Department for Transport

AtkinsRealis
Nova North
11 Bressenden Place
Westminster
London
SW1E 5BY

STARThree
Commercial Relationship Adviser
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Email:
STAR3-Framework@dft.gov.uk

Via DfTs Esourcing Portal

25 March 2025

SCHEDULE 8 – Package Order Terms
Procurement Reference THRE0061

Dear Consultant,

FORM OF AGREEMENT

THIS PACKAGE ORDER is made on the 25 March 2025

BETWEEN:

(1)   Transport Scotland (**Client**); and

(2)   AtkinsRealis registered in England and Wales with company number 668424 whose registered office is at Nova North, 11 Bressenden Place, Westminster, London, SW1E 5BY (**Consultant**).

Each a **Party** and together the **Parties**.

WHEREAS:

(A)   The *Consultant* has been appointed to the Specialist Technical and Commercial Advice for Rail and Other Transport Modes (STAR*Three*) Framework and has entered into a framework agreement in relation to its appointment (**Framework Agreement**).

(B)   The *Client* wishes to appoint the *Consultant* to provide certain services as set out in the Scope and this Package Order.

(C)   The *Consultant* has submitted a Proposal dated 18 February 2025 in response to the *Client's* Proposal Request Form in accordance with terms of the Framework

Agreement. The *Client* has examined the *Consultant's* Proposal and subject to the provisions of this Package Order is willing to engage the *Consultant* to carry out those services in accordance with this Package Order.

(D)   The contract period is for 3 months, with an option to extend for 6 months at the sole discretion of the *Client*. The contract will commence on 1 April 2025 and is expected to conclude on 30 June 2025.

(E)   The maximum "Award Value" of this Package Order is: £80,000 excluding VAT. There is an optional extension for £40,000 excluding VAT at the sole discretion of the *Client*. The *Client* is under no obligation to utilise the full amount.

NOW IT IS AGREED THAT:

1.   In this Package Order, unless the context otherwise requires, words and expressions have the same meanings as set out in the NEC4 Conditions of Contract and Schedule 1 of the Framework Agreement, as applicable.

2.   The "Award Value" of this Package Order upon which the Management Charge shall be calculated is: £2,000. It is further agreed that this Award Value is for the purposes of calculating the Management Charge pursuant to the Framework Agreement and that the Price for the *services* shall be as provided in the *conditions*, the *additional conditions* and the Contract Data.

3.   This contract (**Contract)** shall mean this document and the following documents which are hereby incorporated into and shall comprise:

3.1   the NEC4 Conditions of Contract in the form of the NEC4 Professional Services Contract (Fourth Edition June 2017) together with and as amended by main Option E, Dispute Resolution Option W1, and Secondary Option Clauses as specified in the Contract Data Part One;

3.2   the Contract Data Part One (including the Option Z clauses set out in the Contract Data Part One);

3.3   the Contract Data Part Two;

3.4   the Scope;

3.5   the Proposal being *Consultant's* Scope and

3.6   Clauses 16 (Variation Procedure), 18 Appointment of Sub-*Consultants*; 19 (*Consultant's* Staff), 34 ((Guarantee) of the Framework Agreement are incorporated into these conditions as if they were set out as *additional conditions of contract.*

4.   The *Consultant* shall provide the *services* (as set out in the Contract Data Part One) in accordance with this Contract and applicable law.

5.   The *Consultant* reaffirms that, in accordance with Clause 33 of the Framework Agreement, the *Consultant* acknowledges and agrees that it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Service and that (except as provided below) it shall not act for any person, organisation or company where there is or is reasonably likely to be a conflict of interest with the Service.

6.   Representatives

6.1   In respect of the Package Order:

      6.1.1   the *Client* will appoint a Service Manager who will be identified in the Package Order Contract Data Part One;

      6.1.2   the *Consultant* shall provide the Key Persons who shall supervise the performance of the Services and deal with the Service Manager in relation to matters arising under the Package Order, unless notified otherwise;

      6.1.3   following award of the Package Order the Service Manager will arrange an Inception Meeting with the *Consultant* to ensure an efficient mobilisation. The *Client* and the *Consultant* will discuss and agree the content of the Contract Management Project Summary which will include the key resources' contact details, a summary of what the Package Order is expected to deliver and the completion requirements, the project plan, sequence of activities, resourcing profile, location of delivery, meeting timings etc, using the *Consultant*'s bid proposal as a key point of reference. Thereafter the Contract Management Project Summary should be updated each time a Variation or extension is agreed and for any changes to expected deliverables or completion dates.

      6.1.4   in the event that:

           (a)   either party disputes the content of the Contract Management Project Summary, the Service Manager will make the final decision on the content of the Contract Management Project Summary;

           (b)   the content of the Contract Management Project Summary does not align with the content of the Proposal (including the Proposal Request Form and associated documents), the content of the Proposal (including the Proposal Request Form and associated documents) will take precedence.

7.   Key Performance Indicators

7.1   At least three (3) Working Days prior to the regular (as a minimum), monthly contract meetings, the *Consultant*'s Key Persons will complete the Contract Scorecard in the relevant Package Order project in the Sourcing Portal for the Service Manager's consideration. The *Consultant* is responsible for completing the Contract Scorecard with a self-assessment of its Package Order KPI scores and will record its own perspective of performance in the relevant Package Order KPI justification section. The *Consultant* will be responsible for the timely delivery of high-quality information and for arranging regular review meetings to present progress to the Service Manager.

7.2   The Contract Scorecard will be reviewed by the Service Manager in advance of the progress meeting. Any issues and/or anomalies identified by the Service Manager will be discussed with the *Consultant* with a view to reaching accord and validating agreed Package Order KPI scores and justification for the resultant Package Order Performance Scores.

7.3   In addition to the *Consultant* submitting the Contract Scorecard on a monthly basis for the Service Manager to review, the *Consultant* will also provide:

7.3.1   the data on which the Package Order Performance Scores are based;

7.3.2   any other supporting information that may be requested by the Service Manager for his assessment;

7.3.3   a draft review of the progress of the Package Order against Package Order KPIs using the Contract Scorecard;

7.3.4   a draft *Consultant*'s application for payment using the Schedule 10 Application for Payment Template; and

7.3.5   a draft update report on the progress of the Package Order using the Schedule 11 *Consultant*'s Progress Report Template.

7.4   In the event that the *Consultant* scores less than the minimum threshold of 4 out of 10 at the end of any month for any of the Package Order KPIs, as set out in the Contract Scorecard (4 out of 10 being the **Package Order KPI Minimum Threshold**) then the *Consultant* shall produce a performance improvement action plan (**Action Plan**). The Action Plan shall set out in detail the *Consultant*'s proposed approach and programme to correct any specified instances where the Package Order KPI Minimum Threshold has been breached. The *Consultant* shall submit each Action Plan to the *Client* for review and acceptance. The *Client* shall review the Action Plan and propose any amendments (if applicable) to the *Consultant* and the *Consultant* shall comply with any reasonable requests from the *Client* to change the Action Plan. The *Consultant* shall implement the Action Plan as soon as it has received confirmation of acceptance from DfT. The *Consultant* shall initiate and carry out, efficiently and expeditiously, rectification of any deficiencies in any aspect of the *Consultant*'s performance as soon as the *Consultant* knows that their performance has breached a Package Order KPI, including in circumstances where an Action Plan has not yet been accepted by DfT and/or the *Client*.

7.5   The *Consultant*, agrees that the Service Manager and the Key Persons shall attend regular contract meetings (the location, frequency and time of which shall be specified by the Service Manager from time to time). The draft submissions set out in clause 7 above will form the basis of the meeting agenda. A written record of any actions resulting from these meetings shall be made by the Key Persons and following agreement by the Service Manager, shall be submitted as final revisions of the Schedule 10 and Schedule 11 of the Framework Agreement reports and accepted as a true representation of discussions and resolutions that have taken place. The Service Manager will validate and upload the final agreed version of the Schedule 10 and Schedule 11 reports (Framework Agreement) and will complete the evaluation of the Contract Scorecard on the Sourcing Portal.

7.6   Upon completion of each Package Order, the *Consultant* must provide all the necessary data in relation to the Package Order KPIs within fourteen (14) days of completion of the Package Order.

8.   In consideration of the provision by the *Consultant* of the Service the *Client* shall pay to the *Consultant* the amount due in accordance with this contract.

9.   This contract supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever in relation to this contract. No variation to this contract, after the date hereof, will be made except with the written consent of the *Client* and the *Consultant* with DfT's Approval, which shall not be unreasonably withheld, provided that this is

without prejudice to the *Client's* rights to issue instructions in accordance with this contract.

10. By signing and returning these Package Order Terms (which may be done by electronic means) the *Consultant* agrees to enter a Package Order with the *Client* to provide the Service in accordance with the terms of the Package Order and the Proposal Request Form [1].

11. The Parties hereby acknowledge and agree that they have read the Package Order and the Proposal Request Form and by signing below agree to be bound by this Package Order.

12. The Parties hereby acknowledge and agree that this Package Order shall be formed when the *Client* executes (which may be done by electronic means) the Package Order Terms.

13. ORDER OF PRECEDENCE

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

13.1 Clauses 18 (Appointment of Sub-*Consultant*s); 19 (*Consultant's* Staff), Clause 34 ((Guarantee) of the Framework Agreement;

13.2 the *additional conditions of contract*;

13.3 the other *conditions of contract*;

13.4 the completed Contract Data;

13.5 the Scope; and

13.6 the Proposal

Yours sincerely,
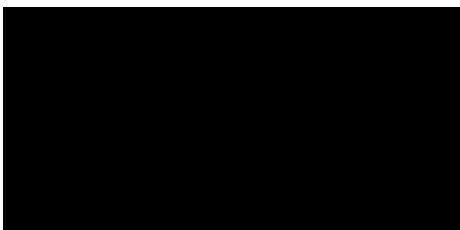
Commercial Relationship /Advisor
STARThree Team

IN WITNESS WHEREOF the Parties have entered into the Package Order on the date written above.

APPENDIX 1 TO SCHEDULE 8
Professional Services Contract – Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

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

1. General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Services Contract June 2017

Main Option	E	Option for resolving and avoiding disputes	W1

Secondary Options	X18 Limitation of Liability
	X11 Termination by the Client
	X20 Key Performance Indicators

The *service* is	THRE0061 – ScotRail Revenue Gap Analysis

The *Client* is

Name	████████████
Address for communications	Transport Scotland, 177 Bothwell Street, Glasgow, G2 7ER
Address for electronic communications	████████████████████

The *Service Manager* is

Name	██████████
Address for communications	Transport Scotland, 177 Bothwell Street, Glasgow, G2 7ER
Address for electronic communications	████████████████████
The Scope is in	Appendix 1 of Schedule 7
The *language of this contract* is	English
The *law of the contract* is	the law of England and Wales

The *period for reply* is	Two weeks		except that
the period for reply for	N/A	is	
the period for reply for	N/A	is	
the period for reply for	N/A	is	
The *period for retention* is	N/A	years following Completion or earlier termination	

The following matters will be included in the Early Warning Register

NONE

Early Warning Meetings are to be held at intervals no longer than	2 weekly period

2. The *Consultant*'s main responsibilities

If the *Client* has identified work which is set to meet a stated condition by a key date	The key dates and conditions to be met are	
	Condition to be met	key date
(1)	N/A	
(2)	N/A	
(3)	N/A	

If Option A is used	The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than	
If Option C or E is used	The *Consultant* prepares forecasts of the total Defined Cost, plus Fee and *expenses* at intervals no longer than	4 weeks

3. Time	

	The *starting date* is	1 April 2025

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

	access	access date
(1)	N/A	
(2)	N/A	
(3)	N/A	

	The *Consultant* submits revised programmes at intervals no longer than	N/A
If the *Client* has decided the *completion date* for the whole of the *service*	The *completion date* for the whole of the *service* is	30 June 2025
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is	N/A

4. Quality management	

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is	N/A

The period between Completion of the whole of the service and the *defects date* is	N/A

5. Payment

The *currency of the contract* is the	GBP

The *assessment interval* is	Monthly

If the *Client* states any *expenses*

The *expenses* stated by the *Client* are

item		amount
N/A		
N/A		

The *interest rate* is   2   % per annum (not less than 2) above the

Base lending	rate of the	Bank of England	bank

If the period within which payments are

The period within which payments are made is	Monthly

made is not three weeks and Y(UK)2 is not used

If Option C or E is used

The *exchange rates* are those published in

N/A

on   N/A   (date)

6. Compensation events

If there are additional
compensation events

These are additional compensation events

None

8. Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client*'s liabilities

(1) N/A

(2) N/A

(3) N/A

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

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The *Consultant*'s failure to use the skill and care normally used by professionals providing services similar to the *service*	£1m in respect of each claim, without limit to the number of claims	

Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service	£5m in respect of each claim, without limit to the number of claims	
Death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract	£5m in respect of each claim, without limit to the number of claims	

If the *Client* is to provide any of the insurance stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

1. Insurance against

N/A

Minimum amount of cover is

N/A

The deductibles are

N/A

2. Insurance against

N/A

Minimum amount of cover is

N/A

The deductibles are

N/A

3. Insurance against

N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

If additional insurances are to be provided

The *Client* provides these additional insurances

1. Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

2. Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

3. Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

The *Consultant* provides these additional insurances

• Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

• Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

• Insurance against	N/A

Minimum amount of cover is	N/A

The deductibles are	N/A

The *Consultant*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters is limited to	£80,000

W1: Resolvir and avoiding disputes

	The *tribunal* is	The Courts of England and Wales

If the tribunal is arbitration:	The arbitration procedure is	N/A
	The place where arbitration is to be held is	N/A

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

The *Senior Representatives* of the *Client* are

Name (1)	STAR*Three* Framework Manager
Address for communications	Great Minster House, 33 Horseferry Road, London, SW1P 4DR
Address for electronic communications	STAR3-Framework@dft.gov.uk
Name (2)	N/A
Address for communications	N/A
Address for electronic communications	N/A

The *Adjudicator* is

Name

Chartered Institute of Arbitrators

Address for communications

12 Bloomsbury Square, London, WC1A 2LP, UK

Address for electronic communications

das@ciarb.org (Dispute Appointment Service)

The *Adjudicator nominating body* is   Chartered Institute of Arbitrators

X1: Price adjustment for inflation (used only with Options A and C)

If Option X1 is used   Option X1 does not apply

N/A

X2: Change in the law

If Option X2 is used   The *law of the project* is

N/A

X3: Multiple currencies (used only with Option A)

If Option X3 is used   The *Client* will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total maximum payment in the currency
N/A		
N/A		
N/A		

The *exchange rates* are those published in

N/A

on | N/A | (date)

X5: Sectional Completion

If Option X5 is used

The *completion date* for each *section* of the *service* is

section	description	*completion date*
(1)	N/A	
(2)	N/A	
(3)	N/A	
(4)	N/A	

X6: Bonus for early Completion		

If Option X6 is used without Option X5	The bonus for the whole of the *service* is	N/A	per day

If Option X6 is used with Option X5 | The *bonus* for each *section* of the *service* is

section	description	*amount per day*
(1)	N/A	
(2)	N/A	
(3)	N/A	
(4)	N/A	

The bonus for the remainder of the *service* is

X7: Delay damages	

If Option X7 is used without Option X5	Delay damages for Completion of the whole of the *service* are	N/A	per day

If Option X7 is used   Delay damages for each *section* of the *service* are

section	description		*amount per day*
(1)	N/A		
(2)	N/A		
(3)	N/A		
(4)	N/A		

The delay damages for the remainder of the *service* are | N/A |

X8: Undertakings to Others

If Option X8 is used   The *undertakings to Others* are provided to

N/A

N/A

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data	The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is
	N/A

X12: Multiparty collaboration (not used with Option X20)

If Option X12 is used

The *Promoter* is

> N/A

The Schedule of Partners is in

> N/A

The *Promoter*'s *objective* is

> N/A

The Partnering Information is in

> N/A

X13: Performance bond

If Option X13 is used	The amount of the performance bond is	

X18: Limitation of liability

If Option X18 is used	The *Consultant*'s liability to the *Client* for indirect or consequential loss is limited to	£80,000
	The *Consultant*'s liability to the *Client* for Defects that are not found until after the *defects date* is limited to	2 years
	The end of liability date is	2 years after Completion of the whole of the *service*

X20: Key Performance Indicators (not used with Options X12)

If Option X20 is used	The *incentive schedule* for Key Performance Indicators is in	N/A
	A report on performance against each Key Performance Indicator is provided at intervals of	1 months

X29: Climate Change

If Option X29 is used:

The performance table is in	N/A
If no climate change plan is identified in Part two of the Contract Data, the period after the Contract Date within which the	N/A

Consultant is to submit a first climate change plan for acceptance is	

Y(UK)1: Project Bank Account

Charges made and
interest paid by the
project bank

The *Consultant* <u>is not</u> to pay any charges made and to be paid
any interest paid by the *project bank* (delete as applicable)

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

If Option Y(UK)2 is used and
the final date for payment is
not fourteen days after the
date on which payment
becomes due

The period for payment is

N/A

days after the date on which payment becomes due

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

If Option
Y(UK)3 is used

term	*beneficiary*
N/A	
N/A	
N/A	
N/A	

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

term	*beneficiary*
The provisions of Options Y(UK)1	Named *Consultant*s

Z: Additional *conditions of contract*

If Option Z is used

The *additional conditions of contract* are

attached to the Contract as Appendix 2 to Schedule 8.

PART TWO – DATA PROVIDED BY THE *CONSULTANT*

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

1. General

The *Consultant* is

Name	AtkinsRealis

Address for communications	Nova North 11 Bressenden Place Westminster London SW1E 5BY

Address for electronic communications	███████████████

The *fee percentage* is	Zero	%

The *key persons* are

Name (1)	██████████

Job	Technical Lead

Responsibilities	

Qualifications	

████████ █████████████████████████████

█████ **█████████**

Job Project Manager

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2. The *Consultant*'s main responsibilities

If the *Consultant* is to provide Scope	The Scope provided by the *Consultant* is in	The *Consultant*'s Proposals appended here to as Annex 1

3. Time

If a programme is to be identified in the Contract Data	The programme identified in the Contract Data is	N/A
If the *Consultant* is to decide the *completion date* for the whole of the service	The *completion date* for the whole of the service is	N/A

5. Payment

If the *Consultant* states any expenses	The expenses stated by the *Consultant* are	
	item	amount
	N/A	
	N/A	
	N/A	

Option E

[2]*Consultant* rates (TABLE 1A):

Category of *Consultant* Resources	Unit (8-hour day is hours worked and does not allow for breaks)	rate
Director	Day rate per 8-hour Day	£1,450
Senior *Consultant*	Day rate per 8-hour Day	£780
Consultant	Day rate per 8-hour Day	£590
Junior *Consultant*	Day rate per 8-hour Day	£400

---

[2] *Day rate based on the expectation that there would be on average, an aggregate of one hour's break time in the course of an 9 hour working day.*

Sub-Consultant rates (TABLE 1B): R&L Bailey Associates

Category of *Sub-Consultant* Resources	Unit (8-hour day is hours worked and does not allow for breaks)	rate
Director	Day rate per 8-hour Day	£1,450
Senior *Consultant*	Day rate per 8-hour Day	N/A
Consultant	Day rate per 8-hour Day	N/A
Junior *Consultant*	Day rate per 8-hour Day	N/A

If Option A or C is used	The *activity schedule* is	N/A
	The tendered total of the Prices is	N/A

Phase	Description	Bidder's Fixed Price
Bidder's Total Fixed Price		

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)   ███████████

Address for communications   Nova North, 11 Bressenden Pl, Westminster, London SW1E 5BY

Address for electronic communications   ████████████████████

Name (2)   ████████

Address for communications   Nova North, 11 Bressenden Pl, Westminster, London SW1E 5BY

Address for electronic communications   █████████████████████

The *Senior Representatives* of the *Consultant* are

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data	The *information execution plan* identified in the Contract Data is	N/A

X29: Climate Change

If Option X29 is used:

If a *climate change plan* is to be identified in the Contract Data	The *climate change plan* identified in the Contract Data is	N/A

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

N/A

named Consultants are

N/A

Data for the Schedule of Cost Components (used only with Options C or E)

The *overhead percentage*s for the cost of support people and office overhead are

location   *overhead percentage*

N/A		%
N/A		%
N/A		%

Data for the Short Schedule of Cost Components (used only with Option A)

The people rates are

category of person	unit	rate
N/A		
N/A		
N/A		
N/A		
N/A		

Annex 1 to the Contract Data Part Two (the *Consultant*'s Proposal)

- THRE0061 -
Transport Scotland -

APPENDIX 2 TO SCHEDULE 8
NEC4 Professional Service Contract June 2017 - Z clauses - Additional Conditions Of Contract

The additional conditions of contract which amend and add to the NEC4 Professional Service Contract June 2017 are:

Clause Z1	Insert new definitions as follows:

"Affiliates" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time.

"Approval" means the prior written consent of the *Client* and **"Approve"** and **"Approved"** shall be construed accordingly.

"Auditor" means (a) the *Client*'s internal and external auditors; (b) the *Client*'s statutory or regulatory auditors; (c) the Controller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the *Client* to carry out audit or similar review functions; (f) successors or assigns of any of the above.

"Confidential Information" means the *Client*'s Confidential Information and/or the *Consultant*'s Confidential Information, as the context requires.

"*Consultant* Staff" means all directors, officers, employees, agents, sub*Consultant*s and subcontractors of the *Consultant* and/or of any sub-subcontractor engaged in the performance of the *Consultant*'s obligations under a Contract

"Contract Management Project Summary" means a summary in the form set out in Schedule 16 of the Framework Agreement.

"Contract Period" means the term of the Package Order on and from the earlier of the: (a) applicable Start Date; or (b) Effective Date, up to and including the applicable End Date.

"Contract Scorecard" means the scorecard for Package Order KPIs described in Paragraph 8 of Part 2 of Schedule 9 (Key Performance Indicators) of the Framework Agreement and agreed between the Parties for the purpose of this Package Order.

"Controller" has the meaning given in the UK GDPR.

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

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

"Data Protection Legislation" means (a) the UK GDPR, the Law Enforcement Directive (EU) 2016/680 and any applicable national implementing Laws as amended from time to time; (b) the DPA to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy.

"Data Subject" has the meaning given in the DPA.

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

"Default" means a material breach of the obligations of the *Consultant* under the Package Order (including an omission) or any negligence or misstatement of the *Consultant*, of its Sub-*Consultant*s or any *Consultant* Staff howsoever arising in connection with or in relation to the subject-matter of the Package Order and in respect of which the *Consultant* is liable to the *Client*.

"Deliverables" means Services that may be ordered under a Package Order including the Documentation.

"Director" means a person who meets the relevant description as set out in Schedule 6 (Position Definitions for *Consultant* Resources) of the Framework Agreement.

"End Date" means the earlier of: (a) the Expiry Date; or (b) if a Contract is terminated before the Expiry Date, the date of the termination of the Contract.

"Environmental Information Regulations or EIRs" 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.

"Existing Intellectual Property Rights (IPR)" means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Framework Agreement (whether prior to the Framework Commencement Date or otherwise).

"Expiry Date" means the date when the Package Order is expressed to end (if for a term), otherwise the date when the *Client* is satisfied that the Completion Date has been achieved or the Services have reached Completion.

"FOIA" means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that 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.

"Framework Agreement" means the agreement between the *Consultant* and the Department of Transport for the latter's Specialist Technical and Commercial Advice for Rail and Other Transport Modes Framework, also known as STAR*Three*, pursuant to which this Package Order is awarded.

"Guarantor" the person that the *Consultant* relied upon to satisfy DfT in relation to the economic and financial standing requirements of the selection stage of the procurement process for the Framework Agreement, whether an Affiliate of the *Consultant* or a bank or insurance company.

"Inception Meeting" means the mobilisation meeting referred to at Sections 8 and 9 of the Scope for a Package Order.

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the *Consultant* (or to which the *Consultant* has provided access) to the DfT and/or the *Client* (as applicable) in the fulfilment of its obligations under a Contract.

"Junior *Consultant*" means a person who meets the relevant description as set out in Schedule 6 (Position Definitions for *Consultant* Resources) in the Framework Agreement.

"Key Persons" means the *Consultant*'s nominated and/or specified resources that supervise the performance of the Services in relation to matters arising under a Package Order as listed in Contract Data Part 2.

"Management Charge" means the sum payable by the *Consultant* in respect of Package Orders for which DfT is not the *Client*, being an amount calculated pursuant to Schedule 21 of the Framework Agreement.

"Mini Competition Procedure" means the process to be followed by a *Client* when awarding a Package Order by way of further competition, as set out in Paragraph 3 of Schedule 13 of the Framework Agreement.

"New IPR" means IPR in items created by the *Consultant* (or by a third party on behalf of the *Consultant*) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or IPR in or arising as a result of the performance of the *Consultant*'s obligations under a Contract and all updates and amendments to the same; but shall not include the *Consultant*'s Existing IPR.

"Open Book Data" is defined in the Framework Agreement**.**

"Package Order KPIs" means the performance measurement and targets set out in the Contract Scorecard for this Package Order pursuant to Paragraph 8 of Part 2 of Schedule 9 of the Framework Agreement.

"Package Order Performance Score" means the total of the Package Order KPI scores accrued in accordance with the Contract Scorecard.

"Personal Data" has the meaning given in the UK GDPR.

"Processor" has the meaning given to it under the UK GDPR.

"Processor Personnel" means all directors, officers, employees, agents, *Consultant*s and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

"Proposal" is the *Consultant*'s proposal as appended to this Package Order at Annex 1 pursuant to Paragraph 3.4.2(b)(ii) of Schedule 13 of the Framework Agreement.

"Proposal Request Form" means the form used to request bids for a Package Order in accordance with Schedule 13 of the Framework Agreement (Call Off Procedure), as set out in Schedule 7 of the Framework Agreement.

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

"Replacement Deliverables" means any deliverables which are substantially similar to any of the Deliverables and which the *Client* receives in substitution for any of the Deliverables following the Expiry Date, whether those goods are provided by the *Client* internally and/or by any third party.

"Request(s) for Information" means a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs.

"Senior *Consultant* Position" means a person who meets the relevant description as set out in Schedule 6 (Position Definitions for *Consultant* Resources) of the Framework Agreement.

"SME" means Small and Medium-sized Enterprise that employs fewer than two hundred and fifty (250) persons in line with the EU definition: https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

"Start Date" means the date on which a Package Order is placed with the *Consultant*.

"Sub-*Consultant*" means any person other than the *Consultant*, who is a party to a Sub-Contract and the servants or agents of that person and shall include, but not be limited to, any Sub-*Consultant*s.

"Sub-processor" means any third party appointed to process Personal Data on behalf of the *Consultant* related to this Framework Agreement or a Package Order.

"GDPR" means the UK GDPR, which has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA.

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.

Clause Z2	**Amendment to Clause 13 (Communications)**

Insert a new clause 13.10:

"Provided the communication is not returned undelivered, the communication is deemed to have been given two (2) Working Days after the day on which the communication was posted."

Clause Z3	**Amendment to Clause 18 (Prevention)**

Insert a new clause 18.2:

Until the *Client* acknowledges through such an instruction that the Contract can no longer be performed, the *Consultant* will use reasonable endeavours to continue to perform the Contract.

Clause Z4	**New clause 19 (Corrupt Practices)**

"19.1   The *Consultant* provides the service in a way which does not constitute any corrupt practice and in particular the *Consultant* agrees not to:

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

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

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

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

(c)   commit any offence:

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

      ii.   under legislation or common law concerning fraudulent acts; or

     iii.   defrauding, attempting to defraud or conspiring to defraud a *Client* or other public body; or

     iv.   any activity, practice or conduct which would constitute one of the offences listed under € above if such activity, practice or conduct had been carried out in the UK;

19.2   A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations.

19.3   Delete clause 11.2(5) and 17."

Clause Z5	**Amendment to Clause 26 (Disclosure)**

Clause 26.1 is deleted and replaced by the following:

"The *Consultant* shall keep (and ensure that its employees and Subcontractor keep) confidential and shall not disclose to any person the terms of this contract and any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of providing the service, except that the *Consultant* may disclose information:

   (a) to its legal or other professional advisers;

   (b) to its employees and Subcontractors as needed to enable the *Consultant* to provide the service;

   (c) where required to do so by Law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Client* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed; or

   (d) which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,

   (e) which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or with the consent of the *Client*.

Clause Z6	**Amendments to Clause 50 (Assessing the amount due)**

Amend the final sentence of sub-clause 50.2 as follows:

50.2 – Replace the words 'the Scope' at the end of the final sentence, with the words "the template in Schedule 10 of the Framework Agreement (Application for Payment)."

Clause Z7	**New Clause 54 (Recovery of sums due from *Consultant*)**

"54.1   The *Consultant* agrees that when, under the Package Order, any sum of money is recoverable from or payable by the *Consultant* such sum may, at the *Client's* sole discretion, be:

(a)   deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of His Majesty's Government; or

(b)   the *Client* may provide an invoice to the *Consultant* in respect of any sum of recoverable money and the *Consultant* shall pay such sum within thirty (30) Working Days of receipt of the invoice.

Clause Z8	**Amendments to Clause 90 (Termination)**

Clause 90.2   In line 1 after the first sentence insert "In addition without affecting any other right or remedy available to it, the *Client* may terminate this Package Order for any reason by giving thirty days' notice to the *Consultant*."

In the first row of the Termination Table, after "R1-R15" insert "(including R13A)".

In the Termination Table add the following additional line:

TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The *Client*	A reason other than R1-22 including termination at Will pursuant toX11 (where incorporated)	P1	A1 and A3

Clause 90.3   In the second paragraph after "R1 to R15," insert "(including R13A)".

Clause 90.5   Add as a new clause 90.5:

"If the *Client* terminates the Package Order pursuant to clause 90.2, the *Client* shall pay the Termination Fee to the *Consultant* within thirty (30) Working Days of receiving a *Consultant* invoice in accordance with Clause 90.9(b). "

Clause 90.6   Add as a new clause 90.6:

"The *Client's* right to terminate is without prejudice to any other rights or remedies that the *Client* may have."

Clause 90.7   Add as a new clause 90.7:

"Termination of the *Consultant's* employment under the contract for any reason shall not determine the operation of any provisions of the contract which remain capable of operation after termination, or affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination."

Clause 90.5   Add as a new clause 90.8:

"Save as otherwise expressly provided in the contract termination or expiry of the contract is without prejudice to any rights, remedies or obligations accrued under the contract prior to termination or expiration and nothing in the contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry."

Clause 90.9   Add as a new clause 90.9:

"If the *Client* terminates the Package Order pursuant to clause 90.2:

(a)   the *Consultant* shall provide to the *Client* within fourteen (14) days of such termination being communicated to the *Consultant*, a full and detailed breakdown of spend to date for the service in the Package Order compared with the forecasted Prices, as set out in the Contract Data and/or the Proposal; and

(b)   within thirty (30)Working Days of receipt of confirmation by the *Client* that the detailed breakdown of spend to date provided pursuant to Clause 90.9(a) is agreed, the *Consultant* shall provide an invoice to the *Client* for 5% (five percent) of the difference between the forecast of the final total of the Prices for the service in the Package Order in the absence of

termination and the amount due on termination for the service in the Package Order excluding the additional amount (**Termination Fee**)."

Clause Z9	**Insert a new section 10 (General)**

Insert a new Clause 100 (Assignment and Appointment of Subcontractors)

"100.1 The *Consultant* shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Package Order or any part of it without Approval.

100.2   The *Client* may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Package Order or any part thereof to:

100.2.1   any *Client*; or

100.2.2   any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the *Client*; or

100.2.3   any private sector body which substantially performs the functions of the *Client*, and the *Consultant* shall, at the *Client's* request, enter into a novation agreement in such form as the *Client* shall reasonably specify in order to enable the *Client* to exercise its rights pursuant to this Clause 100.2.

100.3   If requested by the *Client*, the *Consultant* will execute an agreement to novate the benefit and burden of any Package Order to another body pursuant to the *Client's* rights in clause 100.2."

100.4 The *Consultant* is entitled to use Subcontractors as follows:

(a) any Subcontractor appointed to the Framework in its own right as a *Consultant* does not require further approval from the *Client,* even if its role as Subcontractor hereunder is not for the Category for which it is appointed;

(b) any Subcontractor approved by the DfT under the Framework Agreement with the *Consultant*, provided that any conditions for that approval have been met;

(c) any Subcontractor put forward by the *Consultant* as part of its Proposal to be awarded this contract does not require further approval, provided that any conditions imposed by the *Client* as condition of awarding this contract have been complied with, and the Sub-*Consultant* concerned is an SME (as defined in the Framework Agreement);

(d) the *Consultant* shall not engage or replace a Subcontractor after the Start Date of this contract unless the *Consultant* has sought consent for such engagement pursuant to Clause 18 of the Framework Agreement and such consent has been granted, and furthermore that any conditions attaching to such consent have been met.

Clause Z10	**Insert a new Clause 101 (Discrimination)**

101.1   The *Consultant* shall not discriminate directly or indirectly against any person contrary to all applicable equality Law and any other requirements and restrictions which the *Client* reasonably imposes in connection with equality obligations imposed in the *Client* at any time under applicable equality Law.

101.2   The *Consultant* shall co-operate where possible in providing the Services with and assist the *Client* to satisfy its duty under the Equality Act 2010 to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups, and between disabled people and other people.

101.3   The *Consultant* shall ensure it and each of its employees or agents, or Subcontractors providing the service complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

101.4   The *Consultant* shall notify the *Client* in writing as soon as it becomes aware of any investigation or proceedings brought against the *Consultant* under the Equality Act 2010 in connection with this contract and shall:

(a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;

(b) attend (and permits a representative from the *Client* to attend) any associated meetings;

(c) allow access to any relevant documents and information; and

(d) co-operate fully and promptly with the investigatory body, court or tribunal.

101.5 The *Consultant* shall indemnify the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Equality Act 2010 resulting from any act or omission of the *Consultant*. The *Consultant* shall indemnify the *Client* against any claims, actions or damages brought against the *Client* in connection with any act or omission of the *Consultant* or its employees, Subcontractors or sub-contractors in relation to the Equality Act 2010.

101.6 The *Consultant* shall include in the conditions of contract for each Subcontractor such obligations substantially similar to those set out above.

Clause Z11 **Insert a new Clause 102 (Disclosure of information**)

Z11.1 The Parties acknowledge that:

Z11.1.1 the content of this Package Order, including any changes to this Package Order agreed from time to time, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the *Client*; and

(b) Commercially Sensitive Information;

(together the "Transparency Information") is not Confidential Information.

Z11.2 Notwithstanding any other provision of this Package Order, the *Consultant* hereby gives its consent for the *Client* to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The *Client* shall, prior to publication, consult with the *Consultant* on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

Z11.3 The *Consultant* shall assist and co-operate with the *Client* to enable the *Client* to publish the Transparency Information.

Z11.4 If the *Client* believes that publication of any element of the Transparency Information would be contrary to the public interest, the *Client* shall be entitled to exclude such information from publication. The *Client* acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the *Client* acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the *Consultant*.

Z11.5 The *Client* shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Package Order is being performed, having regard to the context of the wider commercial relationship with the *Consultant*.

Z11.6 The *Consultant* agrees that any Information it holds that arises from the provision of the Services shall be provided to the *Client* on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The *Client* may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (save where the *Client* deems (acting reasonably) that disclosure is necessary or appropriate in the course of carrying out its public functions) and Open Book Data) publish such Information. The *Consultant* shall provide to the *Client* within five (5) working days (or such other period as the *Client* may reasonably specify) any such Information requested by the *Client*.

Z11.7 The *Consultant* acknowledges that the *Client* is subject to the requirements of the FOIA and the EIRs. The *Consultant* shall:

Z11.7.1   provide all necessary assistance and cooperation as reasonably requested by the *Client* to enable the *Client* to comply with its Information disclosure obligations under the FOIA and EIRs;

Z11.7.2   transfer to the *Client* all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

Z11.7.3   provide the *Client* with a copy of all Information held on behalf of the *Client* requested in the Request for Information which is in the *Consultant's* possession or control in the form that the *Client* requires within five (5) Working Days (or such other period as the *Client* may reasonably specify) of the *Client's* request for such Information; and

Z11.7.4   not respond directly to a Request for Information addressed to the *Client* unless authorised in writing to do so by the *Client*.

Z11.8   The *Consultant* acknowledges that the *Client* may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the *Consultant*. The *Client* shall take reasonable steps to notify the *Consultant* of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Package Order) for the purpose of this Package Order , the *Client* shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

Clause Z12	**Insert a new Clause 103 (Conflict of interest)**

Z12.1 The *Consultant* shall take appropriate steps to ensure that neither the *Consultant* nor the *Consultant* Staff are placed in a position where (in the reasonable opinion of the *Client*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* or the *Consultant* Staff and the duties owed to the *Client* and Other Contracting *Client* under the provisions of this Framework Agreement or any Package Order.

Z12.2 The *Consultant* shall promptly notify and provide full particulars to the *Client* or the relevant Other Contracting *Client* if such conflict referred to in Z12.1 arises or may reasonably been foreseen as arising.

Z12.3   The *Client* reserves the right to terminate this Package Order immediately by giving notice in writing to the *Consultant* and/or to take such other steps it deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under the provisions of this Framework Agreement or any Package Order. The action of the *Client* pursuant to this clause Z12.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the *Client*.

Z12.4   A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations.

Clause Z13	**Insert a new Clause 104 (Official Secrets Acts)**

Z13.1   The *Consultant* shall comply with, and shall procure that its employees, agents and/or Subcontractors shall comply with the Official Secrets Acts 1911 to 1989 apply to them during and after performance of the service.

Z13.2   A failure to comply with this clause Z13.1 shall be a substantial failure by the *Consultant* to comply with its obligations.

Clause Z14	**Insert a new Clause 105 (Contents of Sub-Contracts)**

Z14.1   The *Consultant* shall ensure that all Sub-Contracts contain a provision:

Z14.1.1   requiring the *Consultant* to pay any undisputed sums which are due from it to the Subcontractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;

Z14.1.2   requiring that any invoices submitted by a Subcontractor shall be considered and verified by the *Consultant* in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;

Z14.1.3   conferring a right to the *Client* to publish the *Consultant's* compliance with its obligation to pay undisputed invoices to the Subcontractor within the specified payment period;

Z14.1.4   giving the *Consultant* a right to terminate the Sub-Contract if the Subcontractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

Z14.1.5   requiring the Subcontractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Z14.1.5.

Z14.2   The *Consultant* shall pay any undisputed sums which are due from it to a Subcontractor within thirty (30) days from the receipt of a valid invoice.

Z14.3   Any invoices submitted by a Subcontractor to the *Consultant* shall be considered and verified by the *Consultant* in a timely fashion. Undue delay in doing so shall not be sufficient justification for the *Consultant* failing to regard an invoice as valid and undisputed.

Z14.4   If the *Consultant* notifies the *Client* that the *Consultant* has failed to pay an undisputed Subcontractor's invoice within thirty (30) days of receipt, or the *Client* otherwise discovers the same, the *Client* shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Clause Z15   **Insert a new Clause 106 (Data Protection)**
Status of the Controller

Z15.1   The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

Z15.1.1 "Controller" (where the other Party acts as the "Processor");

Z15.1.2 "Processor" (where the other Party acts as the "Controller");

Z15.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

Z1051.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Appendix 3 of Schedule 8 (Processing Personal Data) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

Z15.2   Where a Party is a Processor, the only processing that it is authorised to do is listed in Appendix 3 of Schedule 8 (Processing Personal Data) by the Controller. The Parties shall provide the relevant details for their respective Data Protection Officer in the form appended at Appendix 3 of Schedule 8 to this contract.

Z15.3   The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

Z15.4   The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

   (a) a systematic description of the envisaged processing operations and the purpose of the processing;

   (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

   (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

   (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z15.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Appendix 3 of Schedule 8 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the *Client* before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

　　i.　nature of the data to be protected;

　　ii.　harm that might result from a Data Loss Event;

　　iii.　state of technological development; and

　　iv.　cost of implementing any measures;

(c) ensure that:

　　i.　the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 3 of Schedule 8 (Processing Personal Data));

　　ii.　it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

　　　　A.　are aware of and comply with the Processor's duties under this clause;

　　　　B.　are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

　　　　C.　are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

　　　　D.　have undergone adequate training in the use, care, protection and handling of Personal Data;

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

　　i.　the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with

GDPR Article 46 or DPA 2018 section 75) as determined by the Controller;

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

iii.   the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

iv.   the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

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

Z15.6   Subject to Clause Z15.7, the Processor shall notify the Controller immediately if it:

(a)   receives a Data Subject Request (or purported Data Subject Request);

(b)   receives a request to rectify, block or erase any Personal Data;

(c)   receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d)   receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e)   receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f)   becomes aware of a Data Loss Event.

Z15.7   The Processor's obligation to notify under Clause Z15.6 shall include the provision of further information to the Controller in phases, as details become available.

Z15.8   Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause Z15.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a)   the Controller with full details and copies of the complaint, communication or request;

(b)   such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

    (c)   the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

    (d)   assistance as requested by the Controller following any Data Loss Event; and/or

    (e)   assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

Z15.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
    (a) the Controller determines that the processing is not occasional;

    (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

    (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z15.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
Z15.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
Z15.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
    (a) notify the Controller in writing of the intended Sub-processor and processing;

    (b) obtain the written consent of the Controller;

    (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause Z15 such that they apply to the Sub-processor; and

    (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

Z15.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
Z15.14 The *Client* may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
Z15.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than thirty (30) Working Days' notice to the *Consultant* amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
Where the Parties are Joint Controllers of Personal Data

Z15.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Appendix 3 of Schedule 8 (Processing Personal Data). The Parties shall provide the relevant details for their respective Data Protection Officer in the form appended at Appendix 3 of Schedule 8 to this contract.

Where the Parties are Independent Controllers of Personal Data

Z15.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

Z15.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

Z15.19 Where a Party has provided Personal Data to the other Party in accordance with Clause Z15.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

Z15.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.

Z15.21 The Parties shall only provide Personal Data to each other:

(a) to the extent necessary to perform the respective obligations under this Agreement;

(b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and

(c) where it has recorded it in Appendix 3 of Schedule 8 (Processing Personal Data).

Z15.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

Z15.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.

Z15.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("the **Request Recipient**"):

(a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

(b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:

i. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and

ii. provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation

Z15.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:

(a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;

(b) implement any measures necessary to restore the security of any compromised Personal Data;

(c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

(d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

Z15.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Appendix 3 of Schedule 8 (Processing Personal Data).

Z15.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Appendix 3 of Schedule 8 (Processing Personal Data).

Z15.28 Notwithstanding the general application of Clauses Z15.2 to Z15.15 to Personal Data, where the *Consultant* is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause Z15.16 to Z15.27.

Clause Z16 **Insert a new Clause 107 (Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE))**

Z16.1 The *Consultant* provides to the *Client* within 10 days of the *Client's* request such information in connection with TUPE as the *Client* may require. The *Consultant* promptly notifies the *Client* of any later change to information provided by it.

Z16.2 The *Consultant* acknowledges that the *Client* may disclose information provided by the *Consultant* to any replacement provider of services similar to the Services and any person tendering to become a replacement provider.

The *Client* obtains undertakings from any person to whom the information is disclosed not to disclose it to any other party (unless required to do so by Law).

Z16.3 During the 8 month period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Client* any proposals to amend materially the terms and conditions of employment of any employee whose work wholly or mainly falls within the scope of this Contract, increase materially the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract, or move or deploy any Key Person away from the performance of the service.

The *Client* may withhold acceptance if the proposal would increase the cost to the *Client* of this or any future contract for the service.

Z16.4 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the service.

Z16.5 The *Consultant* complies with, and ensures that any Subcontractor complies with, the Principles of Good Employment Practice published by the Cabinet Office in December 2010, as amended from time to time, or any similar code applicable to persons engaged on service contracts for any department or office of His Majesty's Government.

Clause Z17   **Insert a new Clause 108 Merger, take-over or change of control**
Termination on Change of Control

Z17.1 The *Consultant* shall notify the *Client* immediately in writing and as soon as the *Consultant* is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone:

    (a) a Change of Control;

    (b) any material change to the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*; or

    (c) any material change in the composition of the *Consultant's* partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this Contract by the *Consultant*.

Z17.2 The *Consultant* shall notify the *Client* of any change, or proposed change in the name of or status of the *Consultant.*

Clause Z18   **Insert a new Clause 109 (Audit)**

Z18.1 The *Consultant* must attend regular progress meetings with the *Client* and provide reports on progress when specified in the Package Order.

Z18.2 The *Consultant* must keep and maintain full and accurate financial records and accounts on every transaction under the Contract (including the maintenance of Open Book Data):

    (a) during the Contract Period;
    (b) for seven (7) years after the End Date; and
    (c) in accordance with GDPR,

including but not limited to the records and accounts stated in the definition of Audit in Schedule 1.

Z18.3 The *Client* or an Auditor can Audit the *Consultant*.

Z18.4 During an Audit, the *Consultant* must:

    (a) allow the *Client* or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and

    (b) provide information to the *Client* or to the Auditor and reasonable co-operation at their request.

Z18.5 Where the Audit of the *Consultant* is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the *Client*.

Z18.6 If the *Consultant* is not providing any of the Services, or is unable to provide them, it must immediately:

    (a) tell the *Client* and give reasons;

    (b) propose corrective action; and

    (c) provide a deadline for completing the corrective action.

Clause Z19   **Insert a new Clause 110 (Appointment of Adjudicator)**

Z19.1   The Adjudicator's appointment under the NEC4 Dispute Resolution Services Contract includes the following additional condition of contract:

"The Adjudicator complies and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the contract obtained either by the Adjudicator or any person advising or aiding him is confidential, and may not be used or disclosed by the Adjudicator or any such person except for the purposes of this Adjudication."

Clause Z20   **Insert a new Clause 111 (Retention of Information)**

Z20   Without prejudice to Clause Z18, the *Consultant* shall retain non-financial information obtained or prepared for this contract for a period of six (6) years following Completion. If requested by the *Client*, the *Consultant* shall make this information available for inspection by the *Client* or Others.

Clause Z21   **Insert a new Clause 112 (Rights to Material)**

Z21.1   Each Party keeps ownership of its own Existing IPRs. The *Consultant* gives the *Client* a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the *Consultant's* Existing IPR to enable it to both:

(a) receive and use the Deliverables; and

(b)   make use of the Replacement Deliverables provided by a Replacement *Consultant*.

Z21.2   Any New IPR created under a Contract is owned by the *Client*. The *Client* gives the *Consultant* a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

Z21.3   Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

Z21.4   Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Z21 or otherwise agreed in writing.

Z21.5   If there is an IPR Claim, the *Consultant* indemnifies each *Client* against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

Z21.6   If an IPR Claim is made or anticipated the *Consultant* must at its own expense and the *Client's* sole option, either:

(a) Obtain for the *Client* the rights in Z21.1 and Z21.2 without infringing any third party IPR; or

(b)   Replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.

Clause Z22   **Insert a new Clause 113 (*Client* Assets)**

Z22.1 Where the *Client* issues *Client* Assets free of charge to the *Consultant* such *Client* Assets shall be and remain the property of the *Client* and the *Consultant* irrevocably licences the *Client* and its agents to enter upon any premises of the *Consultant* during normal business hours on reasonable notice to recover any such *Client* Assets. The *Consultant* does not have a lien or any other interest on the *Client* Assets and the *Consultant* at all times possesses the *Client* Assets as fiduciary agent and bailee of the *Client*. The *Consultant* takes all reasonable steps to ensure that the title of the *Client* to the *Client* Assets and the exclusion of any such lien or other interest are brought to the notice of all Subcontractors and other appropriate persons and, at the *Client's* request, stores the *Client* Assets separately and ensures that it is clearly identifiable as belonging to the *Client*.

Z22.2   The *Client* Assets are deemed to be in good condition when received by or on behalf of the *Consultant* unless the *Consultant* notifies the *Client* otherwise within five (5) Working Days of receipt.

Z22.3 The *Consultant* shall maintain the *Client* Assets in good order and condition (excluding fair wear and tear), and shall use the *Client* Assets solely in connection with the Package Order and for no other purpose without prior Approval.

Z22.4   The *Consultant* shall ensure the security of all the *Client* Assets whilst in its possession, either on the premises or elsewhere during the supply of the Services, in accordance with the *Client's* reasonable security requirements as required from time to time.

Z22.5   The *Consultant* is liable for all loss of, or damage to, the *Client* Assets (excluding fair wear and tear), unless such loss or damage was caused by the *Client's* Default. The *Consultant* shall inform the *Client* within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the *Client* Assets.

Clause Z23	**Insert a new clause 114 (Recovery)** "The *Client* retains the right to deduct or to set-off any amount (whether arising under any term of this Package Order, or under any rule of law or of equity) against any monies due or to become due to the *Consultant* under this Package Order or any other contract entered into between the *Client* and the *Consultant*."
Clause Z24	**Insert new clause 115 (Guarantee)** "Where DfT has procured a Guarantee under Clause 34.4 of the Framework Agreement, the *Client* may terminate the Package Order as a substantial Default of the Package Order for the purposes of clauses 91.2 and 91.3 of the NEC4 Conditions of Contract where:

1.1   the Guarantor withdraws the Guarantee in whole or in part for any reason whatsoever;

1.2   the Guarantor is in breach or anticipatory breach of the Guarantee;

1.3   an Insolvency Event occurs in respect of the Guarantor;   or

1.4   the Guarantee becomes invalid or unenforceable for any reason whatsoever;

> and in each case the Guarantee is not replaced by an alternative guarantee agreement which is acceptable to the *Client*."

Z25	**Insert a new clause 116 (Statement of Works)** "The *Client* shall be entitled to commission additional work using the Statement of Works Call Off form at Appendix 5 hereof."
Z26	**Amendments in respect of Option E Cost Reimbursable Contract**[3] Delete 11.2(17) and insert: "Defined Cost is the cost of the components in the Short Schedule of Cost Components less Disallowed Cost." Insert: 11.2(19) "The People Rates are the people rates unless later changed in accordance with the contract." Delete 11.2(21) and insert: "The Price for Service Provided to Date is the total Defined Cost for the work which has been completed plus the Fee (Noting that the fee will be zero in every case)." Delete 50.8 – Other currencies Delete 50.9 – Acceptance of Defined Cost]

---

[3] NOTE: Z26 Clause to be deleted if Option E is not applicable.

APPENDIX 3 TO SCHEDULE 8
Processing Personal Data

1.   PROCESSING PERSONAL DATA

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

1.2   The contact details of the *Client*'s Data Protection Officer are:

Lorna Clark

1.3   The contact details of the *Consultant*'s Data Protection Officer are:

Lorna.Clark@transport.gov.scot

1.4   The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.5   Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	**The Parties are Independent Controllers of Personal Data** The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of: • Business contact details of *Consultant* Personnel, • Business contact details of any directors, officers, employees, agents, *Consultant*s and contractors of *Client* (excluding the *Consultant* Personnel) engaged in the performance of *Client*'s duties under this Agreement).
Duration of the processing	For the duration of the package order.
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.
Type of Personal Data	Individual contact details.
Categories of Data Subject	Client staff and Consultant Personnel.

Description	Details
Plan for return and destruction of the data once the processing is complete UNLESS requirement under Law or Data Protection Legislation to preserve that type of data	On completion of the Package Order, Personal Data shared shall be retained in accordance with the Client and Consultant retention policies, as applicable.