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Contract for Services

Between East West Railway Company Limited and [Service Provider]



Document history

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Version	Date	Reason for issue	Prepared By	Reviewed By	Approved by
V1	03/05/2019	First draft	Ashurst LLP		

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THIS CONTRACT is made the [●] day of [●] 20[●]

BETWEEN:

- (1) **East West Railway Company Limited**, a company registered in England and Wales (Company Registration Number 11072935) whose registered office is at Great Minster House, 3/13 33 Horseferry Road, London, England, SW1P 4DR (the “**Customer**”); and
- (2) [●], a company registered in [●] (Company Registration Number [●]) whose registered office is at [●] (the “**Service Provider**”).

RECITALS:

- A. (**Project DESCRIPTION**)
- B. The Customer wishes the Service Provider to provide the Services and the Service Provider is willing to provide the Services to the Customer on the terms and conditions set out in the Contract.
- C. The Service Provider should be aware that the Customer does not offer any guaranteed or minimum volume of the Services that may be required under the Contract and does not offer any exclusivity to the Service Provider.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

In the Contract (including the Recitals):

- 1.1. unless the context indicates otherwise the following expressions shall have the following meanings:

“**Affected Party**” has the meaning given to it in Clause 27.3;

“**Applicable Law**” means:

- (a) any applicable national, regional, municipal, local, civil, criminal or administrative law, common law, statute, statutory instrument, regulation, directive, order, direction, ordinance, tariff regime;
- (b) any rule, code, standards and guidance (having the force of law); or
- (c) any decree or judgment or measure of similar effect to any of the foregoing (including any amendment, extension or re-enactment or any of the same enforced from time to time),

of any Government Authority which has appropriate jurisdiction;

“**Authority**” means the Secretary of State for Transport;

“**Customer Assets**” means any assets (whether tangible or intangible), materials, resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Customer or any member of the Customer Group;

“Customer Group” means the Customer, any Subsidiary or Holding Company from time to time of the Customer, and any Subsidiary from time to time of a Holding Company of the Customer;

“Customer Premises” means any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Customer Group;

“Business Day” means any day excluding Saturdays, Sundays or public or bank holidays in England;

“Cessation Plan” means a plan agreed between the Parties or determined by the Customer pursuant to Clauses 29.1 to 29.5 (inclusive) to give effect to a Declaration of Ineffectiveness or Clauses 29.6 to 29.10 (inclusive) to give effect to a Public Procurement Termination Event;

“Charges” means the charges payable by the Customer, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Schedule 4 as the same may be varied from time to time in accordance with Clause 27.6 or Clause 32;

“Confidential Information” means all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Customer (or any member of the Customer Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Customer Group);

“Contract” means this contract, including the Schedules and all other documents referred to in this contract;

“Contract Commencement Date” means the date for commencement of the Contract specified in Schedule 1;

“Contract Information” means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

“Contract Manager” means the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Customer;

“Data Protection Legislation” means:

- (d) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (e) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (f) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (g) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (h) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to the Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public

Contracts Regulations 2015 or Regulations 113(2)(a) or 118(3) of the Utilities Contracts Regulations 2016;

"FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Force Majeure Event" means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Affected Party to perform its obligations in accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

"Government Authority" means any legislative, judicial, regulatory, governmental or administrative body, agency or other authority of any kind (whether of a national, regional, municipal, local, civil or administrative nature) (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a person including Her Majesty's Treasury, the Health and Safety Executive, the Environment Agency, the Rail Safety and Standards Board, and the ORR;

"Holding Company" and **"Subsidiary"** have the meanings set out in section 1159 of the Companies Act 2006;

"Information" means information recorded in any form held by the Customer or by the Service Provider on behalf of the Customer;

"Information Access Request" means a request for any Information under the FOI Legislation;

"Insolvency Event" means any of the following:

- (a) either or both of the Service Provider or any of its Holding Companies making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Service Provider or any of its Holding Companies;
- (c) being a company, either or both of the Service Provider or any of its Holding Companies having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both of the Service Provider or any of its Holding Companies ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying;

- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider or any of its Holding Companies under the law of any applicable jurisdiction;

“Intellectual Property Rights” means any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel” the Service Provider’s key personnel named in Schedule 1;

“Losses” means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Milestone” means an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;

“ORR” means the independent statutory body named the Office of Rail & Road established under the Railways and Transport Safety Act 2003;

“Parties” means the Customer and the Service Provider (including their successors and permitted assignees) and **“Party”** shall mean either of them as the case may be;

“Personal Data” has the meaning given to it in the Data Protection Legislation;

“Processing” has the meaning given to it in the Data Protection Legislation;

“Procurement Manager” means the person named as such in Schedule 1 and referred to in Clause 7 or such other person as from time to time notified to the Service Provider by the Customer;

“Project Plan” means the plan (if any) for implementation including (without limitation) project delivery set out in Schedule 5, developed and agreed by the Parties in relation to the performance and timing of the Services under the Contract which may include Milestones;

“Public Procurement Termination Event” has the meaning given to it in Clause 29.7;

“Public Procurement Termination Grounds” means any one or more of the grounds described either in Regulation 73(1) of the Public Contracts Regulations 2015 or Regulation 89(1) of the Utilities Contracts Regulations 2016;

“Service Commencement Date” means the date for commencement of the Services set out in Schedule 1;

“Service Provider Equipment” means the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Customer under the Contract;

“Service Provider's Group” means any Subsidiary or Holding Company from time to time of the Service Provider, and any Subsidiary from time to time of a Holding Company of the Service Provider;

“Service Provider’s Personnel” means all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider, as are engaged in the performance of any of the Services and including the Key Personnel;

“Services” means:

- (a) subject to Clause 27.6 all or any part of the services to be provided to, or activities to be undertaken and completed for, the Customer by the Service Provider under the Contract as detailed in the Specification including any variations to such services or activities pursuant to Clause 32; and
- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Contract;

“Specification” means the specification, [service levels] and other requirements set out in Schedule 3;

“Term” means the period during which the Contract continues in force as provided in Clause 2 and Schedule 1;

“Transparency Commitment” means the Customer’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Customer’s own published transparency commitments;

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;

- 1.2. a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3. a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;
- 1.4. a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;
- 1.5. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6. references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7. in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
 - 1.7.1. the conflicting part of the Schedule is explicitly expressed to take precedence;
 - or

- 1.7.2. the conflict is with a provision in [Schedule 9] (Special Conditions of Contract), in which case the provisions in [Schedule 9] shall prevail;
- 1.8. the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9. the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10. the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. Commencement and Duration

The Contract commences on the Contract Commencement Date and continues in force for the duration stated in Schedule 1 unless terminated earlier in accordance with Clause 27.

3. The Services

- 3.1. The Service Provider:
 - 3.1.1. shall provide the Services to the Customer from the Service Commencement Date in accordance with the Contract;
 - 3.1.2. acknowledges that it has sufficient information about the Customer and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;
 - 3.1.3. shall neither be entitled to any additional payment nor be excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Contract; and
 - 3.1.4. shall comply with all lawful and reasonable directions of the Customer relating to its performance of the Services.
- 3.2. Notwithstanding anything to the contrary in the Contract, the Customer’s discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;
- 3.3. The Service Provider shall provide the Services:
 - 3.3.1. with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
 - 3.3.2. in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
 - 3.3.3. in a safe manner and free from any unreasonable or avoidable risk to any person’s health and well-being and in an economic and efficient manner; and

- 3.3.4. so that they are properly managed and monitored and shall immediately inform the Customer if any aspect of the Contract is not being or is unable to be performed.
- 3.4. Where in the reasonable opinion of the Customer the Service Provider has failed to provide the Services or any part of them in accordance with the Contract, the Service Provider shall, without prejudice to any of the Customer's other rights, re-perform the Services or part thereof as requested by the Customer at no additional cost and within such period of time as reasonably specified by the Customer.
- 3.5. Where reasonably requested to do so by the Customer and provided the Service Provider is willing so to contract, the Service Provider shall contract with such other member(s) of the Customer Group as on the terms of the Contract with only the necessary changes of Parties' details being made.
- 3.6. Throughout the term of the Contract the Service Provider shall comply with the Customer's reasonable instructions and when required give to the Customer such written or oral advice or information regarding any of the Services as the Customer may reasonably require.
- 3.7. Where a format for electronic receipt of orders by the Service Provider is set out in Schedule 1, the Service Provider shall, unless the Customer requires otherwise, receive orders in such format and shall maintain its systems to ensure that it is able to do so throughout the Term.

4. Charges

- 4.1. The Service Provider shall invoice the Customer in accordance with the procedures set out in Clause 5 and in consideration of, and subject to, the due and proper performance of the Services by the Service Provider in accordance with the Contract, the Customer shall pay the Service Provider the Charges in accordance with those procedures and with the other terms and conditions of the Contract.
- 4.2. The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 4 or have been incurred with the prior written consent of the Customer, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Customer.
- 4.3. All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

5. Payment Procedures and Approvals

- 5.1. The Service Provider shall invoice the Customer in respect of the Charges:

- 5.1.1. where no Milestones are specified in Schedule 4, at such dates or at the end of such periods as may be specified in Schedule 1; or
 - 5.1.2. if specified in Schedule 4, on completion of each Milestone provided that any preceding Milestones have been completed in accordance with the Contract, and shall not make any separate charge for submitting any invoice.
 - 5.2. The Service Provider shall submit invoices to the postal address set out in Schedule 1 or, where an electronic format for submission of invoices is set out in Schedule 1, such electronic format shall, unless the Customer requires otherwise, be used. Each such invoice shall contain all information required by the Customer including the Contract Reference Number, SAP order number, Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
 - 5.3. In the event of a variation to the Services in accordance with the Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoices.
 - 5.4. The Customer shall consider and verify each invoice, which is submitted by the Service Provider in accordance with this Clause 5, in a timely manner. If the Customer considers that the Charges claimed by the Service Provider in any invoice have:
 - 5.4.1. been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bankers' Automated Clearance Services (BACS)) or such other method as the Customer may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1;
 - 5.4.2. not been calculated correctly or if the invoice contains any other error or inadequacy, the Customer shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Customer.
- The Customer shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 5.5. No payment made by the Customer (including any final payment) or act or omission or approval by the Customer or Contract Manager or Procurement Manager (whether related to payment or otherwise) shall:
 - 5.5.1. indicate or be taken to indicate the Customer's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Customer may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of the Contract; or
 - 5.5.2. prevent the Customer from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 18, the Customer shall be entitled to withhold such

amount from any sums due or which may become due to the Service Provider or the Customer may recover such amount as a debt.

- 5.6. Except where otherwise provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Contract.
- 5.7. Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under the Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

6. Warranties and Obligations

- 6.1. Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Service Provider warrants, represents and undertakes to the Customer that:
 - 6.1.1. the Service Provider:
 - 6.1.1.1. has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Contract; and
 - 6.1.1.2. is aware of the purposes for which the Services are required and acknowledges that the Customer is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
 - 6.1.1.3. is entering into the Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under the Contract;
 - 6.1.2. the Contract is executed by a duly authorised representative of the Service Provider;
 - 6.1.3. all materials, equipment and goods used or supplied by the Service Provider in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 , sound in design and in conformance in all respects with the Specification; and
 - 6.1.4. all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Customer under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

- 6.2. Each warranty and obligation in this Clause 6 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of the Contract.

7. Operational Management

- 7.1. The Customer authorises the Contract Manager to act as the Customer's representative for the Contract.
- 7.2. The Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract, except as set out below or unless otherwise notified by the Customer:
- 7.2.1. variations to the Contract;
 - 7.2.2. any matter concerning the terms of the Contract; and
 - 7.2.3. any financial matter (including any issues in Schedule 4), which shall be referred to the Procurement Manager.
- 7.3. The Service Provider shall, at the Customer's request, provide promptly to the Customer at no additional cost such reports on the provision of the Services as the Customer may reasonably request.

8. Service Provider's Personnel

- 8.1. The Parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended do not apply on the Contract Commencement Date or the expiry or termination of the Contract.
- 8.2. Nothing in the Contract will render the Service Provider's Personnel, an employee, agent or partner of the Customer or Customer Group or successor service provider to the Service Provider by virtue of the provision of the Services by the Service Provider under the Contract, and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.
- 8.3. The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Customer.
- 8.4. Without prejudice to any of the Customer's other rights, powers or remedies, the Customer may (without liability to the Service Provider) deny access to any Service Provider's Personnel to any Customer Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such

Service Provider's Personnel in the Customer's view have not been properly trained in any way required by the Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Customer shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Personnel).

- 8.5. The Service Provider shall give the Customer, if so requested, full particulars of all persons who are or may be at any time employed on the Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Contract as Key Personnel. The Service Provider shall give the Customer reasonable notice of any proposals to change Key Personnel and Clause 8.3 shall apply to the proposed replacement personnel.
- 8.6. Notwithstanding Clause 8.1, the Service Provider shall indemnify, keep indemnified and hold harmless the Customer from and against all Losses which the Customer or any other member of the Customer Group incurs or suffers in relation to the Service Provider's Personnel or any person who may allege to be the same (whenever such Losses may arise) or any failure by the Service Provider to comply with Clause 8.4.
- 8.7. The Service Provider shall pay to the Service Provider's Personnel not less than the amounts declared to the Customer (if any) as part of the tender process for the Contract and not less than the amounts to which the Service Provider's Personnel are contractually entitled.
- 8.8. The Service Provider shall provide training to the Customer's personnel (including its employees, officers, suppliers, sub-contractors and agents) as specified in Schedule 1.

9. Sub-Contracting and Change of Ownership

- 9.1. The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Customer, which may be refused or granted subject to such conditions as the Customer sees fit.
- 9.2. Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
 - 9.2.1. ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - 9.2.2. be responsible for payments to that person;
 - 9.2.3. remain solely responsible and liable to the Customer for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;

- 9.2.4. on or before the Contract Commencement Date or the Service Commencement Date (whichever is the earlier), notify the Customer in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Service Provider to the Customer under the Contract;
- 9.2.5. promptly notify the Customer in writing of any change to the information notified under Clause 9.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Contract Commencement Date or the Service Commencement Date (whichever is the earlier);
- 9.2.6. without prejudice to the provisions of Clause 12, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
- 9.2.7. include a term in each sub-contract (of any tier):
 - 9.2.7.1. requiring payment to be made by the Service Provider or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
 - 9.2.7.2. a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;
 - 9.2.7.3. entitling the Service Provider or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
 - 9.2.7.4. a requirement that the sub-contractor includes a provision having the same effect as Clause 9.2.7.3 above in any sub-contract it awards.
- 9.3. The Service Provider shall give notice to the Customer within 10 Business Days where:
 - 9.3.1. there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
 - 9.3.2. there is any change in the ownership of a Holding Company of the Service Provider where such change relates to 50% or more of the issued share capital of the Holding Company; and
 - 9.3.3. (in the case of an unincorporated Service Provider) give notice to the Customer if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Customer, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.

Upon the occurrence of any of the events referred to at Clauses 9.3.1 – 9.3.3 above, the Customer shall have the right to terminate the Contract.

10. Conflict of Interest

- 10.1. The Service Provider warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the Customer Group, save to the extent fully disclosed to and approved by the Customer.
- 10.2. The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Customer in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the Customer Group and shall work with the Customer to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Customer's satisfaction, provided that, where the Customer is not so satisfied, it may terminate the Contract in accordance with Clause 27.1.5.

11. Access to Premises and Assets

- 11.1. Subject to Clause 8.4 any access to either or both of any Customer Premises or Customer Assets made available to the Service Provider in connection with the proper performance of the Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the Term in accordance with the Contract provided, for the avoidance of doubt, the Service Provider shall be responsible for its own costs and travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:
 - 11.1.1. have the use of such Customer Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Customer Premises;
 - 11.1.2. vacate such Customer Premises upon the termination or expiry of the Contract or at such earlier date as the Customer may determine;
 - 11.1.3. not exercise or purport to exercise any rights in respect of any Customer Premises in excess of those granted under this Clause 11.1;
 - 11.1.4. ensure that the Service Provider's Personnel carry any identity passes issued to them by the Customer at all relevant times and comply with the Customer's security procedures as may be notified by the Customer from time to time;
 - 11.1.5. not damage the Customer Premises or any assets on Customer Premises; and
 - 11.1.6. return immediately to the Customer in good working order and satisfactory condition (in the reasonable opinion of the Customer) all Customer Assets used by the Service Provider or the Service Provider's Personnel in the performance of the Services.

- 11.2. Nothing in this Clause 11 shall create or be deemed to create the relationship of landlord and tenant in respect of any Customer Premises between the Service Provider and any member of the Customer Group.
- 11.3. The Customer shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in Schedule 1.

12. Compliance with Policies and Law

- 12.1. The Service Provider, at no additional cost to the Customer:
- 12.1.1. undertakes to procure that all the Service Provider's Personnel comply with all of the Customer's policies and standards that are relevant to the performance of the Services, including the provisions set out in Schedule 7 and those relating to safety, security, drugs and alcohol and any other on site regulations specified by the Customer for personnel working at Customer Premises or accessing the Customer's computer systems. The Customer shall provide the Service Provider with copies of such policies and standards on request.
 - 12.1.2. shall provide the Services in compliance with and shall ensure that the Service Provider's Personnel comply with all requirements of all Applicable Law. The Service Provider shall promptly notify the Customer if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this Clause 12.1.2;
 - 12.1.3. without limiting the generality of Clause 12.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
 - 12.1.4. acknowledges that the Customer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a **"Relevant Protected Characteristic"**) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Customer where possible in satisfying this duty;
 - 12.1.5. where possible, shall provide the Services in such a manner as to:
 - 12.1.5.1. promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 12.1.5.2. eliminate unlawful discrimination; and
 - 12.1.5.3. promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
 - 12.1.6. shall promptly notify the Service Provider's Personnel and the Customer of any health and safety hazards that exist or may arise in connection with the performance of the Services;

- 12.1.7. without limiting the generality of Clause 12.1.2, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it; and
- 12.1.8. where applicable to the Service Provider and without limiting the generality of Clause 12.1.2, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.

In all cases, the costs of compliance with this Clause 12.1 shall be borne by the Service Provider.

- 12.2. In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:
 - 12.2.1. preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 12.2.2. enhance the environment and have regard to the desirability of achieving sustainable development;
 - 12.2.3. conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 12.2.4. sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

13. Bribery

- 13.1. For the purposes of this Clause 13:
 - 13.1.1. the meaning of "adequate procedures" shall be determined in accordance with section 7 of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);
 - 13.1.2. "associated person" shall have the meaning given to that term in section 8 of the Bribery Act 2010 and each reference to "associated person" shall be deemed to also refer to sub-contracts and sub-contractors; and
 - 13.1.3. "foreign public official" shall have the meaning given to that term in section 6(5) of the Bribery Act 2010.
- 13.2. Without prejudice to Clause 12, the Service Provider shall be responsible for ensuring that it, its agents, and each of its Sub-contractors shall:
 - 13.2.1. comply with all Applicable Law relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010) ("**Anti-Bribery Requirements**");
 - 13.2.2. not engage in any activity, practice or conduct which would constitute an offence under any Anti-Bribery Requirements; and
 - 13.2.3. have and maintain in place throughout the term of the Contract its own ethics, anti-bribery, whistle-blowing and other policies and procedures [which shall include standards no lower than those included in the Customer's Anti-Bribery and Corruption Policy and Code of Conduct (as may be updated from time to time)], including adequate procedures under the Bribery Act 2010, designed to

ensure compliance with the Anti-Bribery Requirements, and will enforce and implement them where appropriate.

13.3. The Service Provider shall immediately disclose in writing to the Customer if it becomes aware that:

- 13.3.1. it has, or any of its associated persons have, directly or indirectly, engaged in any activity, practice or conduct which constitutes or appears reasonably likely to constitute an offence under any Anti-Bribery Requirements;
- 13.3.2. it or any of its associated persons does not have or does not maintain ethics, anti-bribery, whistle-blowing and other policies and procedures providing at least a reasonable level of assurance of ensuring compliance with the Anti-Bribery Requirements;
- 13.3.3. there is any civil recovery or other order, conviction, judgment or any ongoing investigation in connection with any Anti-Bribery Requirements outstanding against itself, its directors, officers, agents or employees or any other person performing functions for or on its behalf, and for which either itself or its associated persons could be liable under any Anti-Bribery Requirements;
- 13.3.4. it or any of its associated persons have been subject to, or have been notified in writing by a Government Authority that it will be subject to, any significant fine, sanction, debarment or penalty relating to a breach of any Anti-Bribery Requirements;
- 13.3.5. a foreign public official becomes an officer or employee of the Service Provider or any of its associated persons or acquires a direct membership or shareholding or indirect interest in the Service Provider or any of its associated persons; or
- 13.3.6. it is otherwise in breach of any provision of this Clause 13.

and, so far as the information is available to the Service Provider or it is permitted by Applicable Law to do so, any such written disclosure shall:

- 13.3.7. make reference to the facts and circumstances applying from time to time;
- 13.3.8. provide sufficient details as to the facts and circumstances to enable the Customer to make an accurate assessment of the situation; and
- 13.3.9. describe such action(s) that the Service Provider has taken (or will take) in connection with such facts and circumstances.

13.4. The Service Provider undertakes that it will provide to the Customer any information and explanations as and when reasonably requested by the Customer relating to compliance with its obligations under this Clause 13.

13.5. The Service Provider shall ensure that each sub-contract it enters into in respect of the Contract contains obligations equivalent to those imposed on the Service Provider in this Clause 13 and includes a requirement that equivalent obligations are obtained from its sub-contractors in the next tier of contracts, and so on down each tier of contracts ("Anti-Bribery Terms"). The Service Provider shall be responsible for the compliance by its sub-contractors of the Anti-Bribery Terms and shall enforce the Anti-Bribery Terms obtained from its sub-contractors which shall in turn be responsible for the enforcement

of the Anti-Bribery Terms obtained from their respective sub-contractors in the next tier of contracts, and so on down successive tiers of contracts.

14. Corrupt Gifts and Payment of Commission

The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any member of the Customer Group nor favour any employee, officer or agent of any member of the Customer Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any member of the Customer Group other than as a representative of the Customer, without the Customer's prior written approval.

15. Equipment

15.1. Risk in:

- 15.1.1. all Service Provider Equipment shall be with the Service Provider at all times; and
- 15.1.2. all other equipment and materials forming part of the Services (title to which will pass to the Customer) ("**Materials**") shall be with the Service Provider at all times until completion of the Services in accordance with the Contract, regardless of whether or not the Service Provider Equipment or Materials are located at Customer Premises.

15.2. The Service Provider shall ensure that all Service Provider Equipment and all Materials meet all minimum safety standards required from time to time by Applicable Law.

16. Quality and Best Value

16.1. The Service Provider acknowledges that the Customer is a best value authority for the purposes of the Local Government Act 1999 and as such the Customer is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Service Provider shall, where reasonably requested by the Customer, participate in any relevant best value review.

17. Records, Audit and Inspection

17.1. The Service Provider shall, and shall procure that its sub-contractors shall:

- 17.1.1. maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under the Contract and all transactions entered into by the Service Provider for the purposes of the Contract (including timesheets for the Service

Provider's Personnel where such records are material to the calculation of the Charges) ("**Records**"); and

17.1.2. retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by Applicable Law), except Records containing Personal Data (as defined in Data Protection Legislation) which shall be retained only for as long as necessary, following termination or expiry of the Contract ("**Retention Period**").

17.2. The Customer and any person nominated by the Customer has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Customer considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services (including compliance with Clause 12.1) and the Service Provider shall give all reasonable assistance to the Customer or its nominee in conducting such inspection, including making available documents and staff for interview.

18. Set-Off

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Customer arising out of or attributable to the Contract or any other contract between the Customer and the Service Provider may be deducted by the Customer from monies due or which may become due to the Service Provider under the Contract or under any other contract with any member of the Customer Group may recover such amount as a debt.

19. Indemnity

19.1. Subject to Clause 19.2, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless each of the Customer and all other members of the Customer Group (including their respective employees, sub-contractors and agents) (the "**Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or negligent performance of the Contract by the Service Provider (or any of the Service Provider's Personnel) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees, agents or sub-contractors).

19.2. The Service Provider is not responsible for and shall not indemnify the Customer for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under the Contract by the Customer or any other member of the Customer Group including by any of their respective employees, agents or sub-contractors.

20. Insurance

- 20.1. The Service Provider will at its sole cost maintain employer's liability and motor insurance cover as required by Applicable Law and insurance cover in the sum of not less than £5 million per claim (in terms approved by the Customer) in respect of the following to cover the Services (the "**Insurances**") and will ensure that the Customer's interest is noted on each and every policy or that any public liability, product liability or employer's liability insurance includes an Indemnity to Principal clause:
- 20.1.1. public liability to cover injury and loss to third parties;
 - 20.1.2. insurance to cover the loss or damage to any item related to the Services;
 - 20.1.3. product liability; and
 - 20.1.4. professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 20.1.1 or, if applicable, the product liability insurance referred to in Clause 20.1.3. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such other period as the Customer may stipulate) following the expiry or termination of the Contract.
- 20.2. The insurance cover will be maintained with a reputable insurer.
- 20.3. The Service Provider will produce evidence to the Customer on reasonable request of the insurance policies set out in Clause 20.1 and payment of all premiums due on each policy.
- 20.4. The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 20.1 being or becoming void, voidable or unenforceable.
- 20.5. In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the Customer and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Customer.

21. The Customer's Data

- 21.1. The Service Provider acknowledges the Customer's ownership of Intellectual Property Rights which may subsist in the Customer's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Customer's data.
- 21.2. The Service Provider and the Customer shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Customer's data and to prevent any corruption or loss of the Customer's data.

22. Intellectual Property Rights

- 22.1. The Service Provider covenants, warrants, represents and undertakes that it either owns and will for the duration of the Contract own, or is appropriately licensed and will for the duration of the Contract remain licensed in respect of all Intellectual Property Rights necessary, appropriate or desirable to enable it to perform the Services and that the Service Provider is, where necessary, appropriate or desirable, authorised to and shall sub-licence the same for no fee to the Customer to enable the Customer fully to receive, use and enjoy the Services on a permanent royalty free, transferable, with power to sub-licence basis.
- 22.2. The Service Provider hereby assigns with full title guarantee to the Customer all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by or on behalf of the Service Provider in the provision of the Services (the **"Products"**) provided that such assignment shall not include items not prepared or developed for the purposes of the Contract.
- 22.3. The Service Provider shall provide the Customer with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 22.4. The Service Provider shall have no right (save where expressly permitted under the Contract or with the Customer's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Customer.
- 22.5. The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within the Charges.
- 22.6. The Service Provider shall indemnify, keep indemnified and hold harmless each of the Customer and all other members of the Customer Group (including their respective employees, sub-contractors and agents) (the **"Indemnified Party"**) against all Losses which the Indemnified Party incurs directly or indirectly as a result of and/or arising out of any claim by any third party that the Customer's receipt, use or enjoyment of the Services infringes any Intellectual Property Rights of any third party.

23. Privacy, Data Protection and Cyber Security

- 23.1. If and to the extent that, the Service Provider is a Data Controller for Personal Data when providing the Services under the Contract:
 - 23.1.1. It will comply with the provisions of Data Protection Legislation, including by maintaining any valid and up-to-date registrations or notifications required;
 - 23.1.2. It will implement appropriate technical and organisational measures to protect any Personal Data against unlawful Processing, and against accidental loss,

- destruction, damage, alteration or unauthorised disclosure of or access to any Personal Data;
- 23.1.3. It will notify the Customer as soon as reasonably practicable of receipt if it receives:
- (a) any notice or communication from any supervisory or regulatory body which relates directly or indirectly to the Processing of Personal Data; or
 - (b) a complaint, allegation, claim or request relating to Seller's compliance with its obligations under the Data Protection Legislation;
- 23.1.4. Where the Service Provider makes a notification to the Customer under clause 23.1.3 the Service Provider will:
- (a) provide the Customer with full details of the situation being notified; comply with any relevant timescales set out in the Data Protection Legislation;
 - (b) permit the Customer to take all steps as are reasonable in the circumstances, including but not limited to allowing the Customer wholly to manage or assist in responding to the situation being notified and permit the Customer wholly to manage any reputational risk arising from the situation being notified; and
 - (c) provide the Customer with any other information as reasonably requested by the Customer.
- 23.2. If and to the extent that the Service Provider is Processing Personal Data on behalf of the Customer, it shall carry out such Processing only for the purposes of providing the Services in accordance with Schedule 2 of the Contract.
- 23.3. The Service Provider must follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

24. Confidentiality and Announcements

- 24.1. Subject to Clause 25, the Service Provider will keep confidential:
- 24.1.1. the terms of the Contract; and
 - 24.1.2. any and all Confidential Information that it may acquire in relation to the Customer.
- 24.2. The Service Provider will not use the Customer's Confidential Information for any purpose other than to perform its obligations under the Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 24.1. The Service Provider will immediately notify the Customer if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Customer's Confidential Information.
- 24.3. The obligations on the Service Provider set out in Clause 24.1 will not apply to any Confidential Information:
- 24.3.1. which the Service Provider can demonstrate is in the public domain (other than as a result of a breach of this Clause 24);

- 24.3.2. which the Service Provider is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - 24.3.3. to the extent that such disclosure is to the Service Provider's Group who are directly involved in the management and/or delivery of the Contract and need to know the Confidential Information to enable performance of the Service Provider obligations under the Contract, its auditors and its professional advisers for the purposes of obtaining advice in relation to the Contract.
- 24.4. The Service Provider shall keep secure all materials containing any information in relation to the Contract and its performance.
 - 24.5. If the Service Provider is required by Applicable Law to make a disclosure of Confidential Information, the Service Provider shall as soon as reasonably practicable and to the extent permitted by Applicable Law notify the Customer of the full circumstances of the required disclosure including the relevant Applicable Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
 - 24.6. The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or that it is providing the Services to the Customer or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the Customer. The Customer shall have the right to approve any announcement before it is made.
 - 24.7. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Legislation, the content of the Contract is not Confidential Information. The Customer shall determine whether any of the content of The Contract is exempt from disclosure in accordance with the provisions of the FOI Legislation.
 - 24.8. The provisions of this Clause 24 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.
 - 24.9. The provisions of this Clause 24 will survive any termination of the Contract for a period of 6 years from termination.

25. Freedom of Information and Transparency

- 25.1. The Service Provider acknowledges that the Customer:
 - 25.1.1. is subject to the FOI Legislation and agrees to assist and cooperate with the Customer to enable the Customer to comply with its obligations under the FOI Legislation; and
 - 25.1.2. may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

- 25.2. Without prejudice to the generality of Clause 25.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
- 25.2.1. transfer to the Contract Manager (or such other person as may be notified by the Customer to the Service Provider) each Information Access Request relevant to the Contract, the Services or any member of the Customer Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and
 - 25.2.2. in relation to Information held by the Service Provider on behalf of the Customer, provide the Customer with details about and copies of all such Information that the Customer requests and such details and copies shall be provided within five (5) Business Days of a request from the Customer (or such other period as the Customer may reasonably specify), and in such forms as the Customer may reasonably specify.
- 25.3. The Customer shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 25.4. The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Customer.
- 25.5. The Service Provider acknowledges that the Customer is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 24.1 and Clause 25, the Service Provider hereby gives its consent for the Customer to publish the Contract Information to the general public.
- 25.6. The Customer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Customer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 25.7. The Customer may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 25.5. The Customer shall make the final decision regarding both publication and redaction of the Contract Information.

26. Dispute Resolution

- 26.1. The Customer and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract ("**Dispute**") before resorting to litigation.

- 26.2. If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 26.3. If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the other Party ("**Notice**") to commence such process and the Notice shall identify one or more proposed mediators.
- 26.4. If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 26.5. Where a dispute is referred to mediation under Clause 26.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 26.6. If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 26.7. If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 41.
- 26.8. For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 26.
- 26.9. Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 26 and this Clause 26 shall not apply in respect of any circumstances where such remedies are sought.

27. Breach and Termination of Contract

- 27.1. Without prejudice to the Customer's right to terminate at common law, the Customer may terminate the Contract immediately upon giving notice to the Service Provider if:
- 27.1.1. In addition and without prejudice to Clauses 27.1.3 to 27.1.7 (inclusive), the Service Provider has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to

- remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Customer) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;
- 27.1.2. [In the event the Service Provider fails to meet one or more of the service levels in Schedule 3];
- 27.1.3. the Service Provider is subject to an Insolvency Event;
- 27.1.4. in the event that there is a change of ownership referred to in Clause 9.3 or the Service Provider is in breach of Clause 9.3;
- 27.1.5. the Customer is not satisfied on the issue of any conflict of interest in accordance with Clause 10;
- 27.1.6. the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
- 27.1.7. the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
- 27.1.8. the Service Provider fails to comply in the performance of the Services with legal obligations in the fields of environmental, social, labour or other Applicable Law; or
- 27.1.9. it is instructed to do so by the Authority.
- 27.2. Without prejudice to any of the Customer's other rights, powers or remedies (whether under the Contract or otherwise) if the Service Provider is in breach of any of its warranties, or obligations either under Clause 6 or any other provision of the Contract, the Service Provider shall, if required to do so by the Customer, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and obligations. Nothing in this Clause 27.2 shall prevent the Customer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Customer so procures any Services or any remedial action, the Customer shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Customer and attributable to the Customer procuring such Services or remedial action from such alternative contractor.
- 27.3. Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract (the "**Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this Clause 27.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

- 27.4. Without prejudice to the Customer's right to terminate the Contract under Clause 27.1 or to terminate at common law, the Customer may terminate the Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 27.4 may be disapplied by notice to that effect in Schedule 1.
- 27.5. Without prejudice to the Customer's right to terminate the Contract under Clauses 27.1, 27.4 or at common law, the Customer may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 29.
- 27.6. To the extent that the Customer has a right to terminate the Contract under this Clause 27 then, as an alternative to termination, the Customer may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Customer's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall henceforth be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Customer's opinion a proportionate adjustment would not be reasonable in such manner as the Customer may determine.

28. Consequences of Termination or Expiry

- 28.1. Notwithstanding the provisions of Clause 24, wherever the Customer chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Customer may require for the purposes of such tender and shall also comply with all requirements as are set out at Schedule 8 . The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.
- 28.2. The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 28.3. Upon expiry or termination of the Contract (howsoever caused):
- 28.3.1. the Service Provider shall, at no further cost to the Customer:
 - 28.3.1.1. take all such steps as shall be necessary to agree with the Customer a plan for the orderly handover of Services to the Customer (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Customer and to effect such handover; and
 - 28.3.1.2. on receipt of the Customer's written instructions to do so (but not otherwise), immediately commence to demobilise and wind down its activities so as to cease its activities and operations in a prompt, orderly and cost-efficient manner and arrange to remove all electronically held information by a mutually agreed date, including

the purging of all disk-based information and the reformatting of all disks.

28.3.1.3. deliver to the Customer all information, materials, documents and records that it holds in relation to the Contract and shall comply with any directions given by the Customer.

- 28.4. On termination of all or any part of the Contract, the Customer may enter into any agreement with any third party or parties as the Customer thinks fit to provide any or all of the Services and (save where terminated under Clause 27.4) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Customer in having such services carried out and all other costs and damages reasonably incurred by the Customer in consequence of such termination. The Customer may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.
- 28.5. Subject to Clause 28.6, on termination of the Contract by the Customer under Clause 27.1.8, the Customer shall pay to the Service Provider reasonable direct costs that the Service Provider incurred in connection with any materials or goods ordered before termination that cannot be cancelled and the reasonable cost of demobilisation including the cost of any relocation of equipment used in connection with the Services.
- 28.6. On termination by the Customer under Clause 27.1.8, the Service Provider shall mitigate all its losses and shall have entered into all commercial arrangements and/or agreements with third parties in connection with the Contract in the ordinary course of business and on reasonable commercial terms.

29. Declaration of Ineffectiveness and Public Procurement Termination Event

- 29.1. In the event that a court makes a Declaration of Ineffectiveness, the Customer shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 28 and Clauses 29.1, 29.2, 29.4 to 29.6 (inclusive) and 29.12 shall apply as from the time when the Declaration of Ineffectiveness is made.
- 29.2. The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 29.1 to 29.6 inclusive.
- 29.3. During any court proceedings seeking a Declaration of Ineffectiveness, the Customer may require the Service Provider to prepare a Cessation Plan in accordance with this Clause 29.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Customer, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Customer shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- 29.3.1. an orderly and efficient cessation of the Services or (at the Customer's request) a transition of the Services to the Customer or such other entity as the Customer may specify; and
- 29.3.2. minimal disruption or inconvenience to the Customer or to customers of the Services or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 29.2 to 29.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 29.4. Where there is any conflict or discrepancy between the provisions of Clause 28 and Clauses 29.2 to 29.6 (inclusive) and 29.12 or the Cessation Plan, the provisions of these Clauses 29.2 to 29.6 (inclusive) and 29.12 and the Cessation Plan shall prevail.
- 29.5. The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by the Customer) in the event that a Declaration of Ineffectiveness is made.
- 29.6. The Customer shall pay the Services Provider's reasonable costs in assisting the Customer in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of the Contract or as otherwise reasonably determined by the Customer. Provided that the Customer shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of the Contract pursuant to any Declaration of Ineffectiveness.
- 29.7. Without prejudice to the Customer's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Customer exercises its right to terminate pursuant to this Clause 29.7 (a **"Public Procurement Termination Event"**), the Customer shall promptly notify the Service Provider and the Parties agree that:
- 29.7.1. the provisions of Clause 28 and these Clauses 29.7 to 29.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event; and
- 29.7.2. if there is any conflict or discrepancy between the provisions of Clause 28 and these Clauses 29.7 to 29.12 or the Cessation Plan, the provisions of these Clauses 29.7 to 29.12 and the Cessation Plan shall prevail.
- 29.8. Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided in Clauses 29.7 to 29.11 inclusive.
- 29.9. As from the date of receipt by the Service Provider of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Customer shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- 29.9.1. an orderly and efficient cessation or (at the Customer's election) a transition to the Customer or such other entity as the Customer may specify of: (i) the Services; or (at Customer 's election), (ii) the part of the Services which are affected by the Public Procurement Termination Grounds; and
- 29.9.2. minimal disruption or inconvenience to the Customer or to customers of the Services or to public passenger transport services or facilities, in accordance with the provisions of these Clauses 29.7 to 29.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.
- 29.10. Upon agreement, or determination by the Customer, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 29.11. The Customer shall pay the Service Provider's reasonable costs in assisting the Customer in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of the Contract or as otherwise reasonably determined by the Customer, provided that the Customer shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of the Contract as a result of Public Procurement Termination Grounds.
- 29.12. For the avoidance of doubt, the provisions of this Clause 29 (and applicable definitions) shall survive any termination of the Contract following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

30. Survival

The provisions of Clauses 1, 3.1.3, 4, 5, 6.1.4, 8.1, 9.2.2, 9.2.3, 11.1.1, 11.1.2, 11.1.5, 11.2, 15, 17-21 (inclusive), 22.3, 23-26 (inclusive), 28, 29-32 (inclusive), 34-41 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

31. Rights of Third Parties

- 31.1. Save that any member of the Customer Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 31.2. Notwithstanding Clause 31.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Customer Group.

32. Contract Variation

Save where the Customer may require an amendment to the Services, the Contract may be varied or amended only with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Customer may dictate and which may be substantially in the form set out in Schedule 6 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

33. Novation

- 33.1. The Customer may assign, novate or otherwise transfer the Contract (in whole or in part) at any time from time to time.
- 33.2. Without prejudice to the provisions of this Clause 33.1, the Customer shall be entitled to assign, novate or otherwise transfer all of its rights and obligations under the Contract to the Authority, or any third party nominated by the Authority, without the consent of the Service Provider.
- 33.3. If the Customer exercises its rights under Clause 33.1 or Clause 33.2, then the Service Provider shall fully co-operate with the Customer to achieve such assignment, novation or transfer, including by promptly entering into any other documents reasonably requested by the Customer (or the Authority) in relation to the exercise of such rights.
- 33.4. Subject to Clause 9, the Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Customer.

34. Non-Waiver of Rights

No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of this Clause 34. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

35. Illegality and Severability

If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Customer's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

36. Notices

Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

if delivered by hand, at the time of delivery;

if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

37. Entire Agreement

37.1. Subject to Clause 37.2:

37.1.1. the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which the Contract does not contain; and

37.1.2. without prejudice to the Service Provider's obligations under the Contract, the Service Provider is responsible for and shall make no claim against the Customer in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

37.2. Nothing in this Clause 37 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

38. Counterparts

The Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

39. Relationship of the Parties

Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

40. Further Assurance

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

41. Governing Law

The Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 26, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Customer has the right in its absolute discretion to enforce a judgment and take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE CONTRACT has been signed for and on behalf of the Parties the day and year first written above.

Schedule 1 – Key Contract Information

1. Contract Reference Number:

2. Name of Service Provider:

3. Commencement:

3.1. Contract Commencement Date:

3.2. Service Commencement Date:

4. Duration/Expiry Date:

5. Payment (see Clauses 5.1, 5.2 and 5.4):

Clause 5.1

[insert alternative period]

Where no alternative is listed, the payment period shall be 4-weekly

Clause 5.2

[set out details of electronic invoice format to be used]

Clause 5.4

[insert alternative period]

Where no alternative is listed, payment must be made within 30 days of receipt of invoices.

6. Address where invoices shall be sent:

East West Railway Company Limited

Accounts Payable

[PO Box] London **[Postcode]**

Electronic format required (if any) for submission of orders by the Customer and of invoices by the Service Provider:

7. Time for payment where not 30 days (see Clause 5.4):

8. Details of the Customer's Contract Manager

Name:

Address:

Tel:

Email:

9. Details of the Customer's Procurement Manager

Name:

Address:

Tel:

Email:

10. Service Provider's Key Personnel:

Name & Position	Contact Details	Area of Responsibility

11. Notice period in accordance with Clause 27.4 (termination without cause):

90 days unless an alternative is listed here [*insert alternative if needed*]

[*if appropriate, write "Clause 27.4 does not apply" and delete the 90 day reference*]

12. Address for service of notices and other documents in accordance with Clause 36:

For the Customer: [*relevant Customer address*]

Email: XXX

For the attention of: XXX

For the Service Provider:

13. Office facilities to be provided to the Service Provider in accordance with Clause 11.3:

[*Need to be clear about any telephony, IT etc.*]

14. Training to be provided by the Service Provider in accordance with Clause 8.8:

Schedule 2 – Data Processing

[Appropriate wording to be inserted]

DRAFT COPY

Schedule 3 – Specification

[THIS SCHEDULE SHOULD ADDRESS DETAILS OF THE SERVICES REQUIRED AND THE TIMETABLE FOR PERFORMANCE.]

[SET OUT ANY AGREED SERVICE LEVELS AND REMEDIES FOR THE SUPPLIER'S FAILURE TO MEET THESE]

DRAFT COPY

Schedule 4 – Charges

[*Insert Details*]

DRAFT COPY

Schedule 5 - Project Plan

[This Schedule should contain any plans for implementation and, if relevant, any Milestones for payments to be made against.]

DRAFT COPY

Schedule 6 - Form for Variation

Contract Parties: [to be inserted]
Contract Number: [to be inserted]
Variation Number: [to be inserted]
Customer Contact Telephone: [to be inserted]
Email [to be inserted]
Date: [to be inserted]

VARIATION TO CONTRACT

Pursuant to Clause 32 of the Contract, authority is given for the variation to the Services and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Service Provider and returned to the Procurement Manager as an acceptance by the Service Provider of the variation shown below.

DETAILS OF VARIATION	AMOUNT(£)
ALLOWANCE TO THE CUSTOMER	
EXTRA COST TO THE CUSTOMER	
TOTAL	

.....
For the Customer (signed)

.....
(print name)

.....
For the Service Provider (signed)

.....
(print name)

Schedule 7 - Contract Quality, Environmental & Safety Considerations

[*Insert Details*]

DRAFT COPY

Schedule 8 – Re-Tender Cooperation

[This Schedule should set out any specific requirements that will be required of the Service Provider to assist with the re-tendering of the Services, in particular setting out any information/documents/data, etc. likely to be required with (where possible) dates for meeting those requirements]

DRAFT COPY

Schedule 9 - Special Conditions of Contract

[Insert any special or bespoke terms required]

DRAFT COPY

Signed by)
for and on behalf of)
East West Railway Company)
Limited

Signature

Print position
Date:

Signed by)
for and on behalf of)
the **[Service Provider]**)

Signature

Print position
Date:

DRAFT COPY