

CONTRACT DATA

Contract Data

Part one – Data provided by the *Employer*

Statements given in all contracts

1 General The *conditions of contract* are the core clauses and the clauses for main Option **A** dispute resolution Option **W2** and secondary Options **X1, X2, X4, X19, X20, Y(UK)2** and Option **Z** of the NEC3 Term Service Contract June 2005 (with amendments June 2006 and September 2011).

- The *service* is Waste Management in the North East, North West, Manchester and Pennine, East Midlands, West Midlands, Central Shires, North Wales and Borders, South East, South West and Severn, London and the Kennet and Avon Waterways as identified in the Service Information.

The *Employer* is

Name: **Canal & River Trust**

Address: First Floor North, Station House, 500 Elder Gate, Milton Keynes, MK9 1BB

The *Service Manager* is

Name: Mike Spears

Address: Canal Lane, Hatton, Warwickshire. CV35 7JL

The *Adjudicator* is

Name: To Be Agreed or failing agreement as nominated by the Chairman for the time being of the Technology and Construction Solicitors Association.

- The Affected Property is as listed in Part 3 of this document Service Information

The Service Information is in Part 3 of this document hereto entitled Service Information

The *language of this contract* is English

The *law of the contract* is the laws of England.

The *period for reply* is 2 weeks

The *Adjudicator nominating body* is Technology and Construction Solicitors Association

The *tribunal* is litigation in the Courts of England and Wales.

.....

The following matters will be included in the Risk Register

.....
.....
The CDM co-ordinator for the purposes of the CDM Regulations is not applicable or if he ceases to be the CDM co-ordinator, such other person as the *Employer* appoints pursuant to the CDM Regulations

The principal contractor for the purposes of the CDM Regulations and the SWMP Regulations is the *Contractor* or if he ceases to be the principal contractor, such other contractor as the *Employer* appoints pursuant to the CDM Regulations and/or the SWMP Regulations

3 Time *The starting date* is 01st October 2013

The service period is 60 months with an option to extend for a maximum of a further 24 months

4 Testing & Defects The quality policy statement and quality plan are provided within 2 weeks of the Contract Date

5 Payment The *assessment interval* is monthly.

The currency of this contract is the Pounds Sterling (£)

The interest rate is 2 % per annum above the Base Lending Rate of HSBC Bank plc

8 Risks and insurance The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* property [REDACTED]

The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer's* property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor's* Providing the Service [REDACTED]

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract [REDACTED]

The minimum limit of indemnity for professional indemnity insurance in respect of any claims against the *Contractor* in connection with this contract [REDACTED]

Optional statements

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

The Contractor submits a first plan for acceptance within 2 weeks of the Contract Date.

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

21 days

If Option A is used

- The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at Monthly intervals.

If Option X1 is used

See Z3.

If Option X19 is used

- The Contractor submits a Task Order programme to the Service Manager within 14 days of receiving the Task Order

If Option X20 is used

- The *incentive schedule* for Key Performance Indicators are in the Service Information.
- A report of performance against each Key Performance Indicator is provided at monthly intervals.

If Option Z is used

The additional conditions of contract are Z1 to Z18.

ADDITIONAL CONDITIONS OF CONTRACT

The core clauses and clauses for Options shall be amended and added to as follows:

Z1 – Amendments to the Core Clauses

Clause 11 (Identified and defined terms)

At the end of Clause 11.2(2) insert "as may be amended by an instruction given in accordance with this contract".

In Clause 11.2(3) delete "this contract came into existence" and insert "the Parties entered into this Contract".

In Clause 11.2(4), second bullet point, delete "applicable law" and replace with: "Applicable Law".

In Clause 11.2(5) insert "(net of all discounts, rebates or similar which the Contractor can obtain or recover, whether related specifically to the service or as part of any wider purchasing or framework arrangement or similar)" before "and" in the third bullet point.

In Clause 11.2(5), insert "reasonable" before "amounts paid for hired Equipment" and before "amount the Contractor would have paid".

In Clause 11(2)(6) insert "is not recovered from insurers because of the Contractor's breach of (and would have been recovered if the Contractor had complied with) Clause 84.3" after the second bullet point. Between the fourth and fifth bullet points include a further bullet point as follows:

- "reply to a communication from the *Service Manager* within the period for reply or".

Before the sixth bullet point include a further bullet point as follows:

- "correcting a Defect caused by the Contractor or its Subcontractors".

Insert the following after the last bullet point:

- "any internal recharges, overheads, finance charges or similar payments made by the Contractor to any Affiliate save insofar as such costs represent a legitimate arms-length commercial transaction, and (save for matters caused by Employer's risks) the amount of any excess or deductible applied by insurers to costs which (but for such excess or deductible) would have been paid to the Contractor by insurers."

Insert the following at the end of Clause 11.2(15):

"The TUPE Information is not Service Information."

Insert the following new defined terms at the end of Clause 11.2:

"Affiliate" means in respect of the *Contractor*, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of the *Contractor*.

"Applicable Law" means any United Kingdom statute, law, order, regulation, by-law, statutory instrument, decision, rule, order, consent or delegated or subordinate legislation or any legislative act of the Council of the European Union or the European Commission which (without further enactment) has legal effect within the United Kingdom, or any modification or amendment of any of the foregoing having the force of law.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in London.

"CDM Regulations" are the Construction (Design and Management) Regulations 2007 and the Health and Safety Commission's Approved Code of Practice together with any guidance or requirements issued from time to time by the Health and Safety Executive, as all of the above may be amended, revised or supplemented from time to time.

"Change in Law" means the coming into effect of:

- Applicable Law, other than any Applicable Law which on the date of this Contract has been published:
 - in a draft Bill as part of a Government Departmental Consultation Paper;
 - in a Bill;
 - in a draft statutory instrument; or
 - published as a proposal in the Official Journal of the European Communities, or
- Any applicable judgment of a relevant court of law which changes a binding precedent.

"Change of Ownership" means any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares and the *Contractor* and/or its ultimate or any intermediate Holding Company (including the control over exercise of voting rights conferred on those shares, control over the right to appoint to remove directors or the rights to dividends) and/or any other arrangements that have or may have or which result in the same effect as any of the foregoing.

"Confidential Information" is any information:

- about the subject matter of this contract; or
- about a Party's business, statistical, financial and personnel matters; or
- which a Party deems confidential.

"Contract Agreement" means the formal agreement executed by the Employer and the Contractor recording the terms of the contract.

"Contractor Documents" means all plans, drawings, specifications, files, correspondence (including faxes and e-mails), reports, diaries, documents, records (including photographic records), calculations, data, computer discs or programs, models or other material or information at any time generated by or on behalf of the *Contractor* pursuant to or in connection with the contract or the *works*.

"Contractor Personnel" means all employees, agents or consultants of the *Contractor* and/or any subcontractor from time to time including those individuals wholly or mainly engaged in the provision of the *services* or services similar to the *services* immediately prior to the Commencement Date.

"Contractor's Design Documents" means the drawings, design details and specifications prepared by the Contractor for the *service*.

"Documents" are the Contractor's Design Documents and all data, photographs, computer records, reports, databases, patents, patterns, models or other material relating to the *service*, excluding the Employer Data.

"Employer Data" means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any Intellectual Property Rights relating to the same which are vested in the *Employer*.

"Environment" means any and all of the following: air (including without limitation air within manmade structures or natural structures); water; land (including without limitation the surface and the subsurface of land); and organisms (including without limitation human beings), ecosystems and habitats.

"Environmental Harm" means any adverse impact on or deterioration in the quality of air, land or water or the Environment as a whole, harm to the health of human beings or other organisms, offence to the senses of human beings, impairment or interference with ecosystems and habitats, impairment or interference with the amenity of the Environment or any release, discharge or spillage of Hazardous Substances.

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"Exit Plan" means the plan for the provision of the Handover Services in the event of termination for any reason, which is to be developed and agreed pursuant to Clause Z17

"Financial Records" means information, documents, records and the like, in the possession of or available to the *Contractor* and/or Related Persons, in each case relating to the *service* and including information, documents and records of the cost of Providing the Service and/or the Price for Services Provided to Date, kept in accordance with UK Generally Accepted Accounting Principles and showing in detail the *Contractor's*:

- consolidated and company income statements and audited financial statements for each of its annual financial periods;
- details of controls to ensure that progress reporting is accurate and complete
- detail of audit trail that links the Accepted Plan to cost reporting;
- internal audit reviews of controls and external audit recommendations;
- detailed calculations of standard costs used under the Contract as well as reconciliations to actual costs;
- change control and cost control mechanisms as applied in the Contract;
- risk registers and outstanding issues/claims;
- quantity surveyor's cost and issues reports;
- management accounts;
- timesheets, vouchers and records recording costs of personnel, materials and equipment;
- staff and labour payroll (subject to the requirements of the Data Protection Act 1998);
- records showing payments accrued but not yet paid to Subcontractors and the *Contractor's* anticipated liability for Subcontractor claims;
- Subcontractors' accounts and records for such of the *service* as is subcontracted to Subcontractors, showing (1) as far as reasonably practicable, cost breakdowns between each Subcontractor's time charges for personnel, equipment charges, overheads and profit and (2) showing amounts to be disallowed or not due to be paid by the *Contractor* including for:
- retention; 2%
- the correction of Defects and the cost of carrying out a repeat test or inspection as a result of a Defect;
- payments to Others; and
- the supply of equipment, supplies and services included in the charge for overhead cost;

- purchase ledger systems;
- supplier contract files;
- ordering systems;
- discounts and rebate information;
- internal cross charges;
- bank statements;
- variance analysis reports;
- cash flow statements; and
- Employer Data

and such other items as the *Employer* may reasonably require from time to time to conduct cost audits pursuant to Clause 75 for verification of cost expenditure or anticipated expenditure in such form and details as the *Employer* may reasonably require to enable the *Employer* to monitor the *Contractor's* Provision of the Service and compliance with this Contract and/or the Service Information.

"**FOIA**" means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"**Funder**" means a person that has provided, or is to provide, finance in connection with the whole or any part of the *Service* whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

"**Handover Services**" means the services described as such in the Service Information.

"**Hazardous Substances**" means any substance whatsoever (whether a solid, liquid, gas or any other state of matter and whether alone or in combination with any other substance) which is capable of causing Environmental Harm (including without limitation substances defined as hazardous in the European Waste Catalogue).

"**Holding Company**" has the meaning given in Section 1159 of the Companies Act 2006.

"**Intellectual Property Rights**" means all current and future legal and equitable rights in relation to any and all patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), get-up, trade names, application for any of the foregoing, copyright, database rights, domain names, moral rights, semi-conductor topography rights, rights in inventions, utility models,

rights in know-how, trade secrets and other confidential information and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Licence" means any permit, consent, approval, authorisation, agreement, no objection certificate, waiver or licence which must be obtained from any person (including both private persons and public sector entities) in order for the *service* to be performed and for any goods to be transported, imported or exported.

"Mobilisation Period" means the period commencing on **28/06/2013** and ending on the day before the *starting date* during which the *Contractor* shall provide the Mobilisation Services.

"Mobilisation Services" means the services specified in the Service Information Part A.

"Prohibited Act" means:

- offering or agreeing to give to any servant of the *Employer* any gift or consideration of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the *Employer*; or
 - for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the *Employer*;
- accepting or agreeing to accept any gift or consideration of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a Subcontract; or
 - for showing or not showing favour or disfavour to any person in relation to a Subcontract;
- entering into this Contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission or agreement for the payment thereof have been disclosed in writing to the *Employer*;
- committing an offence in relation to this Contract or any other contract with the *Employer* or a Subcontractor;
 - under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010; or
 - under laws creating offences in respect of fraudulent acts (including common law offences in respect of fraudulent acts); or
- defrauding or attempting to defraud or conspiring to defraud the *Employer*.

"Regulator" means any statutory authority being any governmental or local authority, statutory undertaker or other body of competent jurisdiction which has any jurisdiction with regard to the *service* and/or the performance of the *Contractor's* obligations under this contract and/or with whose

requirements the *Employer* is required or accustomed to comply and/or with whose systems the *service* is or will be connected.

"Regulatory Requirement" means any legally enforceable requirement of any Regulator and any condition, stipulation, proviso, restriction or requirement of any licence, authorisation, consent, omission, order, permit, warrant, approval or notice (whether obtained by the *Employer* or by the *Contractor*) required in order to enable the *Contractor* to Provide the *Service* or otherwise required in connection with the *service* and any condition precedent or other requirement of any Regulator which must be satisfied prior to the grant, issuance, renewal, variation, extension, continuation and/or reconfirmation of any such licence, authorisation, consent, permission, order, permit, warrant, approval or notice.

"Related Person" means, in respect of the *Contractor*

- an Affiliate; and/or
- a Subcontractor

"Replacement Contractor" means any entity providing all or part of the *service* or substantially similar services to all or any part of the *service* following termination of this Contract.

"Request for Information" means a request for information under the FOIA or the Environmental Information Regulations or other request for information received from a member of the public.

"Risk Register" means the document set out at Annex 6.

"Schedule of Rates" means any schedule of rates incorporated or referred to in the Price List which the Price List states shall be used to value compensation events.

"Service Records" are information, documents, records and the like, in the possession of or available to the *Contractor* and/or Related Persons, in each case relating to the *service* and the Contract including information, documents and records of:

- the *Contractor's* monitoring of its Provision of the *Service* against the Key Performance Indicators and its quality management systems;
- all incidents relating to health, safety and security which occur in the Provision of the *Service*;
- hazardous materials or Equipment, substances requiring to be noted on a Control of Substances Hazardous to Health Register and all other matters relating to the Provision of the *Service*;
- all notification of compensation events, or claims falling within the scope of section 8 of this Contract;

- the *Contractor's* actual progress in the Provision of the Service as compared to the Accepted Plan; and
- (in relation to risks identified on the Risk Register) details of all assumptions, calculations and methodologies used in connection with the risk allocation, analysis and management procedure pursuant to Clause 16.3 together with full details of any matter in respect of which an early warning is given pursuant to Clause 16.1.

"**Subsidiary**" has the meaning given in Section 1159 of the Companies Act 2006.

"**TUPE Personnel Information**" or "**TUPE Information**" means information provided by the *Employer* to the *Contractor* in respect of persons who may be subject to TUPE (as defined in Clause Z14).

"**Turnover Year**" or "**Contract Year**" means from **01/10/2013** to **30/09/2014** and each calendar year thereafter.

Insert the following bullet point after the second bullet point in clause 11.2(17):

- "where a rate per unit of measurement is stated for an item in the Price List, an amount calculated by multiplying the rate by the number of units for each task which the *Contractor* has completed."

Insert the following at the end of clause 11.2(17):

"Provided that the Price for Services Provided to Date shall exclude any task which is required to be completed before the Price for carrying out such task may be included within any application for payment by the Contractor as specified in the Service Information Part C."

Delete clause 11.2(19) and replace with the following:

"The Prices are the amounts calculated by applying the rates in the Price List to the quantities for each core task specified in the Service Information Part C."

Clause 12 (Interpretation)

Delete Clause 12.1 and replace with:

"12.1 In this Contract, unless the context otherwise requires:

- the headings are for convenience only and shall not affect its interpretation,
- reference to a Clause, schedule, annex or paragraph are to a Clause, a schedule, an annex or a paragraph in this Contract,

- any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document,
- the schedules to this Contract shall have the same effect as if contained in the body of the Contract, and any reference to this Contract shall include the schedules,
- any reference to any statute shall include references to the same as it may have been, or may from time to time be amended/modified, consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under such an amendment, modification, consolidation or re-enactment) subject to the provisions of this Agreement which relate to change of law,
- reference to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders. Any reference to a person shall be a legal person of whatever kind whether incorporated or unincorporated and to its successors, permitted assigns and transferees, and
- words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

Delete Clause 12.4 and replace with:

"12.4 In relation to its subject matter, this Contract sets out the entire agreement between the Parties and supersedes all prior agreements, arrangements or understandings between them. The Parties acknowledge that they have not entered into this Contract in reliance upon any statement, representation, assurance or warranty which is not set out in this Contract. Nothing in this Clause shall limit or exclude any liability for fraud."

Insert the following new Clause:

"12.5 If any Clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the contract and will be ineffective without, as far as is possible, modifying any other Clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect."

Insert the following new clause 12.6:

"12.6 The failure or delay by either party in any one or more instances to insist upon strict performance or observance of any one or more of the terms of this Contract or to exercise any remedy, privilege or right provided by law or under this Contract shall not be construed as a waiver of any breach or right to enforcement of such terms or to exercise such remedy, privilege or right."

Clause 13 (Communications)

Insert the following sentence at the end of Clause 13.1:

"Communications relating to termination of the *Contractor's* obligation to Provide the Service or a dispute are not given by email."

Clause 14 (The Service Manager)

Insert "and/or the Affected Property" at the end of Clause 14.3.

Clause 15 (Employer provides right of access and things)

In Clause 15.1, insert "owned by the *Employer*" after "Affected Property".

At the end insert:

"The *Contractor* shall be responsible for obtaining the necessary rights of access in relation to any Affected Property owned by Others and the *Contractor* shall indemnify the *Employer* for any and all claims, damages, losses, costs or expenses suffered by the *Employer* or for which the *Employer* is otherwise liable arising out of or in connection with any trespass by the *Contractor*, its Subcontractors or their employees."

Clause 17 (Ambiguities and inconsistencies)

Delete Clause 17.1 and substitute with:

"17.1 Where there is any inconsistency between:

- any of the core Clauses as amended, the main Option A Clauses as amended, the secondary Option Clauses as amended and/or the dispute resolution Clause W2 as amended;
- any Task Order issued in accordance with Option X19; and
- any other part of this Contract

the sections of this Contract described in bullet one shall prevail over those described in bullet three and over those described in bullet two (unless otherwise specifically stated in the Task Order) and the sections of this Contract described in bullet three shall prevail over those in bullet two (unless otherwise specifically stated in the Task Order). Where there is any inconsistency between additional conditions contained within the Z Clauses and the Clauses specified in bullet one above the former shall prevail. No such inconsistency shall be treated as an ambiguity to which this Clause applies.

In the event of any conflict, ambiguity or inconsistency between any *Contractor* supplied information contained in the contract and any other part of the contract, the latter shall prevail and the *Service Manager* gives an instruction resolving any such conflict, ambiguity or inconsistency. The *Contractor* shall Provide the Service in accordance with the *Service Manager's* instruction. Any such instruction shall not constitute a compensation event and the Contractor shall have no other right to claim compensation. Subject as aforesaid, the *Service Manager* or the *Contractor* notifies the other as soon as either becomes aware of any ambiguity or inconsistency in or between the documents which are part of this Contract. The *Service Manager* gives an instruction resolving the ambiguity or inconsistency."

Clause 18 (Illegal and impossible requirements)

Delete Clause 18.1 and substitute with:

"30 days after the Contract Date, the *Contractor* will confirm or otherwise that the Service Information does not contain any illegal or impossible requirements. Throughout the course of the service, should an instruction be given in accordance with this contract that amends or adds to the Service Information, the *Contractor* notifies the *Service Manager* as soon as he considers that the instruction requires him to do anything which is illegal or impossible. If the *Service Manager* agrees, he gives an instruction to change the Service Information appropriately."

Clause 20 (The *Contractor's* main responsibilities)

In Clause 20.2, insert at the end:

"and shall Provide the Service so as to prevent any damage to Affected Property. The *Contractor* shall report any damage caused to Affected Property to the *Service Manager* immediately. The cost of repair or replacement of any damaged Affected Property shall be borne by the *Contractor*."

Insert the following new Clause:

"20.6 Notwithstanding anything in the Service Information, the *Contractor* shall be deemed to have inspected and examined the Affected Property, the Sites their surroundings and information available in connection therewith and to have satisfied himself so far as is practicable and reasonable before the award of the Contract as to:

- the form and nature thereof, and
- the extent and nature of services, work, Plant and Materials and Equipment necessary for Providing the Service

and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Provision of the Service. The *Contractor* shall not be entitled to rely upon any survey, report or other document prepared by

or on behalf of the *Employer* regarding any such matter and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, therein contained."

Insert the following new Clauses:

"Protection of the Environment

- 20.7 The *Contractor* shall at all times during the Provision of the Services be responsible for and take reasonable and proper steps for protecting the Environment and shall ensure that in Providing the Service he does not cause Environmental harm.
- 20.8 In doing so, the *Contractor* shall comply with all Regulatory Requirements.
- 20.9 The *Contractor* shall be liable for, and shall indemnify the *Employer* against any expense (including without limitation site investigation and remediation costs), liability, loss, claim, proceedings (including without limitation informal and formal enforcement proceedings brought by a Regulator), or Regulatory Requirements (including without limitation compulsory remediation required by a Regulator) arising in respect of Environmental Harm as a result of any breach of contract, breach of statutory duty or negligence by the *Contractor* or any of its subcontractors, operatives, employees or agents."

Clause 22 (Revising the *Contractor's* plan)

In Clause 22.1, insert "how the *Contractor* plans to deal with any delays and to correct notified Defects, the actual progress of Providing the Services" after "compensation events".

Clause 23 (Design of Equipment)

In Clause 23.1, third bullet point, replace "applicable law" with "Applicable Law".

Insert new Clauses as follows:

- "23.2 The *Contractor* assigns to the *Employer* and the *Employer* owns all present and future Intellectual Property Rights in all Documents created by the *Contractor* or any Subcontractor in Providing the Service. The *Contractor* obtains from a Subcontractor equivalent rights over the material prepared by the Subcontractor. The *Contractor* makes available to the *Employer* all such Documents for use. Where any Documents created by the *Contractor* or any Subcontractor are held on computer or in other machine readable format, the *Contractor* provides a licence for and supplies any software necessary to enable the *Employer* and his representatives to access and use the Documents.

- 23.3 The *Contractor* warrants that the *Employer's* exercise of any such Intellectual Property Rights shall not infringe the Intellectual Property Rights of any third parties and the *Contractor* shall indemnify the *Employer* against any claims, damages, losses, costs or expenses suffered by the *Employer* (or its assignees or licensees) as a result of the *Employer's* exercise of such Intellectual Property Rights.
- 23.4 The *Contractor* has the right to use Documents only to Provide the Service. The *Contractor* may make this right available to Subcontractors. On Completion the *Contractor* returns all the Documents to the *Employer*.
- 23.5 As contemplated by the Copyright, Designs and Patents Act 1988, to the extent the *Contractor* or any Subcontractor is the author of Documents which comprise Intellectual Property Rights, the *Contractor* waives and shall ensure that any Subcontractor waives its rights against the *Employer*, the *Employer's* assignees and licensees to the extent that the exercise of such rights would prevent or impede the *Employer's* exercise of the Intellectual Property Rights."

Clause 24 (People)

Insert new Clause as follows:

- "24.3 The *Contractor* shall demonstrate to the reasonable satisfaction of the *Employer* that it has in place, and shall procure that its Subcontractors shall have in place, appropriate procedures for ensuring the welfare of their respective employees or other persons engaged in Providing the Service, including procedures for reporting and handling instances and perceived instances of fraudulent behaviour and procedures protecting whistle blowers."

Clause 26 (Subcontracting)

Insert the following at the end of Clause 26.2:

"No sum due under a subcontract is eligible for treatment as Defined Cost, or as part of the Price for Services Provided to Date, if and for so long as the requirements of this Clause 26.2 are not satisfied in relation to that subcontract."

In Clause 26.3, delete the first bullet point and replace with the following:

- "an NEC Contract is proposed, which has been amended from the standard NEC text so as to impose on the Subcontractor obligations corresponding to those under the non-NEC standard text Clauses of this Contract (as appropriate) or"

At the end of Clause 26.3, insert the following additional bullet points:

- "where the Subcontract is priced on a lump sum or rates basis, the basis of pricing under the Subcontract is not sufficiently broken down to allow "value for money" analysis by the *Service Manager*, or
- they do not contain provisions imposing on the Subcontractor obligations necessary in order for the Contractor to comply with provisions of this Contract, or
- they do not require the *Contractor* to assign the benefit of the Subcontract to the *Employer* or to permit the *Employer* to assume the *Contractor's* role of *Employer* under the Subcontract in case of termination of this Contract, or
- they do not require the Subcontractor to execute and deliver collateral warranties in accordance with the requirements of this Contract for subcontractor collateral warranties.

No sum under a subcontract is eligible for treatment as Defined Cost, or as part of the Price for Services Provided to Date, if and for so long as the requirements of this Clause 26.3 are not satisfied in relation to that subcontract."

Insert new sub-clause 26.4:

"26.4 Where the *Employer* has consented to a part of the *service* being subcontracted, the *Contractor* shall not allow any additional subcontracting. Any approval to subcontract by the *Employer* is specific to the part of the *service* in respect of which the *Contractor* has requested permission to subcontract and shall not be regarded as an approval to use any such subcontractor for other parts of the *service* or in carrying out works and/or services in connection with other contracts between the *Employer* and the *Contractor*."

Insert the following at the end of Clause 27.1:

"The *Contractor* obtains all Licences required for the carrying out of the *service* except for those which the Service Information expressly states will be obtained by the *Employer*.

In relation to Licences which it is the *Employer's* responsibility to obtain, the *Contractor*:

- provides such support as the Service Information states the *Contractor* is to provide to the *Employer* in applying for and obtaining such Licences, and
- provides such other support as the *Employer* reasonably requires.

The Contractor ensures that the *service* complies with all Licences, Applicable Laws and Regulatory Requirements (including, without limitation, those relating to the protection of human health and the Environment) (and procures that its Subcontractors so comply) in Providing the Service."

Insert new **Clause 27.5** as follows:

"27.5 All operations necessary for the Provision of the Service shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with:

- the convenience of the public, or
- the access to public or private roads, footpaths or properties whether in the possession of the Employer or of any other person and with the use of occupation thereof.

The *Contractor* shall indemnify the *Employer* in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any of the above matters and damage to or loss of any property, real or personal, arising from the Provision of the Service except to the extent that such damage or loss is attributable to any negligence, wilful act or breach of this contract by the *Employer* or by any person employed by or contracted to him except the *Contractor*.

All activities shall be carried out without unreasonable noise disturbance or other pollution.

To the extent that noise disturbance or other pollution is not the unavoidable consequence of Providing the Service the *Contractor* shall indemnify the *Employer* from and against any liability for damages on that account and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in regard to or in relation to such liability."

Insert new Clause 27.7 as follows:

"If the *Contractor* is a joint venture of two or more persons, all such persons are jointly and severally bound to the *Employer* for the purposes of this contract. The persons designate one of such persons to act as a partner in charge with authority to bind the joint venture. The composition or the constitution of the joint venture is approved by the *Employer* and is not altered without the prior consent of the *Employer*."

Insert new Clause 28 as follows:

"28.1 The *Contractor* warrants and undertakes that he has not and shall not specify nor authorise, cause or allow to be used within or in relation to the *service* any material which:

- fails to meet the appropriate British or EU Standard or Code of Practice; or
- is known to or is reasonably believed to pose a hazard to the health of any person or to the environment or which, at the time of specification or use in the *service* is generally accepted as being deleterious

(together known as "Prohibited Materials").

28.2 The *Contractor* shall immediately notify the *Employer* if he suspects or becomes aware of any proposed or actual use within or in connection with the *service* or any of the Prohibited Materials."

Insert new Clause 29 as follows:

"Clause 29 (Third Party Agreements)

29.1 The *Contractor* acknowledges that the *Employer* has and will from time to time enter into agreements with third parties and be bound by decisions, consents and approvals of relevant authorities which may relate to the *Contractor's* obligations hereunder (each a **"Third Party Agreement"** and each counterparty to such Third Party Agreement being a **"Third Party"**).

29.2 Notwithstanding any other provision to the contrary, the *Contractor* shall comply with and shall perform its obligations under and arising out of this Contract so that no act, omission, neglect or default on its part shall:

- cause or contribute to any breach by the *Employer* of any of its obligations,
- give rise to any liability of the *Employer*; or
- lead to any diminution or loss of any rights, entitlements or other benefits of the *Employer*,

under any Third Party Agreement, save to the extent that the *Contractor* has not been provided with a copy.

29.3 The *Contractor* shall indemnify the *Employer* upon proven default from and against all claims, damages, losses and expenses (including without limitation legal fees and expenses) incurred by the *Employer* toward any Third Party which is attributable to any negligence, wilful act or breach of the requirements of this Clause 29 by the *Contractor* providing that the *Contractor* has been issued a copy of the Third Party Agreement for reference.

29.4 In the event the *Employer* enters into a further Third Party Agreement after the Contract Date (including any amendment agreement to a Third Party Agreement entered into before the Contract Date) the same shall constitute a compensation event.

29.5 The *Contractor* shall keep the *Employer* informed of all material correspondence and communications between the *Contractor* and any Third Party."

Clause 31 – Access

In Clause 31.1 insert "owned by the *Employer*" after "Affected Property".

Clause 33 – Employer's Right to Extend the Service Period

Insert the following new Clause 33:

"The *Employer* may, in agreement with the *Contractor* extend the *service period* by a further two years by written notice to the *Contractor*. Such notice must be provided at least two calendar months before the expiry of the *service period*."

Clause 42 (Correcting Defects)

Insert the following at the end of the first sentence of Clause 42.1:

"or, in respect of a Defect in any physical works undertaken by the *Contractor*, within the *defect correction period*".

Insert new Clause 42.3:

"42.3 In addition to the *Employer's* other rights under this contract, the *Service Manager* may give an instruction to the *Contractor* changing the Service Information by omitting a part of the *service* where the *Contractor* has substantially failed to Provide the Service and the Contractor's defaults in relation to the provision of such part of the *service* have not been remedied by the *Contractor* within four weeks of them being notified to the *Contractor* by the *Service Manager*. The *Service Manager* may evoke this remedy by issuing a notice to the *Contractor* identifying the part of the *service* which is being omitted from the Service Information together with the notice provided previously to the *Contractor* notifying the defaults in respect of that part of the *service*. Upon issuing such notices to the *Contractor* the Prices shall be deemed to be reduced by the Prices attributable to the future provision of such part of the *service*."

Clause 50 (Assessing the amount due)

Insert a new paragraph at the end of Clause 50.1:

"One week before each assessment date the *Contractor* submits to the *Service Manager* an application for payment setting out what the *Contractor* considers to be the amount due. The application is:

- in a form acceptable to the *Service Manager*; and
- includes substantiation of the amounts that the *Contractor* considers to be due."

Clause 51 (Payment)

In Clause 51.1:

Delete "one week" and replace with "within 10 Business Days."

Delete Clause 51.2 and replace with the following:

"51.2 No earlier than the date of issue of the *Service Manager's* certificate under Clause 51.1, the *Contractor* issues a VAT invoice for any payment due to him. Each certified payment to the *Contractor* is made within 15 Business Days of receipt by the Employer of the *Contractor's* valid VAT invoice or, if a difference period is stated in the Contract Data, within the period stated. Each certified payment from the *Contractor* to the *Employer* is made within 15 Business Days of the date of issue of the *Service Manager's* certificate under Clause 51.1 or, if a difference period is stated in the Contract Data, within the period stated."

Clause 60 (Compensation Events)

In Clause 60.1, line 1 after "are" insert:

"to the extent they do not result from a breach of Contract by the *Contractor*."

In Clause 60.1(1), in the second sub-paragraph delete "for his plan". Insert the following at the end of the Clause:

- "a change to the Service Information omitting a part of the *service* in the circumstances set out in Clause 42.3."

Add a new bullet point to Clause 60.1(1):

- "a change made as a result of or to overcome or to mitigate the effects of a breach of contract by the *Contractor*"

In Clause 60.1(2) insert "owned by the *Employer*" after "Affected Property".

In Clause 60.1(8) insert at the end "unless the *Contractor* is in breach of this contract".

Insert the following at the end of Clause 60.1(9):

"but delay is not unnecessary if it arises only from the proper carrying out of a test which is provided for in the Contract and/or the Service Information."

In Clause 60.1(13) add at the end:

"unless the correction was necessary due to inaccurate, incomplete or incorrect information provided by the *Contractor*".

Insert "or other act of prevention" after "breach of Contract" in Clause 60.1(14).

Insert new Clause 60.2 as follows:

"60.2 Inaccuracies in the TUPE Personnel Information shall not be regarded as a compensation event."

60.3 In the event of there being any inaccuracies in the TUPE Personnel Information the Prices shall be adjusted by the sum determined in accordance with the adjustment principles set out in Clause Z14."

Clause 61 (Notifying compensation events)

In Clause 61.4 replace "1" with "2" in the fifth bullet.

Clause 63 (Assessing compensation events)

Insert the following at the end of Clause 63.1:

"In the event the *Service Manager* instructs a change to the Affected Property and the Service Information requiring similar works and services as those comprised in the Fixed Scope to be provided in relation to the additional property specified in the instruction to change the Affected Property, the changes to the Prices is assessed by making a proportionate adjustment to the Annual Price to accommodate such additional works and services without adjustment for any price inflation that may have occurred since the Contract Date. Unless otherwise agreed, for all other compensation events the labour rates and agreed mark-ups for Plant and Materials and Equipment contained in the Price List shall be used to assess the change to the Prices."

In Clause 63.2 insert the following after "are" in line 1:

"either assessed in accordance with the remainder of this Clause 63.2 or in accordance with Clause 63.3, at the *Service Manager's* election. If they are to be assessed in accordance with Clause 63.2, the changes to the Prices are".

Clause 63.3 is deleted and replaced with the following:

"Subject to Clause 63.2, for compensation events that concern works and/or services similar to those contained in the Price List, the change to the Prices is assessed by multiplying the quantities of such works and/or services by Prices in the Price List which have been adjusted so as to make due allowance for any change in the conditions under which such work or services are to be undertaken and/or any significant change in the quantity of the work to be undertaken. If, in the *Service Manager's* reasonable opinion there are no Prices in the Price List for work of a similar character to the work and/or services applicable to a compensation event the *Service Manager* may instruct the *Contractor* to assess the change to the Prices either on the basis of the Schedule of Rates or by submitting the *Service Manager* an unit rate for the work based on the anticipated costs to be incurred by the *Contractor* in carrying out the work plus a reasonable margin for overheads and profit. Within 5 Business Days of receipt of any such unit rate the *Service Manager* shall either notify the *Contractor* that it approves the unit rate or set out reasons why it does not approve the unit rate. If the *Service Manager* approves the unit rate it shall be known as a "star rate" and the *Employer* shall be entitled to request that future works and/or Services instructed by the *Employer* of the same type shall be assessed using the star rate. If the *Service Manager* rejects the unit rate proposed by the *Contractor*

the change to the Prices shall be assessed using the Schedule of Rates or in accordance with Clause 63.2, at the *Service Manager's* election."

Delete Clause 63.4 and mark "Not used."

In Clause 63.10 delete "and the event is" to the end of the second bullet.

Clause 65 (Implementing compensation events)

Add the following new Clause:

"65.5 Neither Party has any liability in respect of compensation events except as stated in this Contract."

Clause 7 (Use of Equipment, Plant and Materials)

Insert new Clauses 70.3 and 70.4:

"70.3 The *Employer* does not make any warranty in relation to the condition and/or suitability of any equipment made available to the *Contractor* in relation to the *service*. The *Contractor* shall carry out all necessary inspections of any equipment made available to the *Contractor* by the *Employer* in relation to the service to satisfy itself that such equipment is fit for the purpose for which the *Contractor* intends to use such equipment. If the equipment is found to be unsuitable the *Contractor* shall inform the Employer. The *Contractor* shall also ensure that:

- it maintains insurance against any liability for loss of or damage to the equipment arising from or in connection with the *Contractor's* Providing the Service, provided that the *Contractor*, shall have no responsibility for fair wear and tear; and
- its personnel and/or subcontractors are provided with adequate training and all other appropriate facilities so as to ensure the equipment may be operated safely and in accordance with any operation and maintenance manuals and good industry practice.

70.4 The Contractor indemnifies the Employer against claims, proceedings, compensation and costs due to an event arising from any failure by the Contractor to comply with its obligations under Clause 70.3."

Clause 83 (Insurance cover)

In Clause 83.2 after "issued" add:

"and are:

- with reputable insurers approved by the *Employer*, (such approval not to be unreasonably withheld or delayed) lawfully carrying on such insurance business, and

- on customary and usual terms and conditions prevailing for the time being in the insurance market and not subject to any material excess or unusual exclusions.

The terms and conditions of the insurances do not include any term or condition:

- to the effect that any insured must discharge any liability before being entitled to recover from insurers; or
- which might adversely affect the rights of any person to recover from insurers under any Applicable Law relating to the rights of any third parties against the insurers."

In Clause 83.2, in the fourth row second column of the INSURANCE TABLE, delete "applicable law" and replace with "Applicable Law".

In the INSURANCE TABLE insert the following additional row:

Column One: "Professional indemnity insurance in full force and effect for a period commencing at the beginning of the Mobilisation Period and expiring no earlier than two years from the end of the *service period* or from the date of issue of a termination certificate."

Column Two: "The amount stated in the Contract Data for each and every claim in respect of claims against the *Contractor*."

Clause 84 (Insurance policies)

Insert the following at the end of Clause 84.1:

"The *Contractor* is to notify the *Employer* immediately of any lapses in any insurance cover and shall postpone the *services* until such cover is obtained. It is the responsibility of the *Contractor* to furnish the *Employer* with a copy of any relevant insurance renewal certificate over the period of this contract when requested by the *Employer*."

Insert the following at the end of Clause 84.3:

"and (insofar as it is reasonably within its power) shall not permit anything to occur in relation to them which would entitle any insurer to refuse to pay any claim or avoid, suspend or defeat (in whole or in part) any insurance policy under which that Party is insured or benefits from an 'indemnity to principals' clause."

Clause 90 (Termination)

In the TERMINATION TABLE, in the first row, second column, replace the first reference to "R21" with "R22" and after "R18" add "or R22".

Delete "A reason other than R1 – R21" in the second column of the Termination Table.

Delete all references to "A4" in the Termination Table.

Insert "P3" after "P2" in the column headed "Procedure" in respect of reasons "R1-R15 or R18".

Clause 91 (Reasons for termination)

In Clause 91.1 delete the tenth bullet point and insert:

- "has an administrator appointed under the Insolvency Act 1986 or any amendment or re-enactment thereof (R8)."

Insert the following after "may terminate" in the first line of Clause 91.2:

"(or in the case of the second bullet point below, suspend any payment due to the *Contractor* under this Contract) (without limitation of the sixth bullet in Clause 91.3A)."

In Clause 91.2 at the end of the first bullet point add:

- "which includes any persistent or material failure to comply with his obligations".

Add as the final bullet point:

- "Assigned or transferred any benefit in any part or the whole of this contract without the *Employer's* consent under Sub-Clause 19A.1 (R22)."

Insert the following new Clause:

"91.3A The Employer may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways:

- failed in the reasonable opinion of the *Service Manager* to maintain satisfactory progress in the Performance of the Service,
- (subject to Clause 94) committed a Prohibited Act (or a Subcontractor, or an employee or agent of the *Contractor* or a Subcontractor, has committed a Prohibited Act),
- failed to comply with the financial controls and open book accounting procedures in this Contract and this failure has continued for more than 28 days after the *Employer* serves written notice on the *Contractor* complaining of the *Contractor's* failure and warning of termination under this Clause 91.3A,
- submitted fraudulent claims for payment,
- without prejudice to any other rights to terminate, is in persistent breach of the Key Performance Indicators

and following a termination for any of the reasons referred to in this Clause 91.3A the procedures to be followed shall be P1, P2 and P2 and the amounts due shall be A1 and A3."

In Clause 91.5, delete "law" and replace with "Applicable Law".

Clause 92 (Procedures on Termination)

Insert the following after "Contractor to" in the first line of bullet "P2" in Clause 92.2:

"make safe any work being provided under this Contract and protect such work, and make good the Affected Property to the satisfaction of the *Employer*."

Clause 93 (Payment on Termination)

In Clause 93.2 paragraph A4 is deleted.

Insert the following new Clauses:

Add as Clause 93.3:

"Without prejudice to Sub-Clauses 93.1 and 93.2 and to the extent permitted by the Applicable Law, the *Employer* shall not be liable to the *Contractor* for loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the *Contractor* as a result of termination."

Add as Clause 93.4:

"For a period of 6 years following the termination of this contract, the *Contractor* shall keep or cause to be kept full and accurate records of all material relating to the costs and fees in relation to the *Service* including timesheets, purchase orders and invoices for all labour and materials. All such relevant materials are to be clearly marked "Property of Canal & River Trust".

"Clause 94 (Termination for Prohibited Acts)

94.1 In the *Employer* wishes to terminate the Contract for commission of a Prohibited Act, it notifies the *Contractor* in writing (and for this purpose email is not permissible) of:

- the nature of the Prohibited Act; and
- the identity of the person who the *Employer* believes has committed the Prohibited Act.

94.2 If the relevant Prohibited Act is committed by:

- the *Contractor*, or an Affiliate of the *Contractor* (including any Subcontractor who is an Affiliate of the *Contractor*), or by an employee of the *Contractor*, or by an employee of the *Contractor* or an Affiliate of the *Contractor* (including any Subcontractor who is an Affiliate of the *Contractor*) not acting independently of the *Contractor* or its Affiliate (as the case may be), then the *Employer* may notify the *Contractor* in writing (and for this purpose email is not permissible) that the *Employer* terminates this Contract, and this Contract shall terminate forthwith;
- an employee of the *Contractor* or of an Affiliate of the *Contractor*, acting independently of the *Contractor* or its Affiliate (as the case may be), then the *Employer* may notify the *Contractor* in writing (and for this purpose email is not permissible) that the *Employer* wishes to terminate this Contract, and this Contract shall terminate 28 days after the *Contractor's* receipt of such notice unless before the expiry of the said period the *Contractor* or relevant Affiliate invokes the appropriate disciplinary action and (if necessary) procures such part of the Provision of the Service by another person;
- a Subcontractor (who is not an Affiliate of the *Contractor*), or by an employee of the Subcontractor not acting independently of the Subcontractor, then the *Employer* may notify the *Contractor* in writing (and for this purpose email is not permissible) that the *Employer* wishes the *Contractor* to terminate the Subcontract and the Sub-Contract shall terminate 28 days after the *Contractor's* receipt of such notice unless before the expiry of the said period the Subcontractor invokes the appropriate disciplinary action and (if necessary) procures such part of the Provision of the Service by another person; or
- any other persons not specified in the preceding bullet points of this Clause 94.2, then the *Employer* may notify the *Contractor* in writing (and for this purpose email is not permissible) that the *Employer* wishes to terminate this Contract, and this Contract shall terminate 28 days after the *Contractor's* receipt of such notice unless before the expiry of the said period the *Contractor* invokes the appropriate disciplinary action relating to an employee and (if necessary) procures such part of the Provision of the Service by another person;

and following a termination for any of the reasons referred to in this Clause 94 the procedures to be followed shall be P1, P2 and P3 and the amounts due shall be A1 and A3."

Clause 96 (Change of Control)

No Change of Ownership may occur before the completion of the *service* without prior written consent of the *Employer* (not to be unreasonably withheld or delayed).

Z2 – Amendments to the Dispute Resolution Clause – Option W2

Delete option W2 and insert:

"W2.1 Any party to this Contract can refer a dispute or difference (other than a matter as to which a decision is provided by this contract to be final and conclusive) to adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996 and any adjudication shall be undertaken in accordance with the TeCSA rules version 3.2 (2011) or any later version of the rules at the time a notice of intention to refer a dispute is issued by the referring party ('the Rules').

W2.1.1 The Adjudicator is the person appointed to decide a dispute in accordance with the Rules.

W2.1.2 Apart from the rules and procedures set out in the Rules, the Adjudicator shall not be bound by any other rules or procedures whatsoever (including, without limitation, any rules or procedures relating to evidence, the conduct of hearings, or the conduct of litigation or arbitration).

W2.2 The *Contractor* shall ensure that any sub-contract contains similar adjudication provisions particularly allowing for joinder of related adjudications as between the *Employer*, *Contractor* and any *Subcontractor*.

W2.3 Subject to the above, any dispute or difference which arises between the parties shall be referred to the High Court of England and Wales for resolution as business of the Technology and Construction Court."

Z3 – Amendments to the Secondary Option Clauses

Option X1: Price adjustment for inflation

Delete this Clause in its entirety and replace with the following:

"X1.1 The Prices and Schedule of Rates shall be adjusted on **April 1st 2016** and on each subsequent 1 April during the *service period* in accordance with the terms of this X1.

X1.2 The Base Date Index (B) for the first adjustment of the Prices and Schedule of Rates is the latest available index from the Index prior to **01st April 2015** and for every annual adjustment thereafter the latest available index from the Index before each subsequent **01st April**.

X1.3 The Latest Index (L) for the first adjustment of the Prices and Schedule of Rates is the latest available index from the Index before **01st April 2016** and for every annual adjustment thereafter the latest available index from the Index before each subsequent **01st April**.

X1.4 The Index is the Retail Price Index (RPI) or any official index replacing it.

X1.5 Each hourly rate shall be adjusted in accordance with the following formula:

$$(\text{rate} \times L)/B."$$

Option X2: Changes in the law

Delete and replace with the following:

"A Change in Law (except any changes to the National Minimum Wage which are reasonably foreseeable at the Contract Date) is a compensation event if it occurs after the Contract Date and requires a modification or addition to, or a change in, or replacement of any part of the service required by or required in order to achieve compliance with the Change in Law and which would not be required under the terms of the Contract but for such Change in Law except where such Applicable Law relates specifically to the *service*. The Service Manager may notify the Contractor of a compensation event for a Change in Law and instruct him to submit quotations. If the effect of a compensation event which is a Change in Law is to reduce the total Defined Cost, the Prices are reduced."

Option X4: Parent Company Guarantee

In Clause X4.1 after "If a parent company" insert "or companies"

After "guarantee by the parent company" insert "or companies or an ultimate parent company or companies or other parent entity acceptable to the *Employer* "the Guarantor").

Option X19: Task Order

In Clause X19.1 insert new clause X19.1(4):

"The Price for Services Provided to Date for a Task is the total of

- the Price for each lump sum item in the Price List for each relevant Task specified in the Task Order which the Contractor has completed and
- where a rate per unit of measurement is stated for a relevant item in the Price List, an amount calculated by multiplying the rate by the number of units relevant to the Task specified in the Task Order which the *Contractor* has completed.

Provided that the Price for Services Provided to Date for a Task Order shall exclude any Task which is required to be completed before the Price for carrying out such Task may be included within any application for payment by the Contractor as specified in the Service Information Part C or in the Task Order."

In Clause X19.3 insert "genuine pre-" before "estimated cost".

In Clause X19.3 insert at the end "If the *Service Manager* decides that the Price for an item of work in the Task included in a Task Order is too uncertain to be forecast reasonably, he states assumptions about the Price in his Task Order. The Price for the item of work is based upon these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.

Option X20: Key Performance Indicators

Replace Clause X20.3 with the following:

"If the *Contractor's* reports show that he has not achieved or will not achieve a Key Performance Indicator stated in the Incentive Schedule, he submits to the *Service Manager* his proposals for improving performance."

Replace Clause X20.4 with the following:

"The *Contractor* ensures that its reports are a bona fide and accurate record of his performance against each of the Key Performance Indicators and are provided at the intervals stated in the Contract Data. If the *Contractor* fails to do so the *Employer* may monitor the performance of the *Contractor* against some or all of the Key Performance Indicators and recover its costs of doing so from the *Contractor*.

"The *Contractor's* performance against the Key Performance Indicators shall be assessed annually in accordance with the following procedure. In the month immediately following the end of the first Turnover Year the *Service Manager* shall assess the performance of the *Contractor* against the Key Performance Indicators for such Turnover Year in accordance with the principles set out in the Service Information. The *Service Manager's* assessment shall be based on the reports and other information provided by the *Contractor* prior to the assessment date for that month. The *Contractor* shall have no right to recover any sum from the *Employer* in respect of information provided after such assessment date that proves that the Contractor had performed better against the Key Performance Indicators than evidenced by the reports and information provided on or before such assessment date.

The *Service Manager* shall provide details of his assessment to the *Contractor* with the certificate of payment. If the *Service Manager* decides that a sum is payable by the *Contractor* to the *Employer* in respect of the Contractor's performance against the Key Performance Indicators in the preceding Turnover Year, the Employer shall be entitled to invoice the Contractor for such sum which shall become due upon the date the Employer sends the invoice to the Contractor. The final date for payment for any such sum shall be [21] days after its due date. The Employer shall be entitled to set off any such sum against any sum due to the Contractor provided the Employer gives the Contractor written notice of its intention to do so (setting out details of the sum to be set off) at least 7 days' prior to the final date for payment of the sum due to the Contractor. This procedure shall be followed for each subsequent Turnover Year during the *service period*. If the *service period* ends part way

through a year, the assessment shall take place on the final assessment date in accordance with the same principles."

Replace Clause X20.5 with the following:

"The *Employer* may add a Key Performance Indicator or otherwise amend the incentive principles contained in the Incentive Schedule following consultation with the *Contractor*."

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

Delete the first paragraph of Y2.2 and replace with the following:

"The date on which a payment becomes due is on receipt of a valid VAT invoice in accordance with Clause 51.2."

In the second paragraph of Y2.2 replace "fourteen" with "twenty one".

Additional Clauses

Z4 (Collateral warranty agreements)

- Z4.1 Funder Rights shall vest in the Funder on the date on which the *Employer* issues a written notice to the *Contractor* to that effect stating the name of the Funder and the nature of his interest in the *service*.
- Z4.2 The *Employer* and the *Contractor* shall be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of this Contract, and to terminate this Contract (or the *Contractor's* employment under this Contract) without the consent of any third party being required.
- Z4.3 Within 10 Business Days of a request from the *Employer*, the *Contractor* shall execute and deliver a deed or deeds of collateral warranty in favour of any Funder or other affected third party in the form of the *Contractor's* deed of collateral warranty contained in Part 3.
- Z4.4 If the *Contractor* does not execute and deliver a contractor's deed of collateral warranty in accordance with this Contract, the *Employer* may execute that deed on the *Contractor's* behalf, and the *Contractor* hereby appoints the *Employer* as the *Contractor's* attorney for the purpose of executing that deed and the *Contractor* agrees to ratify and confirm any act done by the *Employer* pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4, Powers of Attorney Act 1971.
- Z4.5 The *Contractor* shall upon the *Employer's* request, at the time of placing each sub-contract or supply order with a Subcontractor, procure the execution by such Subcontractor of collateral warranty agreements in favour of the *Employer* and any Funder or other affected

third party in the form set out in Part 3 or in such similar or varied terms as the Parties may agree, and forthwith deliver the same to the *Employer*.

Z4.6 The obligations in this Clause Z4 to provide collateral warranties continues notwithstanding termination of this contract for any reason, including breach by the *Employer*.

Z5 (Confidential Information)

Z5.1 All information obtained by the *Contractor* in the course or conduct of the Contract shall be held confidential and shall not be divulged by the *Contractor* to any third party save to the extent necessary, to effect the execution of the *Contract* and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the *Contractor* hereunder.

Z5.2 Provided however that this obligation shall not apply to information which:

Z5.2.1 is or shall become part of the public domain otherwise than in consequence of a breach of the *Contractor* of its obligations under this Clause;

Z5.2.2 was in the *Contractor's* possession prior to award of this Contract and which the *Employer* did not notify the *Contractor* as being confidential or which would not reasonably be regarded as confidential by its very nature;

Z5.2.3 was received from third parties having to the best of the *Contractor's* knowledge the right to disclose such information.

Z5.3 The *Contractor* shall ensure that the provisions of this Clause are incorporated in any sub-contracts or supply order and that the employees, agents or representatives of all or any of the sub-contractors or suppliers comply with the same.

Z5.4 This Clause shall remain binding on the *Contractor* notwithstanding the completion or termination or determination of this Contract for any reasons.

Z6 (Assignment)

Z6.1 The *Contractor* does not assign his interest in or any rights or any benefit arising under this contract without the consent of the *Employer*. The *Employer* may assign, charge or transfer his interest in this contract or any rights arising under it at any time without the consent of the *Contractor* and the *Employer* notifies the *Contractor* of any such assignment, charge or transfer.

Z7 The Construction (Design and Management) Regulations 2007

Z7.1 The *Contractor* Provides the Service, in a proper and workmanlike manner and in compliance with all Applicable Law (including, without limitation, The CDM Regulations),

rules and orders made under any Legislation or directive having the force of law which affect the *service* or performance of any obligations under this contract and any regulation or byelaw of any local authority or statutory undertaker which has any jurisdiction with regard to the *service* or with whose systems the *service* is, or is to be, connected.

Z7.2 Where and to the extent that the CDM Regulations apply to the *service* the *Contractor* is appointed as "principal contractor" and "designer" (as those terms are defined in the CDM Regulations) and performs all the functions and duties applicable to those roles. The *Contractor* hereby confirms and agreed that in relation to the preparation of any design of the *service* for which he is responsible under this contract:

- he shall (and shall ensure that all Subcontractors and contractors who undertake any responsibility in relation to the preparation, development and completion of such design or any part therefore shall) carry out and fulfil in all respects the duties of a designer under the CDM Regulations;
- he has or shall be deemed to have made all due allowance in the programming, planning and pricing of the *service* for compliance with this Clause.

Z7.3 The *Contractor* warrants and undertakes that he is competent for the purposes of the CDM Regulations and that he has allocated and will continue to allocate adequate resources to comply with the duties and obligations imposed on him by the CDM Regulations.

Z7.4 Where the *Contractor* is not or ceases to be the principal contractor, the *Contractor* shall (and shall ensure that all Subcontractors and contractors shall) comply with its duties and obligations as a contractor and designer under the CDM Regulations and liaise and cooperate fully with the CDM co-ordinator for the *service*.

Z7.5 The *Contractor* shall not commence any *service* until an adequate construction phase plan is in place, as required by the CDM Regulations.

Z8 Contractor's design submission procedure

Z8.1 The *Contractor* submits the *Contractor's* Design Documents to the *Service Manager* for acceptance at the times and in the manner and format stated in the Service Information.

Z8.2 The *Service Manager* returns each *Contractor's* Design Document to the Contractor marked either 'A' (accepted), 'B' (accepted with comments) or 'C' (rejected). If the *Service Manager* marks a *Contractor's* Design Document 'B' or 'C', he states his reasons. A reason for not accepting a *Contractor's* Design Document is that it does not comply with:

- the Service Information
- the applicable law; or

- any other provision of this Contract.

Z8.3 If the *Service Manager* does not return a *Contractor's* Design Document within the *period for reply*, it is treated as having been returned marked 'A'.

Z8.4 Where a *Contractor's* Design Document is returned marked 'A', the *Contractor* Provides the Service in accordance with the *Contractor's* Design Document.

Z8.5 Where a *Contractor's* Design Document is returned marked 'B', the *Contractor*

- amends the *Contractor's* Design Document to incorporate the *Service Manager's* comments
- submits the *Contractor's* Design Document as so amended to the *Service Manager* and
- Provides the Service in accordance with the *Contractor's* Design Document as so amended.

Z8.6 Where a *Contractor's* Design Document is returned marked 'C', the *Contractor*

- amends the *Contractor's* Design Document to incorporate the *Service Manager's* comments
- re-submits it to the *Service Manager* for acceptance and
- does not Provide the Service until the *Service Manager* has returned it marked 'A' or 'B' and, where it is marked 'B', has complied with Clause Z10.6.

Z8.7 If the *Contractor* disagrees with a comment of the *Service Manager* on a *Contractor's* Design Document marked 'B' or 'C', he notifies the *Service Manager* within one week of receipt stating his reasons and that in his opinion compliance with the comment will give rise to a change in the Service Information. The *Service Manager* replies within one week of receipt of the *Contractor's* notice either confirming or withdrawing his comment. A confirmation or withdrawal by the *Service Manager* is not an acceptance of the *Contractor's* opinion.

Z8.8 If the *Contractor* does not notify the *Service Manager* within one week that he disagrees with a comment of the *Service Manager*, this will be treated as acceptance by the *Contractor* that compliance with the comment does not give rise to a change in the Service Information.

Z9 Data protection

Z9.1 The **Data Protection Acts** are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.

- Z9.2 **Personal Data** is information collected by the *Contractor* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified
- from that information or
 - from that information combined with other details in (or likely to come into) the possession of the *Employer*.
- Z9.3 For the purposes of this contract and the Data Protection Acts
- the *Employer* is the Data Controller and
 - the *Contractor* is the Data Processor.
- Z9.4 The *Contractor* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this contract.
- Z9.5 The *Contractor* has in place and maintains during the *service period*
- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
 - adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.
- Z9.6 The *Contractor* immediately notifies the *Service Manager* if it receives
- a request from any person whose Personal Data it holds to access his Personal Data or
 - a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.
- Z9.7 The *Contractor* assists and co-operates with the *Service Manager* in relation to any complaint or request received, including
- providing full details of the complaint or request
 - complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Service Manager* and
 - promptly providing the *Service Manager* with any Personal Data and other information requested by him.

- Z9.8 The *Contractor* allows the *Employer* to conduct periodic audits of the *Contractor's* compliance with the Data Protection Acts. The *Contractor* complies with the instructions of the *Service Manager* to enable such audits to be carried out.
- Z9.9 The *Contractor* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.
- Z9.10 The *Contractor* immediately notifies the *Service Manager* on becoming aware of any breach of this Clause or of the Data Protection Acts by the *Contractor* or any Subcontractor.
- Z9.11 The *Contractor* does not process the Personal Data outside the European Economic Area without the agreement of the *Service Manager*. Where the *Service Manager* agrees, the *Contractor* complies with the instructions of the *Service Manager* and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.

Z10 Disclosure of information

- Z10.1 The *Contractor* shall assist and co-operate with the *Employer* to enable the *Employer* to respond to any Request for Information which relates to the *service*.
- Z10.2 The *Contractor* shall and shall procure that its Subcontractors shall:
- transfer any Request for Information to the *Employer* as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
 - provide the *Employer* with a copy of all information in its possession or power in the form that the *Employer* requires within seven days (or such other period as the *Employer* may specify) of the *Employer* requesting that Information; and
 - provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to a Request for Information within twenty Business Days.
- Z10.3 The *Employer* shall be responsible for determining at its absolute discretion whether the information relating to the *service* is to be disclosed in response to a Request for Information.
- Z10.4 In no event shall the *Contractor* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.
- Z10.5 The *Contractor* acknowledges that the *Employer* is under no obligation to consult with it prior to responding to any Request for Information relating to the *service* but will take reasonable steps, where appropriate, to give the *Contractor* advanced notice, or failing that, to draw the disclosure to the *Contractor's* attention after any such disclosure.

Z10.6 The *Contractor* shall ensure that all Information produced in the course of the contract or relating to the contract is retained for disclosure and shall permit the *Employer* to inspect such records as requested from time to time.

Z11 Discrimination

Z11.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010 (the "**Discrimination Act**").

Z11.2 Where possible in Providing the Service, the *Contractor* co-operates with and assists the *Employer* to satisfy its duty under the Discrimination Act to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z11.3 Where any employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Employer's* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z11.4 The *Contractor* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Act in connection with this contract and

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

Z11.5 The *Contractor* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Act resulting from any act or omission of the *Contractor*.

Z11.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Z12 Quality management

Z12.1 The *Contractor* operates a quality management system for Providing the Service which:

- complies with BS OHSAS 18001:2007
- complies with the relevant parts of ISO 9001:2000
- incorporates an environmental management system consistent with ISO 14001:2004
- includes processes for delivering continual improvement following the guidance in ISO 9004
- has third party certification from a UKAS approved accreditation body (or its equivalent) and complies with good industry practice.

Z12.2 The *Contractor* provides to the *Service Manager*, within four weeks of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Service Information and are sufficiently detailed to demonstrate how the *Contractor* will Provide the Service in accordance with this contract.

Z12.3 The *Contractor* keeps a controlled copy of the quality plan available for inspection by the *Service Manager* at all times.

Z12.4 The *Contractor* complies with an instruction from the *Service Manager* to

- change the quality plan so that it complies with the requirements of this contract; or
- correct a failure of the *Contractor* to comply with the quality plan.

Z12.5 The *Service Manager* and other persons authorised by him may carry out periodic audits of the *Contractor's* quality management system as specified in the Service Information. The *Contractor* allows access to the premises used by the *Contractor* to Provide the Service and provides all facilities and assistance necessary to enable such audits to be carried out.

Z13 Audit Access

Z13.1 The *Contractor*:

- permits all Service Records and Financial Records relating to this Agreement to be examined and copied from time to time by any auditor (whether internal or external) of the *Employer*, by the *Service Manager* and by other representatives of the *Employer*;
- co-operates fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the *Employer* (until completion, of the service being able to recover its reasonable costs of doing so as part of Defined Cost, and thereafter at the *Contractor's* cost) to:

- provide any of the Service Records and/or the Financial Records or procure their provision;
- provide, or procure the provision of, any oral or written explanation relating to the same;
- provide relevant or requested personnel of the *Contractor* or procure the provision of relevant or requested personnel of Subcontractors for the purpose of attending interviews with any auditor

and procures that Subcontractors grant such rights and/or undertake such obligations to any auditor (whether internal or external) of the *Employer*; to the *Service Manager* and to any other representatives of the *Employer*.

Z13.2 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General (and/or the National Audit Office an/or the Audit commission) may examine all or any of the Service Records and Financial Records as he or they may reasonably require which are owned or held by, or otherwise within the control of, the *Contractor* and any Related Person and may require the *Contractor* and any Related Person to produce such oral or written explanations as he considers necessary.

Z13.3 The Parties acknowledge that the Comptroller and Auditor General has the right to publish details of this Contract and/or the Service Information (including commercially sensitive information) and its relevant reports to Parliament.

Z13.4 The Parties acknowledge and agree that damages shall not be an adequate remedy for breach of this Clause Z13.

Z13.5 Save to the extent expressly otherwise provided in Clause Z13.1, the *Contractor* does not claim its costs of carrying out actions pursuant to this Clause Z13 as part of Defined Cost or otherwise.

Z13.6 The *Contractor* at all times:

- and in accordance with good industry practice, maintains the Service Records and the Financial Records for 6 years from completion of the *service*, in the form stated in the Service Information or, if no form is stated, in the form notified by the *Employer*; and
- when requested by the *Employer*, provides a written summary of any of the Financial Records (including details of funds held by the *Contractor* specifically to cover its costs) and/or Service Records in such form and detail as the *Employer* reasonably requires to enable it to monitor the Provision of the Service, the Defined Cost, the Price for Services Provided to Date and/or the measurement of the *Contractor's* performance against each of the Key Performance Indicators.

Z14 TUPE

Z14.1 Definitions

In this Clause, the following terms shall have the meanings set out below.

- **"Contractor Personnel"** means the individuals employed or engaged by the Contractor or any other person in the provision of the Services or the performance of the Contractor's obligations under this Agreement from time to time (or any of them);
- **"Relevant Employees"** means the individuals employed by the Previous Contractor in the activities that are to be performed by the Contractor under this Agreement and the term "Relevant Employee" shall be construed accordingly;
- **"Employees"** means the individuals employed by the Employer named in Schedule [] to this Agreement, excluding any of such individuals whose employment terminates between the date of this Agreement and the Transfer Date but including any new employee engaged in such period in the activities that are to be performed by the Contractor under this Agreement and the term "Employee" shall be construed accordingly;
- **"Future Service Provider"** means any person who provides services to the Employer following the termination of this Agreement or the termination of the provision of any of the Services by the Contractor;
- **"Previous Contractor"** means any person who immediately before the Transfer Date provided to the Employer (whether directly or indirectly) all or part of the services that are subject to the Transfer;
- **"Relevant Transfer Date"** means the date on which a Transferred Employee becomes employed by the Employer or a Future Service Provider in the circumstances set out in clause Z14.2.13;
- **"Services"** means the *service* described in the Service Information;
- **"Sub-Contractor"** means any person to whom the provision of any of the Services may be sub-contracted or otherwise transferred in the period between the Transfer Date and the date of the termination of this Agreement (inclusive);
- **"the Transfer"** means the transfer of responsibility for the provision of the Services from the Previous Contractor to the Contractor;
- **"Transfer Date"** means 00:01 on the *starting date* as defined in the Contract Data Part One;

- **"Transferred Employee"** shall have the meaning given to it in clause Z14.2.13 of this Annex;
- **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time;
- **"TUPE Personnel Information"** means the information concerning the Relevant Employees provided by the Employer to the Contractor prior to the date of this contract.

Z14.2 Employees and TUPE

Transfer of employees from the Employer

- Z14.2.1 The Employer and the Contractor agree that the Transfer will give rise to a "relevant transfer" within the meaning of TUPE and that the respective contracts of employment between the Employer and the Employees shall have effect from and after the Transfer Date as if originally made between the Contractor or relevant Sub-Contractor and the Employees (save insofar as they relate to provisions of an occupational pension scheme relating to benefits for old age, invalidity or survivors within Regulation 10 of TUPE).
- Z14.2.2 All wages, salaries, bonus and commission payments, contributions to pension schemes and any other emoluments (whether monetary or otherwise), tax and national insurance contributions relating to the Employees shall be paid or borne by the Employer up to the Transfer Date and by the Contractor or relevant Sub-Contractor thereafter and all necessary apportionments shall be made.
- Z14.2.3 Within 28 days after receiving written notice from the Employer of the relevant amounts, the Contractor shall pay to the Employer a sum equal to the outstanding balance as at the Transfer Date of any loan, salary advance or other indebtedness of any Employee due to the Employer immediately prior to the Transfer Date and the rights and liabilities in respect of such loans, salary advances or indebtedness shall transfer from the Employer to the Contractor on the Transfer Date.
- Z14.2.4 As soon as reasonably practicable after the date of this Agreement the Employer shall send to each Employee a letter informing each Employee of the consequences of the Transfer in a form agreed with the Contractor (or, in the absence of such agreement, as reasonably determined by the Employer).
- Z14.2.5 The Employer shall indemnify the Contractor and keep the Contractor indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding which is made or brought by an Employee or an appropriate representative (within the meaning of TUPE) of any Employee against the Contractor at any time by virtue of the operation of TUPE as a result of the Transfer and which relates to

circumstances or events occurring or arising prior to the Transfer Date and in respect of which clause Z14.2.6 does not apply.

Z14.2.6 The Contractor shall indemnify the Employer and keep the Employer indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding which is made or brought against the Employer at any time:

- by an Employee and which relates to circumstances or events occurring or arising on or after the Transfer Date;
- in relation to a failure or alleged failure of the Contractor or a Sub-Contractor to comply with its obligations under Regulation 13 of TUPE; or
- in relation to any substantial change made or proposed by the Contractor or a Sub-Contractor in the working conditions of any of the Employees or as a result of a significant change in the identity of the employer of any of the Employees, in either case where that change is to the detriment of all or any of the Employees.

Z14.2.7 The Contractor acknowledges and agrees that the Employer has complied with its obligations under Regulation 11 of TUPE to notify the Contractor or any Sub-Contractor of employee liability information the Contractor shall indemnify the Employer and keep the Employer indemnified against any costs, expenses, liabilities, damages and losses arising out of any complaint made by the Contractor or a Sub-Contractor against the Employer under Regulation 12 of TUPE.

Transfer of employees from Previous Contractor

Z14.2.8 The Employer and the Contractor agree that the Transfer will give rise to a "relevant transfer" within the meaning of TUPE and that the respective contracts of employment between the Previous Contractor and the Relevant Employees shall have effect from and after the Transfer Date as if originally made between the Contractor and the Employees (save insofar as they relate to provisions of an occupational pension scheme relating to benefits for old age, invalidity or survivors within Regulation 10 of TUPE).

Z14.2.9 The Employer shall indemnify the Contractor and keep the Contractor indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding which is made or brought by a Relevant Employee against the Contractor by virtue of the operation of TUPE as a result of the Transfer and which relates to acts or omissions of the Previous Contractor in respect of the Relevant Employees occurring or arising prior to the Transfer Date, provided that this indemnity shall only apply to the extent that the Employer is able to recover and actually recovers corresponding amounts from the Previous Contractor under any equivalent indemnity in any existing contract between it and the Previous Contractor. The Employer shall use reasonable

endeavours to recover any such sums from the Previous Contractor but it shall not be obliged under this paragraph to commence legal proceedings against the Previous Contractor.

Z14.2.10 The Contractor shall indemnify the Employer (for itself and the Previous Contractor) and keep the Employer indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding which is made or brought against the Employer or the Previous Contractor and which relates to:

- any act or omission of the Contractor or any Sub-Contractor in relation to any Relevant Employee occurring or arising on or after the Transfer Date;
- a failure or alleged failure of the Contractor or any Sub-Contractor to comply with its obligations under regulation 13 of TUPE; or
- in relation to any substantial change made or proposed by the Contractor in the working conditions of any of the Relevant Employees where that change is to the detriment of all or any of the Relevant Employees.

Price adjustment

Z14.2.11 Where, following the Transfer Date, the Contractor and/or the Employer provides reasonable evidence to the other that the TUPE Personnel Information, on which the Contractor based the personnel costs element of the Prices, was inaccurate or incomplete and that as a result there will be a corresponding increase or reduction in the costs of employing or engaging the Relevant Employees, either the Prices shall be adjusted, or other arrangements shall be implemented, to reflect such increase or reduction in such costs in accordance with the following provisions:

- the Employer or the Contractor (as the case may be) shall produce such reasonable evidence of the inaccuracy in or omission from the TUPE Personnel Information and the proposed increase or reduction in the Prices or other arrangement as the other party may reasonably require as soon as is reasonably practicable and, in any event, no later than 28 days following the receipt of such request, prior to any adjustments or other arrangements being implemented;
- following the production of such evidence, the Employer and the Contractor shall consult with each other with a view to agreeing how the relevant inaccuracy or omission in the TUPE Personnel Information should be dealt with, whether by means of an adjustment to the Prices or some other arrangement, such as the reimbursement by the Employer of relevant additional costs to be incurred by the Contractor or a reduction in sums to be paid to the Contractor by the Employer. In the absence of agreement between the Employer and the Contractor, the inaccuracy

or omission in the TUPE Personnel Information shall be dealt with as reasonably determined by the Employer after such consultation and taking account of the Contractor's position;

- the Contractor shall use all reasonable endeavours to mitigate any increase in costs which may result from any inaccuracy in or omission from the TUPE Personnel Information;
- where there is a failure by the Contractor to produce such evidence within this timescale or where the Employer reasonably considers such information to be insufficient, no adjustment to the Prices or other arrangement shall be implemented;
- a failure by the Employer to produce reasonable evidence demonstrating inaccuracies and/or the reduction in costs, save where such a failure is as a result of an act or omission of the Contractor or a Sub-Contractor, shall result in no adjustment to the Prices or other arrangement being implemented;
- the Contractor shall provide such information and co-operation as the Employer may reasonably require in order to assess whether or not the TUPE Personnel Information is inaccurate or incomplete such that it may lead to a reduction in the costs of employing or engaging the Relevant Employees, during the Contract Period; and
- in order to avoid double recovery, there shall be no adjustment to the Prices or other arrangement under this paragraph where the Contractor is able to recover the relevant increase in costs under, or either party is able to benefit from, any other provision in the contract in respect of the inaccuracy in or omission from the TUPE Personnel Information.

Termination/expiry

Z14.2.12 During the period of twelve months preceding the expiry of this Agreement or at any time after the Employer or the Contractor has given notice to terminate this Agreement or to cease the provision of any of the Services or actually ceased to provide any of the Services:

- the Contractor shall promptly on the Employer's request fully and accurately disclose to the Employer details of the number, identity, age, terms and conditions of employment (including remuneration, benefits, pension arrangements, job title and job description), proportion of time spent in the provision of the Services and employment history in relation to any individuals employed or engaged in the provision of the Services by the Contractor or any other person and such other information as the Employer may require in relation to such individuals. Nothing in this sub-paragraph shall require the Contractor to do anything that constitutes a breach of its obligations under the Data Protection Act 1998 but the Contractor shall use all reasonable

endeavours to provide information requested under this paragraph, which may include obtaining the consent of individuals and/or providing information in anonymised form. The Employer shall be entitled to pass on any information provided pursuant to this Clause to any person intending to tender or tendering for any contract for the provision of services that are similar in nature to the Services and the Employer shall be entitled to rely upon and warrant the accuracy of any such information to any Future Service Provider, and the Contractor shall indemnify the Employer against any costs, expenses, liabilities, damages and losses arising out of any failure by the Contractor to provide information under this Clause and/or the provision of inaccurate information; and

- the Contractor shall not and shall procure that any third party or Sub-Contractor shall not vary the terms and conditions of employment or engagement of any individual employed or engaged in providing the Services or redeploy, replace or dismiss any of the individuals so employed or engaged or employ or engage any additional individual in the provision of the Services, without the prior written consent of the Employer.

Z14.2.13 Where the Contractor ceases for whatever reason and whether directly or indirectly to provide any of the Services and any contract of employment of any individual has effect by virtue of the operation of TUPE as if originally made between such person (a "**Transferred Employee**") and the Employer or a Future Service Provider, the Contractor shall indemnify the Employer (for itself and any Future Service Provider) and keep it indemnified against all and any costs, expenses, liabilities, damages and losses arising out of:

- any claim, demand, action or proceeding which is made or brought by a Transferred Employee, or any trade union or other body or person representing any Transferred Employee, against the Employer or a Future Service Provider at any time and which relates to circumstances or events occurring or arising on or prior to the Relevant Transfer Date; and/or
- any failure by the Contractor (or any other employer of a Transferred Employee) to comply with its obligations under Regulation 11 of TUPE to notify the Employer or a Future Service Provider of employee liability information

and the Contractor agrees that the Employer may agree to indemnify a Future Service Provider against such costs, expenses, liabilities, damages and losses and, if the Employer becomes liable to pay any amounts under such indemnity to any Future Service Provider, it shall be entitled to claim in respect of such liability under the indemnity given by the Contractor in this paragraph.

Z14.2.14 The Contractor shall, and shall procure that any Sub-Contractor shall, co-operate in the orderly transfer of employment of any Transferred Employees if and to the extent

reasonably requested by the Employer, including without limitation allowing and assisting the Employer or a Future Service Provider to communicate and meet with Contractor Personnel who may become Transferred Employees or their trade union or other employee representatives as reasonably requested by the Employer.

Z14.2.15 The Contractor shall, and shall procure that any Sub-Contractor shall, comply with all reasonable instructions from the Employer with regard to arrangements connected with the termination of this Agreement or the termination of part of the provision of the Services (including without limitation providing payroll and P45 information in relation to the Transferred Employees), and will take all reasonable steps to mitigate any costs relating to any Transferred Employees which the Employer or any Future Service Provider may incur as a result of the termination of this Agreement or the provision of part of the Services.

Z14.3 Contractor Personnel

Z14.3.1 The Contractor shall at all relevant times ensure that there is an adequate number of Contractor Personnel to provide the Services and that the Contractor Personnel:

- have appropriate qualifications, training and expertise and demonstrate suitable competence in carrying out the duties for which they are engaged;
- are entitled to work in the UK (or other relevant jurisdiction) without contravening any statutory or other legal requirement;
- shall comply with such policies and security requirements as are notified to the Contractor from time to time;
- have satisfied such background and security checks as the Employer may require from time to time;
- carry out their duties in relation to the provision of Services in a professional manner and in accordance with the provisions of this Agreement, including any KPIs/service levels agreed from time to time.

Z14.3.2 The Contractor shall maintain up-to-date and adequate personnel records in relation to the Contractor Personnel and shall provide to the Employer such information or documents as the Employer may request from time-to-time to demonstrate that the Contractor Personnel satisfy the provisions in clause Z14.3.1.

Z14.3.3 The Employer reserves the right to require the Contractor to remove from the provision of the Services any Contractor Personnel if the Employer considers that it is not in the interests of the Employer for such Contractor Personnel to be engaged in the provision of the Services (including without limitation if the Employer is dissatisfied with the conduct or performance of such Contractor Personnel or if the Employer believes such member of the

Contractor Personnel has committed any act of fraud or dishonesty). The Contractor will promptly comply with any requirement by the Employer to remove such Contractor Personnel from the provision of the Services and, where appropriate, ensure that such person is replaced promptly with another person with the appropriate qualifications, training and expertise (at no additional cost to the Employer).

Z14.3.4 The Employer shall have the right to refuse access to any site to any Contractor Personnel who in the opinion of the Employer is not a fit and proper person to have access to the site. The Employer shall notify the Contractor as soon as reasonably practicable if it refuses access to any site to any Contractor Personnel specifying the reasons for such refusal. Such action shall not relieve the Contractor from its obligations under this Agreement.

Z14.3.5 The Contractor shall use all reasonable endeavours to ensure continuity of personnel amongst the Contractor Personnel and to ensure that the turnover rate of Contractor Personnel is at least as good as the prevailing industry norm for similar services, location and environment.

Z14.3.6 Nothing in this Agreement shall constitute or be deemed to constitute any of the Contractor Personnel an employee, worker, officer or agent of the Employer for any purpose whatsoever, save as anticipated in clause Z14.2.13 above. The Contractor shall be solely responsible for all matters relating to the employment or engagement of the Contractor Personnel including compliance with all applicable laws. The Contractor will be responsible for all the income tax, national insurance contributions and/or social security charges or similar statutory payments in relation to all Contractor Personnel and will ensure that they are deducted and/or paid to the relevant authorities and/or Contractor Personnel (as the case may be).

Z14.3.7 Subject to the provisions of clause Z14.2.5, the Contractor shall indemnify the Employer and the Employer Group against all and any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any of the Contractor Personnel which arises as a result of his asserting that he is or was an employee or worker of the Employer or any other member of the Employer's Group or which arises or is alleged to arise out of any act or omission of the Contractor (or any Sub-Contractor). The Contractor shall further indemnify the Employer for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interest thereon) which may be found due from the Employer or any other member of the Employer's Group in respect of any Contractor Personnel.

Z15 Construction Industry Scheme

Z15.1 For the purposes of this Clause, the *Employer* is "a Contractor" for the purposes of the Construction Industry Scheme ("CIS") under the Finance Act 2004 ("Act").

- Z15.2 The *Employer* is not obliged to make any payment unless he is reasonably satisfied that, at the time of making the payment, the *Contractor* is registered for gross payment. If the *Employer* is not reasonably satisfied that the *Contractor* is registered for gross payment, the *Employer* shall be entitled to deduct and withhold from the monies due to the *Contractor* under this Contract a sum equal to the appropriate relevant percentage (as specified by order of the Treasury in force at the date of payment) of so much of the monies due to the *Contractor* under this Contract as is required under the Finance Act 2004 Section 61 (Sub-Section 1) and, if any such deduction is required, the *Contractor* shall only be entitled to payment of the balance of the monies due to it under this Contract from the *Employer*.
- Z15.3 The *Contractor* indemnifies the *Employer* against any damage, loss and/or expenses suffered or incurred by the *Employer* arising out of or in connection with any breach by the *Contractor* of his obligations under this Clause and/or under the Act.
- Z15.4 Where any error or omission has occurred in calculating or making any statutory deduction the *Employer* corrects that error or omission by repayment to, or by deduction from payments to, the *Contractor* as the case may be subject only to any statutory obligation on the *Employer* not to make such correction.
- Z15.5 If compliance with this Clause results in the *Employer* or the *Contractor* in not complying with any other provision of the contract, then the provisions of this Clause prevail.
- Z15.6 The *Contractor* shall immediately following the Contract Date provide the *Employer* its unique tax reference and accounts office reference to allow the *Employer* to verify the *Contractor's* registration status with Customs. The *Contractor* agrees to notify the *Employer* immediately of any change in its status for the purposes of the CIS.

Z16 Change of Control

- Z16.1 The *Contractor* shall inform the *Employer* immediately of any material change in the ownership of the *Contractor* **or the Guarantor** meaning a change in the beneficial ownership of 10 per cent more of the *Contractor's* **or the Guarantor's** issued share capital, or the creation of a trust or any sub-participation in relation to such shares and of any proposed change of control of the *Contractor* **or the Guarantor**.
- Z16.2 The *Contractor* shall obtain the *Employer's* written approval prior to any change of control of the *Contractor*. Change of control of the *Contractor* means:
- an event where any single person or group of persons acting in concert (within the meaning of the City Code on Take-Overs and Mergers) acquires control of the *Contractor* or any interest in the relevant share capital (as defined in section 198(2) of the Companies Act 1985) of the *Contractor* as a result of which that person or group

of persons has an interest in more than 30 per cent of the relevant share capital of the *Contractor*, or

- a change of the general partner of the *Contractor*, or
- a change of the legal structure of the *Contractor*, or
- an event where any single person or group of persons acting in concert (within the meaning of the City Code on Take-Overs and Mergers) acquires Control (as defined in section 840 Income and Corporation Taxes Act 1988) of the *Contractor*.

Z17 Handover Services/Exit Plan

- Z17.1 The *Contractor* shall provide the Handover Services to the *Employer* in accordance with the requirements of the Exit Plan and this Contract in the event of termination (which, for the purposes of this clause Z17 includes the expiry of the *service period*) which shall commence at least 3 months before the end of the *service period*.
- Z17.2 The *Contractor* shall co-operate with each Replacement Contractor to the extent reasonably required to facilitate the smooth migration of the *service* from the Contractor to each of the Replacement Contractors.
- Z17.3 The *Contractor* will, within six months from the Contract Date, produce an Exit Plan to the *Employer* for the orderly transition of the *service* from the *Contractor* to each Replacement Contractor in the event of termination based on the principles set out in the Service Information. The *Employer* and the *Contractor* shall meet and use all reasonable endeavours to agree the contents of the Exit Plan within fifteen Business Days after the submission of the draft Exit Plan to the *Employer*. If the *Employer* and the *Contractor* are unable to agree the contents of the Exit Plan within that fifteen Business Day period, the principles set out in the Service Information shall apply and either of them may refer the dispute for resolution in accordance with the dispute resolution procedure.
- Z17.4 The *Contractor* shall update the Exit Plan not less than once each Contract Year to reflect changes in the service and shall keep the Exit Plan under continuous review. Following each update, the *Contractor* shall submit the revised Exit Plan to the *Employer* for review. The *Employer* and the *Contractor* shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in the Service Information and the changes that have occurred in the service since the Exit Plan was last agreed within fifteen Business Days after the submission of the revised Exit Plan to the *Employer*. If the *Contractor* and the *Employer* are unable to agree the contents of the revised Exit Plan within that fifteen Business Day period, the previous version shall continue to apply and either of them may refer the dispute for resolution in accordance with the dispute resolution procedure.

- Z17.5 Until the agreement of the Exit Plan, the *Contractor* shall provide the Handover Services to the *Employer* in accordance with the principles set out in the Service Information and the last-approved version of the Exit Plan (insofar as this exists and still applies) and in good faith. The *Contractor* shall ensure that it is able to implement the Exit Plan at any time.
- Z17.6 In addition, within 10 days after service of a termination notice by either the *Employer* or the *Contractor* the *Contractor* will update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination and the timing of termination so that such Exit Plan can be submitted to the *Employer* for review and approval. The *Contractor* and the *Employer* shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in the Service Information. Until the agreement of the updated Exit Plan, the *Contractor* will provide the Handover Services to the *Employer* in accordance with the last-approved version of the Exit Plan (insofar as this exists and still applies) and in good faith.
- Z17.7 The costs of:
- the Handover Services; and
 - the development, agreement and operation of each Exit Plan
- are for the *Contractor* and the *Contractor* shall not charge such costs and expenses (whether directly or indirectly) to the *Employer* or any Replacement Contractor.
- Z17.8 Regardless of the provisions of this clause Z17, the *Contractor* agrees that it will provide the following information and data (in a readable, non-proprietary format and up to date at the time it is provided) to the *Employer* and agrees that the *Employer* may disclose such information to any Replacement Contractor:
- any operations manual for the services;
 - all asset validation surveys and all associated reports in respect of each site and all assets at that site which are subject to the service;
 - up to date status reports on planned maintenance, including status reports on statutory compliance;
 - supply chain data required by the *Employer* including details of active suppliers and Subcontractor, their activities and purchase values;
 - specifications, as updated for all changes to the service;

- all KPI performance data from the starting date to the most recent completed month; and
- all Financial Records relating to the service required by the *Employer*.

Z17.9 The *Contractor* will promptly and fully answer all reasonable questions about the *service* and its provisions of the service which the *Employer* or any Replacement Contractor may ask, for the purpose of understanding properly how the *service* was provided or for the purposes of any Replacement Contractor carrying out due diligence.

Z18 Mobilisation Services

The *Contractor* shall perform the Mobilisation Services during the Mobilisation Period together with any other activities necessary to ensure the efficient commencement of the *service* on the *starting date*. The costs of performing the Mobilisation Services and any other activities referred to above during the Mobilisation Period are for the *Contractor* and the *Contractor* shall not charge any costs and/or expenses (whether directly or indirectly) to the *Employer*.