Transfer Date; and</li> <li>e. the <i>Client</i> or Replacement Consultant's failure to perform and discharge any obligation to pay all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period after the Service Transfer date.</li> </ul> <p>(k) If as a result of the Transfer Regulations any contract between a Non-Transferring Employee and the <i>Consultant</i>, any Consultant Group Company or any Subcontractor has effect as if originally made between such Non-Transferring Employee and the Replacement Consultant or if any claim is made to that effect, then:</p> <ul style="list-style-type: none"> <li>a. each party shall, within five (5) Business Days of becoming aware of the same, notify the <i>Consultant</i> and the parties shall then consult as to how such person should be dealt with;</li> <li>b. the <i>Consultant</i> may offer to re-employ or employ such Non-Transferring Employee; and</li> <li>c. notwithstanding clauses Z18.3(j)(a) and Z18.3(j)(b), the Replacement Consultant may terminate such Non-Transferring Employee's employment or engagement within three (3) months of the notification under clause Z18.3(j)(a).</li> </ul> <p>(l) The <i>Consultant</i> shall indemnify the <i>Client</i> and any Replacement Consultant against all Costs arising in respect of:</p> <ul style="list-style-type: none"> <li>a. the employment of any Non-Transferring Employee up to the end of the period of three (3) months after the notification under clause Z18.3(j)(a);</li> <li>b. the termination of the employment of any Non-Transferring Employee pursuant to clause Z18.3(j)(c) above; and</li> <li>c. any other claim made by or in respect of any Non-Transferring Employee for which it is alleged the <i>Client</i> or any Replacement Consultant may be liable by virtue of this agreement and/or the Transfer Regulations.</li> </ul> <p>(m) In the event that any Consultant Personnel is employed by Consultant Group Company or any Subcontractor, the <i>Consultant</i> undertakes to comply with the obligations in this</p>
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	<p>clause Z18 as if such persons were its own employees, or procure that the employer of such person shall comply with this clause Z18.</p> <p>The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause Z18 to the extent necessary to ensure that any Replacement <i>Consultant</i> shall have the right to enforce the obligations owed to, and indemnities given to the Replacement Consultant by the <i>Consultant</i> under this clause Z18 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999. The consent of any third party shall not be required for the variation or termination of this agreement, even if that variation or termination affects the benefit or benefits conferred on any third party.</p>
Z18.4	<p><b><u>Defined terms</u></b></p> <p>In this clause Z18, the following terms shall have the following meanings:</p> <p><b>Assigned Employee</b> means any employee (as that term is used in the Transfer Regulations) of the Outgoing Consultant who is assigned (as that term is used in the Transfer Regulations) to the services transferring to the Consultant;</p> <p><b>Consultant Personnel</b> means all employees, staff, other workers, agents and consultants of the <i>Consultant</i>, any Consultant Group Company and/or any Subcontractor who are engaged in the provision of the Services from time to time.</p> <p><i>[Note to tenderers: EWR reserves the right to amend the definition of "Consultant Personnel" (including the definition of "Consultant Group Company" depending on the structure of the relevant Consultant entity. ]</i></p> <p><b>Consultant's Final Staff List</b> means the list of all employees (as that term is used in the Transfer Regulations) among the Consultant Personnel who are or will be engaged in or wholly or mainly assigned to the provision of the Service (or relevant part thereof) at the Service Transfer Date.</p> <p><b>Consultant's Provisional Staff List</b> means a list prepared and updated by the Consultant of all employees (as that term is used in the Transfer Regulations) among the Consultant's Personnel who are engaged in, or wholly or mainly assigned to, the provision of the Service (or relevant part thereof) at the date of preparation of or update to the list.</p> <p><b>Costs</b> means all actions, claims, demands and proceedings and all losses, liabilities, damages, payments, costs and expenses (including legal and other professional costs and expenses);</p> <p><b>Non-Transferring Employee</b> means any person who is or was, or claims to be or have been, an employee of the <i>Consultant</i> or any group or associated company or any Subcontractor who is not a Transferring Employee.</p> <p><b>Outgoing Consultant</b> means the person(s) appointed by the Client to provide services prior to the relevant <i>starting date</i> which are fundamentally or essentially the same type of services as the Service.</p> <p><b>Replacement Consultant</b> means any person appointed by the Client (or any successor to the Client, and including for the avoidance of doubt the Client itself, or any third party) from time to time to provide, following expiry or termination of this agreement in whole or part, services which are fundamentally or essentially the same type of services as the Service or any part thereof;</p> <p><b>Service Transfer</b> has the meaning given by clause Z18.3(b) above.</p> <p><b>Service Transfer Date</b> means the date of any Service Transfer.</p>

	<p><b>Staffing Information</b> means the information required to be provided under regulation 11 of the Transfer Regulations, together with the following information, in relation to all persons who will or may be Transferring Employees:</p> <ul style="list-style-type: none"> <li>(a) their dates of commencement of employment or engagement, job title and qualifications;</li> <li>(b) the identity of the company which employs or engages them;</li> <li>(c) details of immigration/right to work status (including any pending application and/or the expiry date of any existing permission);</li> <li>(d) their statutory and contractual notice periods;</li> <li>(e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them and of any changes to pay which are agreed, announced or proposed;</li> <li>(f) details of any existing or proposed redundancy agreements, policies or procedures including any such agreement, policy or procedure relating to redundancy pay, whether or not contractual;</li> <li>(g) details of other employment-related benefits (whether or not contractual) including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and car schemes applicable to them;</li> <li>(h) any outstanding or potential contractual or statutory claims in respect of such persons (including in respect of personal injury claims);</li> <li>(i) details of any such individuals on sick leave for a continuous period of 3 months or more, maternity or other statutory leave;</li> <li>(j) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals); and</li> <li>(k) details of any agreement or understanding with any trade union or other employee representative body in respect of such persons and information about any collective agreement affecting the employment of such persons.</li> </ul> <p><b>Transferring Employees</b> means those employees who are listed in the Consultant's Final Staff List and whose contract of employment will be transferred to a Replacement Consultant pursuant to the Transfer Regulations.</p> <p><b>Transfer Regulations</b> means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended or replaced from time to time.</p>
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# Contract Data

## PART ONE – DATA PROVIDED BY THE CLIENT

Completion of the data in full, according to the Options chosen, is essential to create a complete contract

### 1. General

The conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 (with amendments January 2023)

Main Option E Option for resolving and avoiding disputes W2

Secondary Options X2, X4, X9, X11, X18, X20 and Y(UK)2

The *service* is Land & Property Services

The *Client* is East West Railway Company Ltd

Name TBC

Address for communications Add Address

Address for electronic communications Via CEMAR

The *Service Manager* is

Name TBC

Address for communications

Address for electronic communications

The Scope is in Schedule [] to the Agreement and otherwise in the relevant Task Order SoR

The *language of the contract* is English

The *law of the contract* is the law of England & Wales

The *period for reply* is [2 weeks] except that

The period for reply for is

The period for reply for	is	
The <i>period for retention</i> [12]		year(s) following Completion or earlier termination
The following matters will be included in the Early Warning Register		
[]		
Early warning meetings are to be held at intervals no longer than	2 weeks[]	

## 2. The Consultant's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are to be set out in the relevant Task Order

*condition* to be met

*key date*

(1)

(2)

(3)

If Option A is used

The *Consultant* prepares a forecast of the total *expenses* at intervals no longer than

If Option C or E is used

The *Consultant* prepares forecasts of the total *Defined Cost* plus Fee and *expenses* at intervals no longer than 4 weeks

## 3. Time

The *starting date* is

The *Client* provides access to the following persons and things

Access

Access date

(1)

(2)

(3)

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

If the *Client* has decided the completion date for the whole of the *service*

The *completion date* for the whole of the *service* is

Not applicable Check with Jonny

If no programme is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is

4 weeks

## 4. Quality Management

is to submit a quality policy statement and quality plan is 4 weeks

The period between Completion of the whole of the *service* and the *defects date* is 52 weeks

## 5. Payment

	The <i>currency of the contract</i> is the <u>Great British Pounds</u>	
	The <i>assessment interval</i> is <u>every 4 weeks</u> - <u>monthly [ check if it's now 4 weeks]</u>	
If the <i>Client</i> states any <i>expenses</i>	The <i>expenses</i> stated by the <i>Client</i> are	
	Item	Amount
	The <i>interest rate</i> is <u>2</u>	% per annum (not less than 2) above the rate of the bank
If the period in which payments are made is not three weeks and Y(UK)2 is not used	The period within which payments are made is	
If Option C or E is used and the <i>Client</i> states any locations	The locations for which the <i>Consultant</i> provides a charge for the cost of support people and office overhead are	
If Option C is used	The <i>Consultant's</i> share percentages and the <i>share ranges</i> are	
	Share range	<i>Consultant's share percentage</i>
	less than	%
	from % to	%
	from % to	%
	greater than	%
If Option C or E is used	The <i>exchange rates</i> are those published in	
	on	(date)

## 6. Compensation events

If there are additional compensation events These are additional compensation events

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## 7. Liabilities and insurance

If there are additional *Client's* liabilities These are additional *Client's* liabilities

(1)		
(2)		
(3)		

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	<u>£10,000,000</u> in respect of each claim, without limit to the number of claims	<u>from the <i>starting date</i> until 12 years following completion of the whole of the service or earlier termination</u>
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i> ) arising from or in connection with the <i>Consultant</i> Providing the Service	<u>£10,000,000</u> in respect of each event, without limit to the number of events	
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	<u>£5,000,000</u>	

	in respect of each event, without limit to the number of events	
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If the *Client* is to provide any of the insurances stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

If additional insurances are The *Client* provides these additional insurances to be provided

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

The *Consultant* provides these additional insurances to be provided

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

The *Consultant's* total liability to the Client for all matters arising under or in connection with the contract, other than the excluded matters is limited to

Will be limited to 125% of the total contract value as set out in the Tender Notice

## 8. Resolving and avoiding disputes

The *tribunal* is arbitration

If the *tribunal* is arbitration

The *arbitration procedure* is the London Courts of International Arbitration Rules

The place where arbitration is to be held is London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is The Institute of Civil Engineers

The *Senior Representatives* of the *Client* are

TBC

Name (1)

□

Address for  
communications

Address for electronic  
communications

Name (2)

□

Address for  
communications

Address for electronic  
communications

The *Adjudicator* is

the person agreed by the Parties from the list of *Adjudicators* published by the Institution of Civil Engineers or nominated by the *Adjudicator nominating body* in the absence of agreement.

Name

□

Address for  
communications

One Great George Street, London, SW1 3AA

Address for electronic  
communications

TBC

The *Adjudicator nominating body* is

Institute of Civil Engineers



Name (2)

[●]

Address for  
communicationsAddress for  
electronic  
communicationsThe *Adjudicator* is

Name

[●]

Address for  
communicationsAddress for  
electronic  
communicationsThe *Adjudicator nominating body* is**X2: Changes in the law**

If Option X2 is used

The law of the project is

English law

**X18: Limitation of liability**

If Option X18 is used	The <i>Consultant's</i> liability to the <i>Client</i> for indirect or consequential loss is limited to	<div>Not applicable</div>
	The <i>Consultant's</i> liability to the <i>Client</i> for Defects that are not found until after the <i>defects date</i> is limited to	<div></div>
	The <i>end of liability date</i> is <div></div> years after the Completion of the whole of the <i>service</i>	

**X20: Key Performance Indicators (not used with Option X12)**

If Option X20 is used	The KPI Schedule for Key Performance Indicators is in	<div>the Scope</div>
	A report of performance against each Key Performance Indicator is provided at the intervals set out in the KPI Schedule	<div></div>

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

If Option Y(UK)2 is used and the final date for payment is not seven days after the date on which payment becomes due	The period for payment is	<div>10</div>	Business Days after the date on which payment becomes due
-----------------------------------------------------------------------------------------------------------------------	---------------------------	---------------	-----------------------------------------------------------

**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used	term	<i>beneficiary</i>
	<div></div>	<div></div>
	<div></div>	<div></div>
	<div></div>	<div></div>
	<div></div>	<div></div>

If Y(UK)3 is used with

term

*beneficiary*

Y(UK)1 the following entry  
is added to the table for  
Y(UK)3

The provisions of  
Options Y(UK)1

Named Suppliers



**PART TWO –**  
**PROVIDED BY THE CONSULTANT**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**1 General**

The *Consultant* is

Name

Address for communications

Address for electronic communications

The *fee percentage* is (to be applied to all aspects of Defined Cost except for the *people rates*)

 %

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register



## 2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope

The Scope provided by the *Consultant* is in

## 3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

If the *Consultant* is to decide the *completion date* for the whole of the *service*

The *completion date* for the whole of the *service* is

## 5 Payment

If the *Consultant* states expenses

The *expenses* stated by the *Consultant* are any

item

amount







If Option A or C is used

The *activity schedule* is

The tendered total of the Prices is

## Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

be

X29: Climate change

If Option X29 is used

If a *climate change plan* is to be identified in the Contract Data

The *climate change plan* identified in the Contract Data is

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

*named suppliers* are

Data for the Short Schedule of Cost Components

The *people rates* are payable as follows.

People will be charged at the Day Rates for each day of providing the Services provided that, where a person has worked four or more days for four consecutive weeks then, with effect from the first day of the following week, the Long Term Staff Rate will apply to that person.

Day Rates:

category of person	unit	rate

Long Term Staff Rate:

category of person	unit	rate





## Short Schedule of Cost Components

An amount is included

- only if it does not form part of the *expenses*,
- only in one cost component and
- only if it is incurred in order to Provide the Service.

<b>People</b>	1	<p>The cost component of people who are employed directly or indirectly by the <i>Consultant</i> to undertake any part of the <i>service</i> is determined by multiplying each of the applicable rates for the relevant roles which are set out in the tables in the Contract Data by the total time spent on that part of the <i>service</i>. For the avoidance of doubt, the rates for roles which are set out in the table below shall apply in respect of all Subcontracts and sub-subcontracts of any tier, unless different rates are proposed by the <i>Consultant</i> and approved by the <i>Service Manager</i> in accordance with clause 19.10:</p> <p>The rates in the table above are based on an eight hour Business Day (excluding breaks) and are inclusive of all direct salary costs (true cost), costs of employment, overheads and profit of any nature whatsoever. For the avoidance of doubt, the people rates are the only recoverable costs in relation to the <i>Consultant's</i> costs of labour and people in providing the Services.</p>
<b>Subcontractors</b>	2	The following components of the cost of Subcontractors.
	21	Payments to Subcontractors for work which is subcontracted that is a Reimbursable Service, without taking into account any amounts paid to or retained from the Subcontractor by the <i>Consultant</i> , which would result in the <i>Client</i> paying or retaining the amount twice..
<b>Indexation</b>		<p>The people rates set out above and in the Contract Data shall be subject to adjustment on each anniversary of the Commencement Date in accordance with the UK Average Weekly Earnings Annual Growth rate – Regular Pay. The data to be used for such indexation will be the most recent available data on the relevant anniversary of the Commencement Date.</p> <p>No other costs of the <i>Consultant</i> will be subject to indexation.</p>
<b>Insurance</b>	3	<p>The following are deducted from cost</p> <ul style="list-style-type: none"> <li>• the cost of events for which the contract requires the <i>Consultant</i> to insure and</li> <li>• other costs paid to the <i>Consultant</i> by insurers.</li> </ul>

## Schedule 1

### Scope

## Schedule 2

### GDPR

The following definitions shall apply to this Schedule 2.

**Agreement** : this contract;

**Processor Personnel** : means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

**GDPR CLAUSE DEFINITIONS:**

**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 Processor 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 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)

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing

**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 that Processor related to this Agreement.

## 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor unless otherwise specified in Appendix 1. The only processing that the Processor is authorised to do is listed in Appendix 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the works;
  - (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 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - (a) process that Personal Data only in accordance with Appendix 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 1);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller 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) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject 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 Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.

1.7 Taking into account the nature of the processing, the Processor shall provide the Controller 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 Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;

- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own 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 Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Business 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 Controller may on not less than 30 Business Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties include two or more Joint Controllers as identified in Appendix 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [Y] in replacement of clauses 1.1 – 1.14 for the Personal Data under Joint Control.

#### **Appendix 1:**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Appendix.

**[EWR to complete]**

Description	Details
<b>Identity of the Controller and Processor</b>	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor in accordance with Clause 1.1</p> <p><i>[Guidance: You may need to vary this section where (in the rare case) the Client and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</i></p> <p><i>“Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”</i></p>
<b>Subject matter of the processing</b>	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
<b>Duration of the processing</b>	<i>[Clearly set out the duration of the processing including dates]</i>
<b>Nature and purposes of the processing</b>	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
<b>Type of Personal Data being Processed</b>	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
<b>Categories of Data Subject</b>	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<b>Plan for return and destruction of the data once the processing is complete</b>	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>



