

Specialist Technical Advice for Rail (STAR) Framework

Framework Agreement

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft

General email enquiries star-framework@railexecutive.gsi.gov.uk

© Crown copyright 2015

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Table of Contents

FORM OF AGREEMENT	4
GLOSSARY	7
SCHEDULE 1 - FRAMEWORK TERMS AND CONDITIONS	11
1. Objectives and Principles.....	11
2. The Framework Agreement Environment	13
3. Behaviours and Collaboration	14
4. Term of Framework Agreement and Package Orders	17
5. Quotation procedure	17
6. The Scope of Services.....	21
7. Selection Procedure.....	21
8. Charges and Rates	23
9. Pricing, Invoicing & Payment	24
10. Framework and Package Order Management	26
11. Small and Medium-sized Enterprises (SMEs).....	28
12. <i>Supplier's</i> Personnel	29
13. Equipment and Materials	31
14. Conflict of Interest.....	31
15. Key Performance Indicators.....	32
16. Performance Improvement Action Plan	34
17. Mobilisation.....	35
SCHEDULE 2 - KEY CONTRACT INFORMATION	36
SCHEDULE 3 - QUOTATION INFORMATION	37
SCHEDULE 4 - <i>SUPPLIER</i> CAPABILITY MATRIX	41
SCHEDULE 5 - SCOPE OF SERVICES.....	47
SCHEDULE 6 - POSITION DEFINITIONS FOR <i>SUPPLIER</i> RESOURCES	51
SCHEDULE 7 - WORK PACKAGE REQUEST FORM	58
SCHEDULE 8 - PACKAGE ORDER TEMPLATE	61
SCHEDULE 9 - KEY PERFORMANCE INDICATORS	64
SCHEDULE 10 - APPLICATION FOR PAYMENT	65
ANNEXE A - WORK PACKAGE QUOTATION PROCEDURE PROCESS MAP	66
ANNEXE B - <i>SUPPLIER</i> PERFORMANCE MEASUREMENT PROCESS MAP	67
PROFESSIONAL SERVICES CONTRACT - CONTRACT DATA.....	67
Z- Clauses.....	79

FORM OF AGREEMENT

THIS AGREEMENT is made the [Insert date] 2015]

BETWEEN:

- (1) [Insert Employer Name] (“the *Employer*”); and
- (2) [Insert Supplier Name] registered in England and Wales with company [Insert Company Number] whose registered office is at [Insert Supplier’s Address] (“the *Supplier*”).

WHEREAS:

- (A) The *Employer* has examined the *Supplier’s* tender and now wishes to include the *Supplier* as one of the framework suppliers under this Specialist Technical Advice for Rail (STAR) Framework Agreement (“the Framework Agreement”).
- (B) From time to time the *Employer* may require the *Supplier* to provide Required Services and the *Supplier* has confirmed that it is willing to provide such services in accordance with this Framework Agreement and the terms and conditions contained in or referred to in the Package Order.

NOW IT IS AGREED THAT:

1. In this agreement capitalised words and expressions have the meanings assigned to them in the attached glossary.
2. The *Employer* appoints the *Supplier* to the Framework at such Grade and for such Categories as stated in Schedule 2 (Key Contract Information).

3. If a Work Package is awarded to the *Supplier*, the *Supplier* shall provide the goods and services and the *Employer* shall pay to the *Supplier* the amount due, in accordance with the executed Package Order (including the terms and conditions incorporated therein).

4. The documents forming this Framework Agreement are:
 - (i) this form of agreement duly executed by the Parties;
 - (ii) the attached Glossary;
 - (iii) the Framework Terms and Conditions (Schedule 1);
 - (iv) the Key Contract Information (Schedule 2);
 - (v) Schedules 3 to 10 as incorporated by the Framework Terms and Conditions; and
 - (vi) the NEC3 Framework Contract (April 2013) (as amended by secondary Option Z Clauses).

This Framework Agreement supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever in relation to the STAR Framework. No variation to this Framework Agreement, after the date hereof, will be made except with the written consent of the Parties provided that this is without prejudice to the *Employer's* rights to issue instructions in accordance with the Framework Agreement.

The use of the term "Employer" in this Framework Agreement or in any Package Order does not imply the conclusion of a contract of service with the Supplier of any of the Supplier's staff.

AS WITNESS this agreement has been executed the day and year first above written.

Signed for and on behalf of

The Secretary of State for Transport acting by:

Signature

Print name

Signed for and on behalf of

[Insert Supplier Company Name]

acting by:

Signature of Director

Print name of Director

GLOSSARY

This glossary defines terms used in the Framework Agreement, including in the terms and conditions set out in Schedule 1.

“Capability Matrix” means the tables setting out the recognised capabilities of the Suppliers on the Framework.

“Category” means each category of Required Services as set out in Schedule 5 – Scope of Services.

“Consultant Position” means a person who meets the relevant description as set out in Schedule 6 (Position Definitions for *Supplier* Resources).

“CPI” means Consumer Price Index.

“CSR” means Corporate Social Responsibility.

“DfT” means the Department for Transport.

“Director Position” means a person who meets the relevant description as set out in Schedule 6 (Position Definitions for *Supplier* Resources).

“Employer” means the Department for Transport including associated bodies of the Authority.

“Employer’s Framework Manager” means the official appointed by the *Employer* to act on its behalf for the purpose of managing the Framework and the overall performance of the Service Provider in respect of the Framework.

“EXPERT Grade” means the grade of *Supplier* awarded a place on the Framework Agreement that could be called upon to provide an isolated technical and commercial advisory services to meet the *Employer’s* requirements for Required Services from a maximum of two nominated Categories.

“Framework” means the Specialised Technical Advice for Rail Framework.

“Framework Terms and Conditions” means the terms and conditions of the Framework Agreement as set out in Schedule 1.

“Framework Agreement” means a framework agreement entered into between the *Employer* and a *Supplier*.

“Grade” means the PRIME Grade, MEDIUM Grade or EXPERT Grade.

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

“Key People” means the *Supplier’s* nominated and/or specified resources that supervise the performance of the Services in relation to matters arising under a Package Order.

“Maximum Daily Rate” means the rate for each position within each Category calculated in accordance with Appendix 4 and as set out in Tables 1, 2, 3, 4 and 5 of Appendix 4: Section 1 (Maximum Daily Rate Card) to the ITT. Noting that these rates are not to be exceeded in *Supplier’s* pricing of future Work Packages (subject to the adjustment set out in 8.2).

“MEDIUM Grade” means the grade of *Supplier* that could be called upon to provide all resources that could successfully deliver a package of technical and commercial advisory services or an isolated technical and commercial advisory service to meet any or all of the *Employer’s* requirements for Required Services from a maximum of two nominated Categories.

“The NEC Conditions of Contract” means the NEC Professional Services Contract (Third Edition April 2013 with amendments June 2006 and September 2011) together with and as amended by Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, Y(UK)2 (with amendments dated September 2011) and Z clauses as set out in the Contract Data Part One.

“Package Order” means a contract between the *Employer* and a *Supplier* (also referred to as the Consultant) in the form set out in Schedule 8.

“Package Order Contract Data” means the contract data used to form the Package Order as provided by the *Employer* (Part 1) and the *Supplier* (Part 2), which form part of the NEC Conditions of Contract, and which will be recorded in the form set out in Annex C.

“Package Order Template” means a template Package Order in the form set out in Schedule 8.

“Position” means the position of an individual who is representing a *Supplier*, being; Director Position, Senior Consultant Position, Consultant Position or Junior Consultant Position as those terms are defined in Schedule 6 (Position Definitions for *Supplier* Resources).

“Proposal” has the meaning set out in clause 5.6.3 of the Framework Terms and Conditions.

“PRIME Grade” means the Grade of organisations that could be called upon to provide all resources that could successfully deliver a lead technical and commercial advisory role for a franchise, programme or project or deliver either a package of technical and commercial advisory services or an isolated technical and commercial advisory service to meet any or all of the *Employer’s* requirements for Required Services from any Category.

“Quotation Procedure” means the procedure for requesting and assessing bids for a Work Package as set out in paragraph 5 of the Framework Terms and Conditions.

“Rail Executive” means the Department for Transport’s Rail Executive.

“Required Services” means the services to be provided under this Framework as described in Schedule 5 – Scope of Services.

“Senior Consultant Position” means a person who meets the relevant description as set out in Schedule 6 – Position Definitions for *Supplier* Resources.

“SME” means Small and Medium-sized Enterprise that employs fewer than 250 persons and has an annual turnover not exceeding €50 million.

“Specialist Technical Advice” means the scope of services procured within this framework.

“Start Date” means the date on which a Package Order is placed with the Consultant.

“Sub-Supplier” means a named entity that an Applicant relied upon in its PQQ Response to demonstrate its capability and/or experience to provide the Required Services in accordance with the requirements of the PQQ and continues in the capacity of a Bidder to rely upon in the ITT stage of this procurement competition.

“Supplier” means the person, firm or company with whom the *Employer* enters into a Framework Agreement.

“Supplier Representative” means the named person identified by the *Supplier* in Schedule 2 as the main point of contact in respect of all matters arising under this Framework Agreement.

“STAR” means Specialist Technical Advice for Rail.

“Work Package” means an individual package of work which a *Supplier* is contracted to carry out under a Work Package Contract.

“Work Package Request Form” means the form used to request bids for a Work Package in accordance with the Quotation Procedure as set out in Schedule 7.

SCHEDULE 1 - FRAMEWORK TERMS AND CONDITIONS

1. Objectives and Principles

1.1. Objectives

The overriding objective of this Framework Agreement is to ensure that Parties work collegiately and collaboratively together, at all times exemplifying a principle tenet of Rail Executive's vision which is to act as 'one team' and by doing so to ensure the successful delivery of each Package Order. To achieve this, *Suppliers* are required to meet the following objectives:

- provide access to a range of experienced, high calibre professional, technical and commercial specialist advisors, to support the business of the *Employer* not available from existing Government frameworks;
- provide such services to a high standard and in accordance with agreed key performance indicators, programme(s) and costs;
- ensure compliance with current best procurement practice together with Departmental and Government procurement practice and legislation;
- promote opportunities for SMEs in line with the objectives set out in Section 11;
- promote seamless integration and partnering between the *Employer* and its *Suppliers*; and
- ensure best practice is applied, that knowledge transfer is sustainably delivered and managed at all times and that innovative approaches are encouraged, considered and incorporated in the *Employer's* future requirements where practicable.

1.2. Principles

In meeting these objectives the *Employer* and the *Supplier* shall work together to apply the following principles to Package Orders procured and undertaken under this Framework:

- Early supplier involvement – to improve the understanding and deliverability of requirements, the *Employer* will, wherever practicable ensure that early market engagement is carried out and that it informs the development of specifications for future requirements;
- Innovation – to encourage the development and sharing of innovative solutions, processes and initiatives that improve performance and value for money;
- Collaboration – to ensure that behaviours and cultures enable optimal ‘one team’ working relationships, seamless integration and cooperation between client teams and *Suppliers* appointed to the Framework in preparing, planning and delivering Package Orders;
- Partnering – the *Employer* and *Supplier(s)* working closely with a common understanding of goals and strategic objectives and sharing benefits;
- Knowledge transfer – promoting and facilitating the transfer of skills and knowledge between the *Employer* and *Supplier*, and the sharing of information and the development of broader best practice initiatives within the STAR Framework community;
- Improving the industry skills base – to ensure continuous contribution to the development and improvement of the skills within the market in order to sustainably grow capability and scale of advisory resources through initiatives which include: continuous professional development, specialist

training provision, internships, under-graduate and graduate training schemes, apprenticeships and working with skills agenda schemes;

- Investing in people – the STAR Framework offers Framework *Suppliers* the potential to grow their businesses and the ability to invest in the future development of their skill base and resource capability. To ensure that such investment is worthwhile and sustainable the parties agree to adopt a ‘fair play’ arrangement whereby a cross-framework principle of ‘non-poaching’ of resources is accepted and maintained; *and*
- Performance measurement – to improve consistency and quality of delivery performance that enables the development of a STAR Framework benchmarking mechanism throughout the life of the Framework.

2. The Framework Agreement Environment

2.1 Figure 1 below provides an overview of the proposed STAR Framework Agreement structure following award.

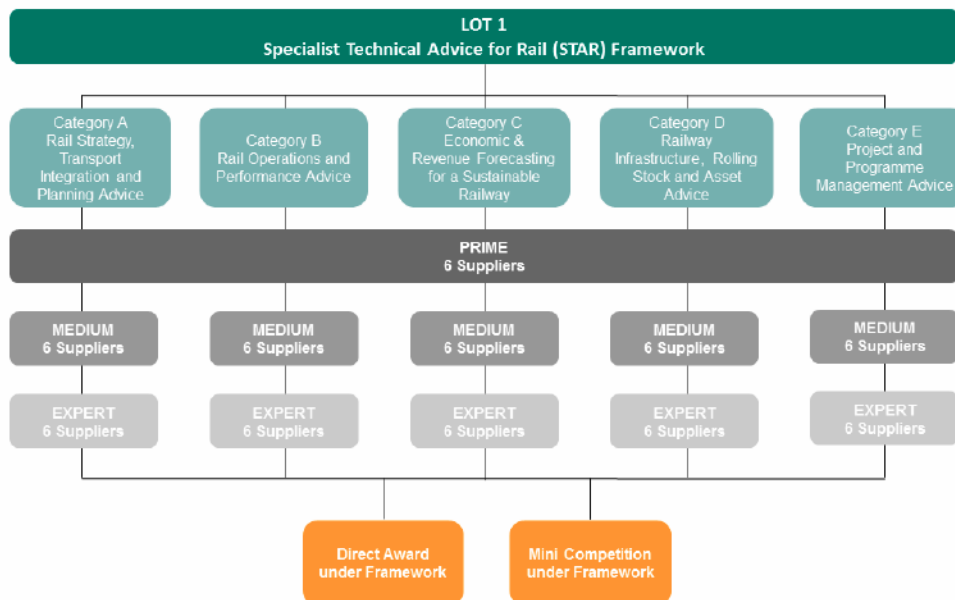


Figure 1 – Overview of STAR Framework Structure

3. Behaviours and Collaboration

- 3.1 This procurement aims to create a STAR Framework community that offers the *Employer* access to the highest quality of technical and commercial rail advisory services. To ensure that the *Employer*, the *Suppliers* and the rest of the STAR Framework community successfully contributes towards the delivery of the *Employer's* future rail projects and programmes, the *Employer* requires the parties to participate collaboratively and in a collegiate manner at all times.
- 3.2 Using the principles of Supplier Relationship Management (SRM) as the basis of the relationship between the *Employer*, the *Supplier* and the rest of the STAR Framework community, all parties are required to attune their collective efforts in establishing and constantly improving common approaches towards:
- Trust, reliability and consistency
 - Responsiveness
 - Accessibility
 - Courtesy
 - Consideration
 - Respectful and intuitive communication
 - Recognising the needs of our partners
 - Competence and capability
- 3.3 The success of the Framework Agreement and any Package Order let under it is dependent upon the creation and retention of a positive culture, with aligned and common STAR Framework behaviours that collectively apply a pragmatic approach to risk and opportunity management, the use of best practice and the management of programme and project level issues.
- 3.4 By encouraging participants to work collaboratively to establish positive, sustainable, efficient and effective behaviours and practices, the *Employer* intends to build lasting relationships within the STAR Framework community that successfully deliver future Package Orders.

3.5 In order to achieve success the Parties must together:

- strive to achieve exceptional levels of performance and measure performance against critical success criteria and key performance indicators;
- encourage responsive delivery practices and success-focused processes which continually evolve to deliver better value solutions and which remove wastage;
- socialise, consider and implement achievable innovative solutions to improve standard practices and challenge existing standards of performance;
- co-locate teams where appropriate and encourage information sharing, communication, concurrent working and a proactive delivery culture;
- transfer knowledge, share information and communicate openly with each other;
- continuously feedback lessons learnt, share achievements and enable embedded and sustainable learning, and as a norm include post-assignment feedback within future Work Packages;
- action risk responsibilities, develop mitigation strategies and accept responsibility for any potential consequences;
- develop, deploy and maintain consistent processes that effectively manage projects, programmes, key risks and improve performance; *and*
- be socially responsible at corporate level through the implementation of self-regulated CSR policies that ensure active compliance with the spirit of the law, ethical standards and norms.

3.6 The Parties must ensure that, as between the Parties' respective organisations, the interfaces between the *Employer's* operating model optimally converges with the *Supplier's* to ensure that the Parties collectively achieve success at both project and business level.

- 3.7 Whilst it is with companies that the *Employer* initially establishes relationships, it is individuals who ensure that those relationships deliver on a day to day basis. It is a key expectation that all resources joining future programme and project teams will have been proposed by the *Supplier* on the grounds that they are considered by the *Supplier* to be the best resource for the task and proposed accordingly, not simply because they are available. The *Employer* expects deployed resources to remain involved and committed to a Package Order until at least the completion of their activity (or otherwise for the duration of time that they are employed by the *Supplier*) and not to be substituted for less experienced or less committed individuals part way through their activity.
- 3.8 The *Employer* expects individual, team and organisational behaviours that:
- deliver Package Orders to a high standard;
 - encourage improvement and innovation;
 - bring a 'can do, will do' attitude;
 - champion change through commitment and enthusiasm;
 - reward individual performance as well as team performance; and
 - build upon parallel successes in other projects and other industries.
- 3.9 The *Employer* requires *Suppliers* to encourage and support continued professional development (not just in functional skills but also in team behavioural skills) in its resources at all times through mentoring, coaching and training. Individual objectives and targets (be they the objectives and targets of people, teams or companies) need to be set so they are aligned with the requirements of Package Orders rather than in conflict with them.
- 3.10 *Suppliers* who are selected for a particular Package Order will be expected to follow these behaviours and collaboration requirements when delivering Required Services and, in line with the NEC3 Professional Services Contract

on which all Package Orders will be based, *'The Employer and the Consultant shall act as stated in this contract and in a spirit of trust and co-operation'*.

4. Term of Framework Agreement and Package Orders

- 4.1. This Framework Agreement commences on the date specified in Schedule 2 (the "Commencement Date") and continues in force for the duration stated in Schedule 2 unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement.
- 4.2. Each Package Order Term shall be set out in the relevant Package Order. Unless stated otherwise in a Package Order, the Package Order Term and the Services provided pursuant to a Package Order may extend beyond the termination or expiry of this Framework Agreement. In which case the provisions of this Framework Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Package Order.
- 4.3. A Package Order may expire or be terminated in accordance with its terms but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Package Order or this Framework Agreement.

5. Quotation procedure

- 5.1 At any time during the duration of the Framework Agreement, the *Employer* may identify *Suppliers* who are capable of providing Required Services for which it proposes to issue a Work Package Request Form by utilising the Capability Matrix (Schedule 4).
- 5.2 The *Employer* will award each Work Package in one of the following two ways:

- 5.2.1 the *Employer* will invite those framework *Suppliers* with the capacity and capabilities to provide the specific Required Services, based on the Capability Matrix, to participate in a Mini-Competition;
- 5.2.2 alternatively, there may be circumstances where the *Employer* elects to appoint an identified *Supplier* through direct award, where to do so would provide best value to the *Employer*. Reasons for such a direct award might include (but are not limited to) the following: specifically required capabilities being identified on the Capability Matrix, time constraints limiting the number of *Suppliers* who are capable of responding in time, or where a *Supplier* has provided previous support to the same project or programme and the expediency of readily accessible knowledge would be advantageous.
- 5.3 Where the *Employer* elects to appoint an identified *Supplier* using a direct award, it will issue a Work Package Request Form as set out in Schedule 7, specifying the Services to be provided and the commercial model that it wishes to employ.
- 5.4 Where the *Employer* elects to undertake a Mini-Competition it will issue to those *Suppliers* that it assesses are capable of providing the Services a Work Package Request Form as set out in Schedule 7, specifying the Services to be provided and the commercial model that it wishes to employ.
- 5.5 In the event that the *Supplier* receives a Work Package Request Form, the *Supplier* shall:
- within 2 days of receiving the Work Package Request Form, confirm receipt of the Work Package Request Form by giving written notice to the *Employer*;
 - provide to the *Employer* a completed pricing matrix in respect of the Work Package Request Form by inserting the *Supplier's* proposed rates. These rates shall:

- i. be the applicable rates for the purposes of the Package Order (including in respect of any Compensation Events arising under the Package Order);
 - ii. not exceed, but can be lower than, the Maximum Daily Rates included in Schedule 3 of this Framework Agreement; and
 - iii. must be subject to adjustment equal to, or more than, the minimum pricing discounts included in Schedule 3 of the Framework Agreement.
 - complete and issue a proposal to the *Employer* using the quotation information provided by the *Employer*, a project plan and a completed Package Order Contract Data Part Two (together a ‘Proposal’); and
 - reaffirm their status regarding potential and actual Conflicts of Interest in line with Section 14 of this Framework Agreement.
- 5.6 The Proposal completed and issued by the *Supplier* shall be treated as an offer capable of acceptance by the *Employer*. The *Supplier* shall respond to the *Employer* by issuing its Proposal on or before the date specified in the Work Package Request Form or, if no such date is specified, within 10 Working Days of receiving the Work Package Request Form, or by such other date as may be agreed with the *Employer*. A Proposal issued by the *Supplier* remains valid for acceptance by the *Employer* for at least 175 days (or such longer period as may be specified in the Work Package Request Form) from the date it is submitted to the *Employer*.
- 5.7 The *Supplier* shall not include any amendments to any of the terms and conditions of the Framework Agreement or the proposed Package Order (whether in any Proposal or otherwise) at any time.
- 5.8 The *Supplier* shall submit with each Proposal a fully priced resource matrix, as contained in the relevant quotation information in the Package Order Contract Data Part Two.

- 5.9 The *Supplier* shall submit with each Proposal a detailed project plan aligned with the services to be provided. The project plan shall be linked in sequence as to when the services will logically take place in respect of the work items identified in the Work Package. The project plan shall also identify any key milestone dates for the work items to be undertaken under the proposed Package Order.
- 5.10 A Work Package Request Form and anything prepared or discussed by the *Employer* constitutes an invitation to treat and does not constitute an offer capable of acceptance by the *Supplier*. The *Employer* is not obliged to consider or accept any Proposal submitted by the *Supplier*.
- 5.11 Unless otherwise expressly agreed in writing with the *Employer*, the *Supplier* does not charge under this Framework Agreement for any work involved in receipt and/or confirmation of any Work Package Request Form, and/or any response to any Work Package Request Form as contemplated in this *quotation procedure*.
- 5.12 The *Supplier* is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this *quotation procedure* and the *Employer* shall not be liable for any costs, charges or expenses borne by or on behalf of the *Supplier* whether or not the *Supplier* is awarded a Package Order, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.
- 5.13 This *quotation procedure* by which a Work Package will be issued is set out in the process flow chart at Annex A.

6. The Scope of Services

- 6.1 The *Supplier* shall provide the Services specified in a Package Order to the *Employer* in accordance with this Framework Agreement and the terms of the relevant Package Order.
- 6.2 In addition to the Services, the *Supplier* shall provide at no additional cost to the *Employer* any management, services, functions and responsibilities (including any incidental services, functions or responsibilities) not specifically set out in a Package Order but which are within the *scope* of the Services and which are reasonably to be inferred from the Framework Agreement and/or the relevant Package Order. In particular, the *Supplier* shall provide regular updates, performance monitoring data, benchmarking analysis and review reports and attend regular liaison and review meetings with the *Employer* as set out in Section 10.
- 6.3 The *Supplier* shall comply with all lawful and reasonable directions of the *Employer* relating to its performance of the Services. Nothing in this in this Framework Agreement or any Package Order, shall in any way fetter the *Employer's* discretion in carrying out its statutory duties and functions.

7. Selection Procedure

- 7.1 The *Employer* will award the relevant Package Order to the Proposal that is the most economically advantageous with reference to the following assessment criteria and weightings:-
- Quality – 70%
 - Price – 30%
- 7.2 Questions designed to test these criteria in relation to the specific services being sought in a Work Package will be set out in the Work Package Request Form.

- 7.3 The *Employer's* assessment as against the relevant criteria at the time of the Work Package may take into account experience and performance since the commencement of this Framework Agreement.
- 7.4 The *Employer* reserves the right to utilise an electronic auction to carry out this Mini-Competition process. In this event full specifications for running the electronic auction will be issued to all participants prior to the opening of bids.
- 7.5 The *Employer* will forward to the selected *Supplier* notification of acceptance of their Proposal together with two copies of the completed Package Order Template (Schedule 8). The *Supplier* should sign both copies of the Package Order Template and return to the *Employer* within 10 Business Days of receipt.
- 7.6 Upon execution of the Package Order Template by the *Employer* the Package Order shall be a binding Contract on the Parties and shall incorporate (insofar as relevant to the performance of the Package Order) the terms and conditions of this Framework Agreement.
- 7.7 A Package Order Template only becomes a Package Order upon execution of the draft Package Order by both the *Supplier* and the *Employer*. The *Supplier* shall commence provision of the relevant Services only in accordance with the Package Order. The *Supplier* must not commence any Services without an executed Package Order. If it does so, it shall be at the *Supplier's* risk.
- 7.8 The *Employer* shall forward a Rejection Notice to all members of the Framework who are unsuccessful in a Mini-Competition process after a Package Order has been executed for the Services in question.
- 7.9 The selection of the process by which a Package Order will be placed is set out in the process flow chart at Annex A.

8. Charges and Rates

- 8.1 The *Employer* may require Work Packages to be priced on the basis of a lump sum cost, target cost(s), cost reimbursable basis, time charge or such other pricing structure as may be specified. All pricing must be transparent and all the elements must be shown in the proposal using an activity schedule as appropriate.
- 8.2 The Maximum Daily Rates submitted by the *Supplier* for each Category referred to as the Supplier Maximum Daily Rates are incorporated into this Framework Agreement in Schedule 3 – Quotation Information and shall be fixed for a period of two years from the commencement of the Framework Agreement after which they may be varied by not more than the percentage change in the current (at the time of writing of the notice of the price review) Office of National Statistics' Consumer Prices Index (CPI) from the same index at the date of the Framework Agreement.
- 8.3 The minimum pricing discounts submitted by the *Supplier* for each Category referred to as the *Supplier* Minimum Pricing Discounts are incorporated into this Framework Agreement in Schedule 3 – Quotation Information and shall be fixed for the duration of the Framework Agreement.
- 8.4 All Charges in respect of a Package Order shall be set out in the relevant Package Order and the rates used to calculate the Charges shall be in accordance with paragraphs 8.2 and 8.3 above.
- 8.5 In consideration of and subject to the due performance of the Services by the *Supplier*, the *Employer* shall pay the *Supplier* the Charges. The *Supplier* shall invoice the *Employer* in accordance with this Framework Agreement.
- 8.6 The *Supplier* is not entitled to reimbursement for expenses unless such expenses are specified in a Package Order or have been incurred with the

prior written consent of the *Employer*, in which case the *Supplier* shall supply appropriate evidence of expenditure in a form acceptable to the *Employer*.

- 8.7 All Charges payable under this Framework Agreement or a Package Order exclude VAT (or any similar United Kingdom or European sales tax), unless otherwise stated. VAT, where applicable, shall be shown as a separate charge.
- 8.8 The *Supplier's* Maximum Daily Rates must be calculated on the basis of a full working business day of nine hours duration, exclusive of any travel unless in exceptional cases where that travel has been agreed with the Authority as being legitimately part of the business day (as in the case of a site visit on behalf of the Authority). The Maximum Daily Rate must be inclusive of any management, services, functions and responsibilities (including any incidental services, functions or responsibilities) which are reasonably to be inferred from the Framework Agreement and any future Work Package. In particular, the *Supplier* shall provide Framework management, including regular updates, performance monitoring data, benchmarking analysis, performance review, availability reports (including but not limited to details of other consulting and advisory activities that they are carrying out or planning to undertake in the cross-UK rail advisory sector) and attendance at regular liaison and review meetings with the Authority.
- 8.9 The *Supplier* shall provide to the *Employer* a quarterly report setting out the amount of the Charges accrued to the date of such report for all Package Orders awarded to the *Supplier*.

9. Pricing, Invoicing & Payment

- 9.1 The *Employer* is required to pay a *Supplier's* invoice within 30 days of receipt of a valid invoice. Provided that the *Supplier* complies with the requirements of the *Employer's* finance system, the *Employer* will aim to pay all undisputed invoices within ten days of receipt of a valid invoice, and explore the option of faster payment through the application of electronic invoicing.

- 9.2 In addition, to ensure that the benefits of payment improvements are shared with small businesses, the *Supplier* shall ensure that they pay their Sub-Supplier(s) and Sub-Consultant(s) within 30 days of receipt of a valid invoice (clause Z9 of the Framework Agreement Conditions).
- 9.3 The *Employer's* finance system requires steps to be undertaken in the correct order to ensure timely payment of invoices.
- 9.4 Before submitting an invoice for payment, the *Supplier* shall discuss recent activity under the Package Order with the *Employer's* Contract Manager and submit an application for payment using the form set out in Schedule 10.
- 9.5 The *Employer's* Contract Manager will agree the quantity and value of the application for payment that has been accepted.
- 9.6 Upon acceptance by the *Employer*, the *Supplier* shall submit their invoice to the Shared Service Centre (or as notified) for payment. Invoices shall reflect the agreed amounts and any deviation from this will delay payment.
- 9.7 The *Supplier's* invoices shall comply with the *Employer's* requirements, in line with the agreed "application for payment form", the template for which is set out in Schedule 10. Invoices that do not comply cannot be processed for payment and will be returned. The following data must be included on every invoice:
- DfT Department or Business unit (e.g. Rail Executive);
 - PO number relevant to the Services delivered;
 - Quantities / prices (as applicable) consistent with those on the original Package Order; and
 - Clear and detailed text describing the Services.
- 9.8 Invoices shall be submitted in accordance with any agreed invoicing points included in the Package Order scope. Invoices must be sent to the *Employer's* Shared Service Centre (SSC) (or as notified):

Accounts Payable
DfT Shared Service Centre
Sandringham Park
Swansea Vale
Swansea SA7 0EA

9.9 Payment will be made via BACS and in accordance with the contracted terms.

9.10 Where an invoice is rescinded the *Supplier* shall issue a credit note. Credit notes must quote the original underlying invoice and purchase order number.

10. Framework and Package Order Management

10.1 For all purposes of this Framework Agreement:

10.1.1 the *Employer* authorises the Framework Manager to act as the *Employer's* representative;

10.1.2 the *Supplier* Representative shall act as the *Supplier's* representative and shall deal with the Framework Manager (or his or her nominated representative) in respect of all matters arising under this Framework Agreement, unless notified otherwise;

10.1.3 the Framework Manager and the *Supplier* Representative shall hold regular liaison meetings (the location, frequency and time of which shall be specified by the Framework Manager from time to time) in order to review performance under the Framework Agreement; specifically to consider the *Supplier's* periodic reports on Package Orders awarded, progress against Key Performance Indicators, invoicing and Charges in accordance with the provisions of Section 9; and to set and agree objectives.

10.2 In respect of each Package Order:

- 10.2.1 the *Employer* will appoint a Contract Manager who will be identified in the Package Order Contract Data Part One;
- 10.2.2 the *Supplier* shall provide the Key People who shall supervise the performance of the Services and deal with the Contract Manager in relation to matters arising under a Package Order, unless notified otherwise. The *Supplier* shall provide the Contract Manager with regular update reports on the progress of the Package Order (frequency and content to be agreed between the Contract Manager and the Key People);
- 10.2.3 the Contract Manager and the Key People shall attend regular contract meetings (the location, frequency and time of which shall be specified by the Contract Manager from time to time) in order to review progress of the Package Order against Key Performance Indicators. A written record of any actions resulting from these meetings shall be made by the Key People and, following agreement by the Contract Manager, shall be accepted as a true representation of discussions and resolutions that have taken place. The *Supplier* shall provide the Contract Manager with regular update reports on the progress of the Package Order (frequency and content to be agreed between the Contract Manager and the Key People) and the provision of a final performance evaluation report.

10.3 The *Supplier* Representative and the Key People shall be available to the *Employer* to resolve any issues arising in connection with the Framework Agreement or a Package Order within 5 Business Days of any such request from the *Employer*.

10.4 The *Supplier* may only make any changes to the *Supplier* Representative (except in the event of sickness, incapacity or resignation) with the prior consent of the *Employer* (which shall not be unreasonably withheld).

10.5 No act of or omission by or approval from either the *Employer*, the Framework Manager, or any Contract Manager in performing any of their respective duties under or in connection with the Framework Agreement or any Package Order (except an express written waiver signed on behalf of the *Employer*) shall in any way operate to relieve the *Supplier* of any its duties, responsibilities, obligations or liabilities under the Framework Agreement or any Package Order.

11. Small and Medium-sized Enterprises (SMEs)

- 11.1 The DfT Rail Executive is committed to not only meeting Cabinet Office's SME Agenda target of 25% of the Government's spend going to SMEs by 2015, but significantly improving upon this by setting our objective target at 40%.
- 11.2 PRIME Grade *Suppliers* will be required to demonstrate that they have supported this objective in future Package Orders by ensuring that at least 25% of services (by value) are carried out by SMEs where the Work Package competition is limited to PRIME Grade *Suppliers* only.
- 11.3 PRIME Grade *Suppliers* will be required to provide open book access to accounts and supporting data that substantiate commitments made in respect of the use of SMEs in the delivery of Required Services under Work Packages, including details of any SME organisations that are utilised.
- 11.4 PRIME Grade *Suppliers* will be required to provide details of how they have augmented their teams using SME resources drawn from the STAR Framework MEDIUM and EXPERT Grade (where applicable) community or how they have sourced SME resources from outside the STAR Framework community on those occasions where they are unable to fully satisfy all requirements requested in Package Orders through the MEDIUM and EXPERT Grade community.

12. *Supplier's Personnel*

- 12.1 The *Supplier* undertakes to provide all personnel necessary for the performance of the Services and undertakes that all personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services. The *Supplier* shall ensure that all its personnel are in possession of valid work permits if they are non-European Union nationals.
- 12.2 It is not the intention of the Parties that any of the *Supplier's* personnel shall transfer to the *Employer* or any subsequent provider of Required Services to the Employer by the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Nevertheless, the *Supplier* shall at any time, if reasonably requested by the Employer, provide all information which the *Supplier* considers it would be required to provide to either the Employer or a subsequent provider of Required Services under Regulation 11 of TUPE in connection with a relevant transfer (as that term is defined in TUPE) occurring at the expiry of termination of this Framework Agreement or any Package Order. The *Supplier* is responsible for making appropriate deductions for tax and National Insurance contributions from the remuneration paid to its personnel.
- 12.3 Where training of the *Supplier's* personnel is reasonably required for the purposes of performance of the Framework Agreement or any Package Order, the *Supplier* shall be responsible for arranging such training and for all costs associated with such training. The *Supplier* shall have no claim against the *Employer* if access to any the *Employer* Premises is denied due to incomplete training of the *Supplier's* personnel.
- 12.4 The *Employer* may, by written notice to the *Supplier*, object to a member of the *Supplier's* personnel if such person is in the *Employer's* reasonable view incompetent, negligent, or guilty of misconduct and the *Supplier* shall immediately remove such person from performing the Services and provide a suitable replacement (with the *Employer's* prior consent).

- 12.5 Where it is necessary for the *Supplier* to provide replacement personnel for reasons other than those laid out in paragraph 12.4, the *Supplier* shall arrange a minimum hand-over period between personnel of two weeks, and shall bear all costs associated with such hand-over period with no additional Charges accruing to the *Employer*, ensuring at all times no loss of knowledge through a seamless handover.
- 12.6 The *Supplier* acknowledges, and undertakes to inform all its personnel and Sub-Consultants who will be using the *Employer's* communication facilities, that the *Employer* reserves the right from time to time to:
- 12.6.1 intercept, for the purposes of monitoring and/ or recording, any communication made through any system capable of transmitting communications including but not limited to telephone, electronic mail, facsimile, voicemail or internet facility provided by the *Employer*; and
- 12.6.2 use any information obtained as a result of any intercepted communication referred to in Clause 12.6.1 for the purposes permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
- 12.7 The *Supplier* will be required to ensure that all staff they supply or intend to supply who will have regular access to or will be based at the *Employer's* premises have complied with the *Employer's* Baseline Personnel Security Standard (BPSS) <https://www.gov.uk/government/publications/security-policy-framework>.

13. Equipment and Materials

- 13.1 All equipment and materials provided or used by or on behalf of the *Supplier* in the performance of the Services (if any) shall be at the risk and in the sole charge of the *Supplier* (regardless of whether or not such equipment and materials are located at the *Employer* Premises).
- 13.2 The *Supplier* shall ensure that all such equipment and materials (if any) meet minimum safety standards required by law and shall remove all equipment and materials which it brings to the *Employer* Premises on termination or expiry of this Contract.

14. Conflict of Interest

- 14.1 The *Supplier* 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 Services 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 Services. This Clause shall not prevent the *Supplier* from providing services to an existing client of the *Supplier* to whom the *Supplier* is currently providing services provided that the *Supplier* shall:
- 14.1.1 not act for any such client in respect of any transactions between any member of the *Employer* and such client;
- 14.1.2 ensure that the personnel acting in any capacity for any such client are different from the personnel involved in providing the Services or in any other work which the *Supplier* carries out in relation to any member of the *Employer*;
- 14.1.3 ensure that any personnel acting for any such client do not have access to information held by the *Supplier* relating to any member of

the *Employer* using defined ethical wall arrangements approved by the *Employer* (such approval not to be unreasonably withheld or delayed); and

14.1.4 inform the *Employer* of all such existing clients and the steps that it is taking to ensure compliance with Clauses 14.1.1 - 14.1.3.

14.2 The *Supplier* shall undertake ongoing and regular conflict of interest checks throughout the duration of this Contract or any Package Order and shall notify the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the Services provided under this Contract or any Package Order. Breach of Clause 14.1 or this Clause shall entitle the *Employer* to terminate this Contract or any Package Order and any other contracts between the *Supplier* and any member of the *Employer* immediately.

15. Key Performance Indicators

15.1 Each Package Order awarded under the Framework will incorporate key performance indicators (“Package Order KPIs”) in order to measure the *Supplier’s* performance on that Package Order. The Package Order KPIs will be in the form set out in Schedule 9 (once completed, the “Package Order KPI Schedule”). The Package Order KPI Schedule may be amended by the *Employer* for each separate Package Order and amended or new KPIs may be used irrespective of KPI’s used with the *Supplier* in relation to a previous Package Order.

15.2 The *Employer* and the *Supplier* agree to implement the following provisions to monitor the *Supplier’s* performance (or underperformance) for each Package Order concluded with the *Supplier*.

15.2.1 Each Package Order’s Contract Manager will be the primary recipient of the *Supplier’s* monthly progress reports, schedule updates,

including measured performance against the KPIs contained in the Package Order KPI Schedule and cost reports. The *Supplier* will be responsible for the timely delivery of high quality information and regular review meetings to present progress to the Contract Manager.

15.2.2 The Package Order KPI Schedule will be reviewed by the *Employer* on a monthly basis to determine the “Package Order Performance Scores.”

15.2.3 The Package Order Performance Score is the total of the KPI scores accrued in accordance with the Package Order KPI Schedule.

15.2.4 The *Supplier* submits to the Contract Manager a Performance Report on a monthly basis for review. The Package Order Performance Report shall include:

- i. the data on which the Package Order Performance Scores are based; *and*
- ii. any other supporting information that may be requested by the Contract Manager for his assessment.

15.3 Upon completion of each Package Order, the *Supplier* must provide all the necessary data in relation to the Package Order KPIs within 14 days of completion of the Package Order.

15.4 The process by which the *Supplier's* performance of a Work Package will be managed is set out in the process flow chart at Annex B.

16. Performance Improvement Action Plan

- 16.1 In the event that the *Supplier* scores less than the minimum threshold at the end of any month for any of the KPIs, as set out in the Package Order KPI Schedule (“the Package Order KPI Minimum Threshold”) then the *Supplier* shall produce a performance improvement action plan (the “Action Plan”). This Action Plan shall set out in detail the *Supplier’s* proposed approach and programme to correct any specified instances where the Package Order KPI Minimum Threshold has been breached. Each Action Plan will first be issued to the *Employer* for review and acceptance. If necessary, the *Supplier* will consult with the *Employer* in order to obtain the *Employer’s* acceptance of the Action Plan.
- 16.2 The *Supplier* shall implement the Action Plan as soon as the *Employer* accepts it. Even if the *Employer* has not accepted the *Supplier’s* Action Plan, any rectification of any deficiencies in any aspect of the *Supplier’s* performance shall be initiated by the *Supplier* and carried out, efficiently and expeditiously, as soon as the *Supplier* knows that their performance scores have breached a Package Order KPI. All rectification activity resulting from an Action Plan shall be completed expeditiously, and in any case within 3 months of the date that the *Employer* accepts the *Supplier’s* Action Plan, so that performance scores at or above Package Order KPI Minimum Threshold shall be restored. Without prejudice to the Selection Procedure, if there is no evidence of such performance restoration, the *Employer* reserves the right to:
- i. terminate the current Work Package;
 - ii. serve notice to the *Supplier* that the *Supplier* shall not be allocated any subsequent Work Packages; or
 - iii. terminate the Framework Agreement (as the case may be).
- 16.3 Any rectification in relation to performance improvement shall be at the *Supplier’s* cost.

16.4 The *Supplier* performance process by which a Work Package will be managed is set out in the process flow chart at Annex B.

17. Mobilisation

17.1 It is important, from a budget control and management perspective, that all Package Order resources are mobilised and demobilised in a timely manner to accord with the approved plan and/or as agreed in order to avoid or minimise non-productive costs being incurred.

17.2 The *Supplier* must obtain proper authorisation and approvals from the *Employer* before the resources are mobilised.

SCHEDULE 2 - KEY CONTRACT INFORMATION

1. Framework Number: TBC
2. Name of *Supplier*:
3. Grade at which the Supplier has been appointed to the Framework
4. Category or Categories for which the *Supplier* has been appointed to the Framework (if the *Supplier* has been appointed at PRIME Grade they are appointed to supply services in all Categories):
5. Commencement Date:
6. Duration: Two Years + 2 x One Year Extensions
7. *End date*:
8. Details of Framework Manager:

Name:
Address:

Tel:
Fax:
Email:
9. Details of *Supplier* Representative:

Name:

Address:

Tel:
Fax:
Email:

SCHEDULE 3 - QUOTATION INFORMATION

MAXIMUM DAILY RATE CARD

The following tables establish the Maximum Daily Rates (as at the Award date) for each Position within those Categories that Suppliers have been appointed to the Framework. These rates are those tendered by Bidders in Appendix 4: Section 1 (Maximum Daily Rate Card) of the ITT. These rates will not be exceeded in the *Suppliers'* pricing of future Work Packages subject to the adjustment set out in Schedule 1 para 8.2.

The Maximum Daily Rates have been calculated on the basis of a full working business day of nine hours duration, exclusive of any travel unless in exceptional cases where that travel has been agreed with the Authority as being legitimately part of the business day (as in the case of a site visit on behalf of the Authority). These Maximum Daily Rates will be inclusive of any management, services, functions and responsibilities (including any incidental services, functions or responsibilities) which are reasonably to be inferred from the Framework Agreement. In particular, the *Supplier* shall provide Framework management, including regular updates, performance monitoring data, benchmarking analysis, performance review reports and attendance at regular liaison and review meetings with the Authority.

CATEGORY SPECIFIC MAXIMUM DAILY RATE CARD PRICING TABLE		
CATEGORY A - RAIL STRATEGY, TRANSPORT INTEGRATION AND PLANNING ADVICE		
ITEM	POSITION	MAXIMUM DAILY RATE
1.1	DIRECTOR	
1.2	SENIOR CONSULTANT	
1.3	CONSULTANT	
1.4	JUNIOR CONSULTANT	

CATEGORY SPECIFIC MAXIMUM DAILY RATE CARD PRICING TABLE		
CATEGORY B - RAIL OPERATIONS AND PERFORMANCE ADVICE		
ITEM	POSITION	MAXIMUM DAILY RATE
2.1	DIRECTOR	
2.2	SENIOR CONSULTANT	
2.3	CONSULTANT	
2.4	JUNIOR CONSULTANT	

CATEGORY SPECIFIC MAXIMUM DAILY RATE CARD PRICING TABLE		
CATEGORY C - ECONOMIC AND REVENUE FORECASTING FOR A SUSTAINABLE RAILWAY		
ITEM	POSITION	MAXIMUM DAILY RATE
3.1	DIRECTOR	
3.2	SENIOR CONSULTANT	
3.3	CONSULTANT	
3.4	JUNIOR CONSULTANT	

CATEGORY SPECIFIC MAXIMUM DAILY RATE CARD PRICING TABLE		
CATEGORY D - RAILWAY INFRASTRUCTURE, ROLLING STOCK AND ASSET ADVICE		
ITEM	POSITION	MAXIMUM DAILY RATE
4.1	DIRECTOR	
4.2	SENIOR CONSULTANT	
4.3	CONSULTANT	
4.4	JUNIOR CONSULTANT	

CATEGORY SPECIFIC MAXIMUM DAILY RATE CARD PRICING TABLE		
CATEGORY E - PROJECT AND PROGRAMME MANAGEMENT		
ITEM	POSITION	MAXIMUM DAILY RATE
5.1	DIRECTOR	
5.2	SENIOR CONSULTANT	
5.3	CONSULTANT	
5.4	JUNIOR CONSULTANT	

MINIMUM PRICING DISCOUNTS

The following table establishes the *Supplier's* Minimum Pricing Discounts and identifies the minimum discount rates that they will apply to their Maximum Rate Card Tables in their pricing of future Work Packages.

Minimum Pricing Discounts Table		
TOTAL DURATION	COMMISSION	MINIMUM DISCOUNT Rate
Less than 50 resource days		
51 – 150 Resource Days		
151 – 1000 Resource Days		
Over 1001 Resource Days		

SCHEDULE 4 - *SUPPLIER* CAPABILITY MATRIX

Tables 1 – 5 of this Schedule 4 provide a *Supplier* Capability Matrix that will enable the STAR Framework Manager to identify the relevant specific capabilities and capacity of all successfully awarded STAR Framework *Suppliers*.

The Framework Manager will use these to determine the most appropriate *Suppliers* for future Work Packages and Direct Awards. Recognising that resource capacity and capability of *Suppliers* may change from time to time:

- i. *Suppliers* must immediately advise the Framework Manager in writing of there being any reduction in the *Supplier's* resource capacity and capability within the Category/ Categories for which they have been appointed to the Framework.
- ii. On each anniversary of the Commencement Date (or as directed by the Employer) each of the *Suppliers* will update the information on the Capability Matrix by completing revised versions Tables 1 – 5 below (as relevant) for each Category or Categories and Grades for which they have been appointed to the Framework.
- iii. Any updates of the Capability Matrix will be subject to acceptance by the *Employer* of the evidence provided the *Supplier* of any additional capability.
- iv. In no circumstances will a *Supplier* be entitled to supply Required Services at any Grade or in any Category for which they have not been appointed to the Framework (as stated in Schedule 2 – Key Contract Information) and any information provided about a *Supplier's* purported capability in relation to such Grades or Categories will be ignored by the *Employer*.

TABLE D, CATEGORY D – RAILWAY INFRASTRUCTURE, ROLLING STOCK AND ASSET ADVICE

STAR FRAMEWORK																																																																	
CATEGORY D Railway Infrastructure, Rolling Stock and Asset Advice																																																																	
GRADE	SUPPLIER NAME	General Rail Infrastructure, Rolling Stock and Assets Advice				Rail Infrastructure, Rolling Stock and Asset Research				Railway Asset Management				Stations - Inc. Access, Property, Parking, Mobility & Security				Depots & Stabling - Strategy & Advice				Signalling & Systems - Strategy & Advice				Rolling Stock - Strategy & Advice				Rolling Stock, Management, Acceptance, Planning				Rolling Stock - Leasing				On Train Facilities & Services				Technical Due Diligence				Rail Engineering, Feasibility & Operating Advice				Power / Electrification - Strategy & Advice				Telecommunications / CIS - Strategy & Advice				Railway Infrastructure & Assets Commercial Advice				Package Specific Bid Evaluation Support			
		Position				Position				Position				Position				Position				Position				Position				Position				Position				Position				Position				Position				Position															
		D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC	D	SC	C	JC								
PRIME	Supplier 1																																																																
	Supplier 2																																																																
	Supplier 3																																																																
	Supplier 4																																																																
	Supplier 5																																																																
	Supplier 6																																																																
MEDIUM	Supplier 7																																																																
	Supplier 8																																																																
	Supplier 9																																																																
	Supplier 10																																																																
	Supplier 11																																																																
	Supplier 12																																																																
EXPERT	Supplier 13																																																																
	Supplier 14																																																																
	Supplier 15																																																																
	Supplier 16																																																																
	Supplier 17																																																																
	Supplier 18																																																																
Position Key:																																																																	
D - Director																																																																	
SC - Senior Consultant																																																																	
C - Consultant																																																																	
JC - Junior Consultant																																																																	

SCHEDULE 5 - SCOPE OF SERVICES

This Schedule sets out the Required Services for each category within the STAR Framework.

1. Category A – Rail Strategy, Transport Integration and Planning Advice

Providing technical and commercial support to Rail Executive for a range of macro-level strategic activities such as future forecasts and plans, the analysis of optimal solutions for the development of long term rail investment proposals, option analysis and the construction of project and programme business cases.

Typical requirements identified by Rail Executive clients include but are not limited to:

- General Rail Strategy, Transport Integration and Planning Advice
- Rail Strategy, Transport Integration and Planning Research
- Strategic corporate planning and appraisal
- Business case support
- Control period advice and analysis
- Strategic planning and research
- Transport systems integration
- High level Rail Investment Strategy (RIS) support
- Technical assurance
- Strategic technical commercial advice
- Macro-level revenue forecasting
- Package-specific bid evaluation support
- Remapping and Devolution studies

2. Category B – Rail Operations and Performance Advice

Providing technical and commercial support to Rail Executive across a full range of operational specialisms to ensure that strategic objectives of schemes, projects and programmes, including Rail Franchises and Direct Awards, are articulated effectively and attract bidder responses that optimally meet them.

Typical requirements identified by Rail Executive clients include but are not limited to:

- General Rail Operations and Performance Advice
- Rail Operations and Performance Research
- Operational proposal package
- Operational management
- Timetabling, diagramming, rostering
- Staffing policy/strategy
- Industrial relations/Trade Unions/TUPE/pensions
- Network Rail operational interfaces
- Environment and sustainability
- Franchise integration
- Management and business structure
- Operational mobilisation
- Operational safety
- Operational cost modelling
- Modal integration, interfaces and connectivity
- Passenger communication
- Passenger connectivity
- Service quality/customer service
- Passenger flow monitoring
- Station design layout, logistics, passenger & pedestrian movement and facilities
- Operations commercial advice
- Package-specific bid evaluation support

3. Category C – Economic and Revenue Forecasting for a Sustainable Railway

Providing technical and commercial support to Rail Executive for a range of short to medium term activities specifically in relation to forecasting and meeting demand, fares calibration and the development of bidding strategies and analysis.

Typical requirements identified by Rail Executive clients include but are not limited to:

- General Economic and Revenue Forecasting advice for a Sustainable Railway
- Economic and Revenue Forecasting Research
- Technical risk adjustment
- Macro-economic advice
- Market reviews production
- Benefits realisation support
- Rail transport commercial advice
- Commercial risk analysis/profiling
- Fare reviews and policy
- Ticketless travel
- Ticket retailing
- Revenue protection
- Marketing and branding
- Modelling - revenue, fares and demand
- Revenue commercial advice
- Revenue forecasting
- Package-specific bid evaluation support
- Comparator modelling and associated business case support

4. Category D – Railway Infrastructure, Rolling Stock and Assets Advice

Providing Rail Executive with technical and commercial support and advice across the full spectrum of railway assets ranging from infrastructure to rolling stock. Services will include a wide range of technical and commercial advice throughout the asset lifecycle such as strategic level planning and option analysis, whole life cost reviews, value engineering and management, assurance, technical specification, category management, procurement of assets and asset interface risk assessment.

Typical requirements identified by Rail Executive clients include but are not limited to:

- General Railway Infrastructure, Rolling Stock and Assets Advice
- Railway Infrastructure, Rolling Stock and Asset Research
- Railway asset management
- Stations - including access, property, parking, mobility and security
- Depots and stabling - strategy and advice



- Signalling and systems - strategy and advice
- Rolling stock - strategy and advice
- Rolling stock - management, acceptance, planning
- Rolling stock - leasing
- On train facilities and services
- Technical due diligence
- Rail engineering, feasibility & operating advice
- Power / electrification - strategy and advice
- Telecommunications / CIS - strategy and advice
- Railway infrastructure and assets commercial advice
- Package-specific bid evaluation support

5. Category E – Project and Programme Management Advice

Providing Rail Executive with technical and commercial support and advice across a full range of programme and project management services throughout the project lifecycle from strategy to post-transition mobilisation.

Typical requirements identified by Rail Executive clients include but are not limited to:

- General Project and Programme Management Advice
- Project and Programme Management Research
- Programme partner
- Programme management
- Project management
- Project delivery
- Project controls
- Assurance
- Project management commercial advice
- Project representative
- Enterprise, programme and project integration management
- Package-specific bid evaluation support

SCHEDULE 6 - POSITION DEFINITIONS FOR *SUPPLIER* RESOURCES

DIRECTOR POSITION

For a partnership, a Partner in the practice; for a limited company, any employee who carries the title “Director” (or “Associate Director” or other similar title) and who is normally chargeable to projects, who has extensive experience in their specialist field in which they are nationally or internationally renowned as an expert.

Responsible for all grades of personnel.

Typical Education/Qualifications and Experience

- Hold an undergraduate degree.
- Hold appropriate professional qualification(s) of a major institution applicable to the discipline of services commissioned to perform.
- Must have at least 15 years of relevant work experience including extensive experience of leading or directing major, complex and business critical projects in which they have brought genuine strategic insight.
- Overall responsibility for project(s) and for management, supervision, control and development of subordinate personnel.
- Significant management responsibility with strong leadership qualities within the organisation.
- In-depth knowledge of the Public Sector and of current policy and political issues affecting it.

Responsibilities

- Developing and maintaining client relationships.
- Manage Package Order delivery.



- Manage and control personnel efficiently, and in compliance with all relevant statutory instruments procedures, rules, regulations, standing orders and instructions and the adopted procurement method.
- Establish, manage and maintain effective communication channels, between the *Supplier*, *Sub-Suppliers*, *Sub-Contractors* and the *Employer* and other *Suppliers* and other bodies as necessary.
- Ensure that sufficient personnel are assigned for the Package Order and that they are suitably qualified and motivated to perform the duties allocated to them.
- Oversee all awarded Package Orders and ensure full adherence with the Framework Agreement and Work Package contract terms.
- Ensure *Supplier* compliance with all safety and quality assurance procedures and requirements, including audits.
- Ensure that all training needs are identified, established, rolled-out, monitored and effectively refreshed.

SENIOR CONSULTANT POSITION

A person who has extensive experience in their specialist field who reports directly to a Partner or Director.

Responsible for all grades of consultants and support staff.

Typical Education /Qualifications and Experience:

- Hold an undergraduate degree.
- Hold appropriate professional qualification(s) of a major institution applicable to the discipline of services commissioned to perform.
- Should have at least 10 years of relevant work experience including extensive experience working at a senior level within major, complex and business critical projects in which they have brought genuine strategic insight.
- The ability to demonstrate key involvement in delivering projects of high value and complexity.
- Should have substantial transport experience and technical skills appropriate to the discipline.
- Responsibility for awarded Package Orders and for supervision, control and development of junior personnel.
- Significant management responsibility with strong leadership qualities within the organisation. Permanent employee.
- Must have significant knowledge of the Public Sector and of current policy and political issues affecting it.

Responsibilities

- Deputise for the Partner/Director on all aspects of the project.
- Be capable of managing and controlling a team(s) of Consultants effectively and in compliance with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method.



- Communicate effectively with other members of the project team, other DfT departments and external contractors and bodies where necessary.
- Ensure that sufficient personnel are assigned for the Package Order and that they are suitably qualified and motivated to perform the duties allocated to them.
- Supervise, control and develop personnel assigned.
- Ensure that the team's activities meet the objectives of the Package Order.
- Comply with all the project's safety and quality assurance procedures and requirements and ensure that all team members do likewise.
- Ensure that all appropriate training is rolled out.

CONSULTANT POSITION

A person who has significant experience in their specialist field who reports directly to a Senior Consultant.

Responsible for junior consultant / administration staff.

Typical Education/Qualifications and Experience;

- Hold an undergraduate degree.
- Hold appropriate professional qualification(s) of a major institution (or be able to evidence that they have equivalent working experience) applicable to the discipline commissioned to perform.
- Should have at least 5-10 years of relevant work experience including experience working within major, complex and business critical projects.
- Should have some transport experience and technical skills appropriate to the discipline.
- Responsibility for awarded Package Orders and for supervision, control and development of junior personnel. Permanent employee.
- Must have knowledge of the Public Sector and of current policy and political issues affecting it

Responsibilities:

- Deputise for the Partner / Director / Senior Consultant on all aspects of the project.
- Assist in the management and control of Consultants to ensure efficiency and compliance with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method.
- Communicate effectively with other members of a project team, other DfT departments and external contractors and bodies as necessary.
- Supervise, control and develop personnel assigned.
- Ensure that own and assigned personnel activities meet the objectives of the Package Order.

- Comply with all safety and quality assurance requirements and ensure that all team personnel do likewise.
- Ensure that all appropriate training is rolled out.

JUNIOR CONSULTANT POSITION

Reporting to Partner/Director, Senior Consultant/Consultant.

Responsible for support staff.

Education/Qualifications and Experience

- Should have at least 1-5 years relevant work experience.
- Working towards attaining appropriate professional qualifications applicable to the discipline commissioned to perform.
- Permanent employee.
- They must have knowledge of the Public Sector and of current policy and political issues affecting it.

Responsibilities

- Assist the Partner/ Director, Senior Consultant/ Consultant where appropriate.
- Supervise the support staff assigned.
- Work in compliance and ensure that all assigned personnel comply with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method.
- Ensure that own and assigned personnel's activities meet the objectives of the commission.
- Comply with all safety and quality assurance requirements and ensure that all assigned personnel do likewise.
- Ensure that all appropriate personal training is undertaken.

SCHEDULE 7 - WORK PACKAGE REQUEST FORM

Framework Number: [Insert Framework Ref]

Request Form Number:

To:

Address:

From:

Date:

This is a Work Package Request Form for the Provision of Required Services using the Specialist Technical Advice for Rail (STAR) Framework referenced above. This is an enquiry document only, constituting an invitation to tender, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the *Employer*; however, such acceptance will not occur unless and until the *Employer* issues a notice of acceptance to you in the form of an authorised Package Order.

Attachment 1 of this Work Package Request Form sets out the *Scope* of Services required.

Attachment 2 of this Work Package Request Form is a draft Package Order Contract Data Parts 1 and 2.

In your Proposal, you must respond by completing the Package Order Contract Data Part Two.

The assessment criteria for evaluating the Proposal are:



Quality – 70%, made up of the following sub criteria:

[Insert a table of the assessment criteria and their respective weighting]

Price – 30%

Your Proposal shall include the following documents:

[Insert the documents required from the *Supplier* to demonstrate their capability/Prices etc.]

The *Employer* is under no obligation to award any Package Order as a result of this Work Package Request Form. The *Employer* shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Package Order (which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process), save for charges properly billed under an executed and binding Package Order.

You must complete and return your Proposal by [insert date and time].

Please e-mail your Proposal and send a paper copy to:

Name:

Email address:

Postal address:

Telephone:

Fax:

Any queries regarding this Work Package Request Form should be directed to the above. Any queries regarding the Framework Contract should be directed to the Framework Manager named in the Framework Contract.

Signed: _____

for and on behalf of [Name of *Employer*]

Attachments:

Attachment 1: Scope of Services

Attachment 1 will include, but not be limited to the following:

- Details of the extent of the Opportunity
- Details of the *Employer*
- Requirements Specification
- A description of the outputs and deliverables
- Project parameters
- Performance requirements and measures

Attachment 2: Draft Package Order Contract Data Parts 1 and 2.

SCHEDULE 8 - PACKAGE ORDER TEMPLATE

FORM OF AGREEMENT

THIS AGREEMENT is made the [Insert Date] 201[]

BETWEEN:

- (1) [Insert *Employer Name*]; and
- (2) [Insert *Supplier's Name*] registered in England and Wales with company number [*****] whose registered office is at [insert company registered address] (“the *Supplier*”).

WHEREAS:

- (A) The Consultant has been appointed to the Specialist Technical Advice for Rail (STAR) Framework and has entered into a framework agreement in relation to its appointment (the “Framework Agreement”).
- (B) The *Employer* wishes to appoint the Consultant to provide certain services being [Insert brief details of the service].
- (C) The Consultant has submitted his Proposal dated [Insert date of the Proposal] in response to the *Employer's* Work Package Request Form in accordance with terms of the Framework Agreement. The *Employer* has examined the Consultant’s said tender and subject to the provisions of this contract is willing to engage the Consultant to carry out those services in accordance with this contract.

NOW IT IS AGREED THAT:

1. In this Agreement, unless the context otherwise requires, words and expressions have the same meanings as set out in the *NEC Conditions of Contract*.
2. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract:

- (i) The *NEC Conditions of Contract* are the *NEC Professional Services Contract* (Third Edition April 2013 with amendments June 2006 and September 2011) together with and as amended by *Dispute Resolution Option W2*, and *Secondary Option Clauses* as specified in the *Contract Data Part One, Y(UK)2* (with amendments dated September 2011);
 - (ii) The *Contract Data Part One* (including, the *Option Z* clauses set out in the *Contract Data Part One*);
 - (iii) The *Contract Data Part Two*;
 - (iv) The terms of the *Framework Agreement* insofar as they relate to the provision of services;
3. The *Supplier* shall provide the *scope* of services (as set out in the *Contract Data Part 1*) in accordance with this contract.
 4. The *Supplier* reaffirms that, under Section 14 of the *Framework Agreement*, the *Supplier* 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 *Services* 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 *Services*.
 5. In consideration of the provision by the *Supplier* of the [*Services*] the *Employer* shall pay to the *Supplier* the amount due in accordance with this contract.

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 Parties provided that this is without prejudice to the *Employer's* rights to issue instructions in accordance with this contract.

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

Signed by:

Name:

Position:

On behalf of [the Secretary of for Transport] (*Employer*)

and

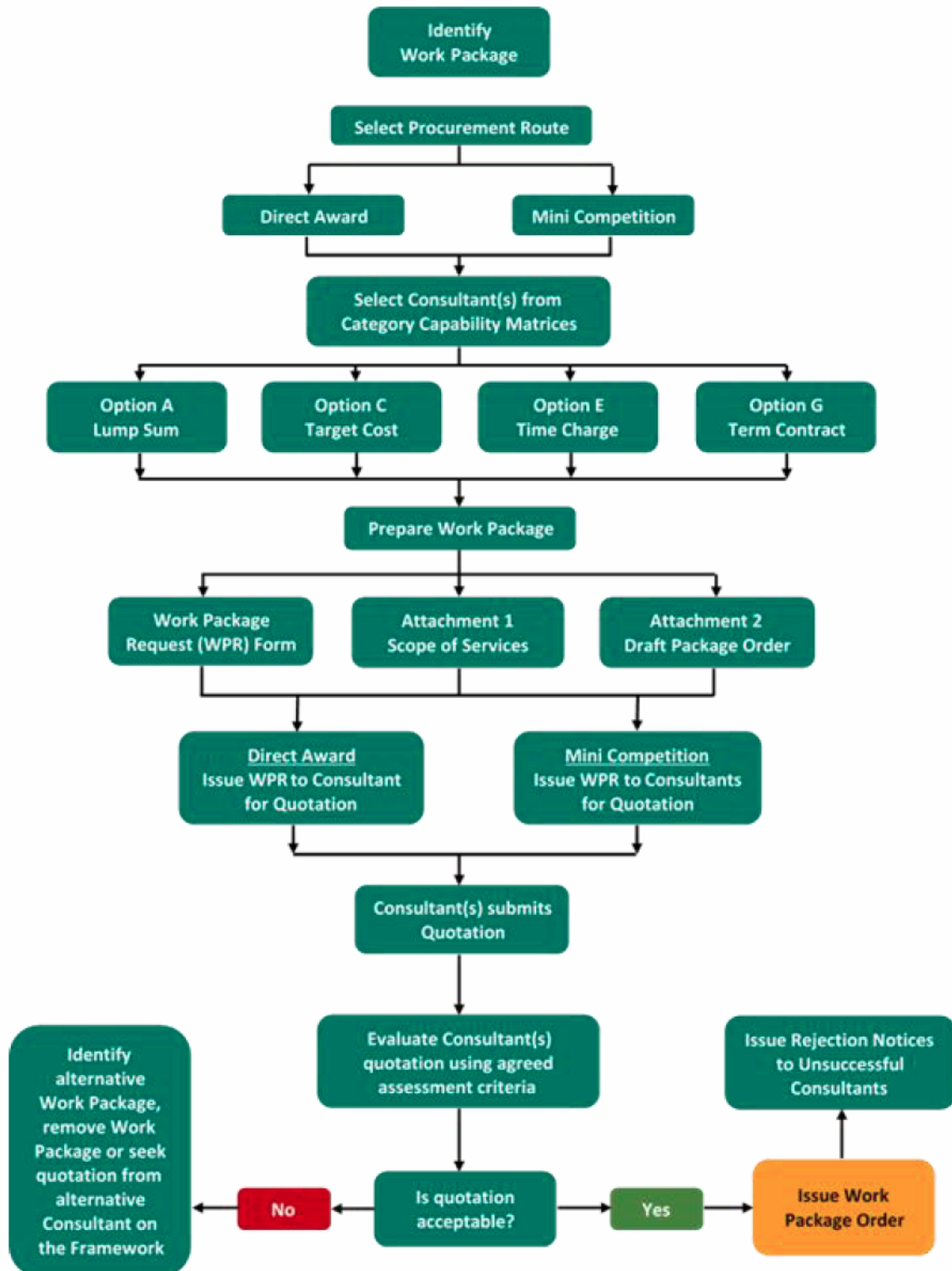
Signed by:

Name:

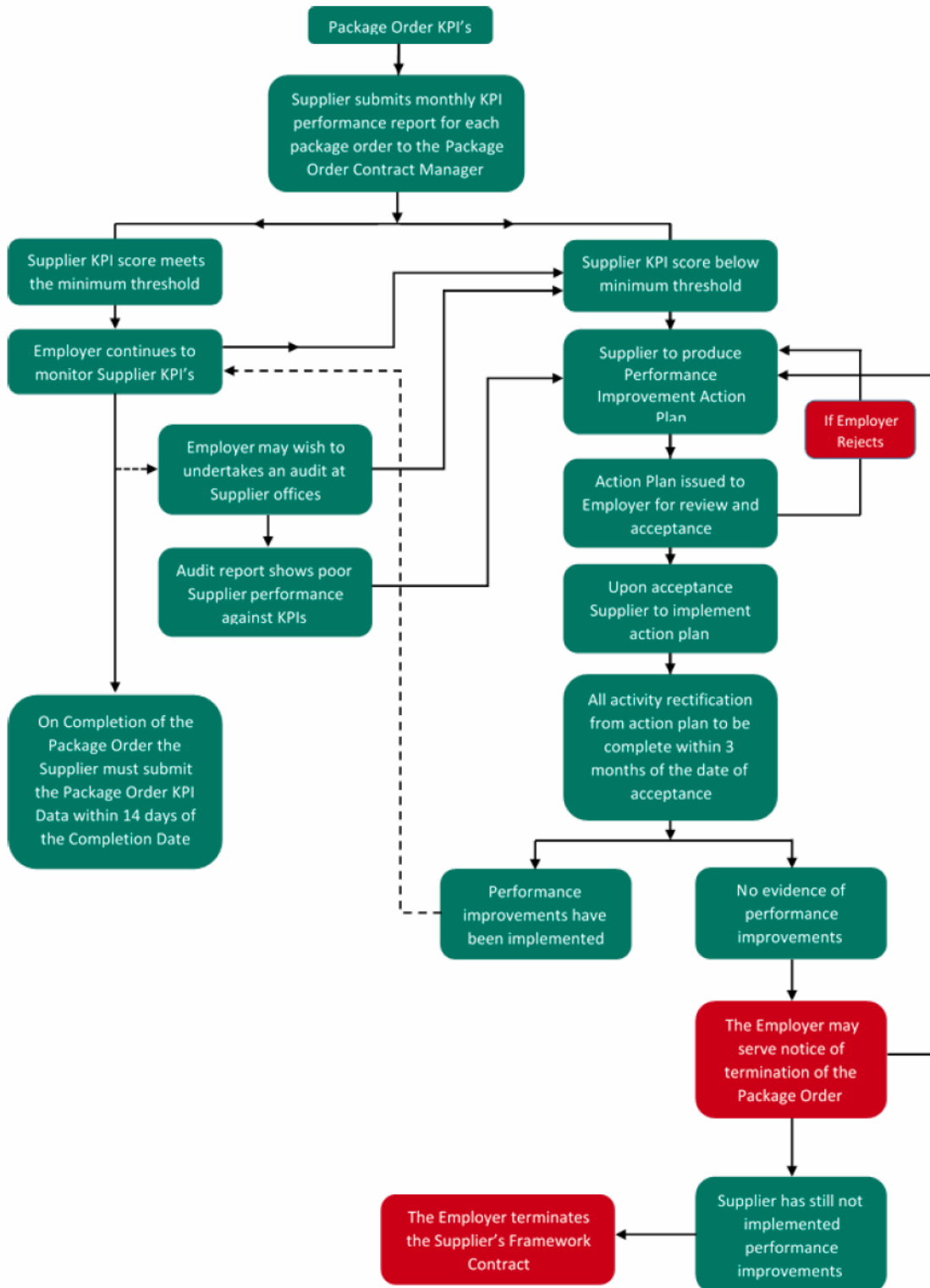
Position:

On behalf of [Insert Company Name] (*Supplier*)

ANNEXE A - WORK PACKAGE QUOTATION PROCEDURE PROCESS MAP



ANNEXE B - SUPPLIER PERFORMANCE MEASUREMENT PROCESS MAP



PROFESSIONAL SERVICES CONTRACT - CONTRACT DATA

Part One - Data provided by the *Employer*

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

Statements given in all contracts

1. General The *conditions of contract* are the core clauses and the clauses for main Option dispute resolution Option and secondary Options of the NEC3 Professional Services Contract April 2013

The *Employer* is.....

Name

Address

.....

.....

The *Adjudicator* is

Name.....

Address

.....

.....

The *services* are

.....

.....

The *Scope* is in

.....

.....

The *language of this contract* is English.

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

The *period for reply* is weeks.

The *period for retention* is years following Completion or earlier termination.

The *Adjudicator nominating body* is

The *tribunal* is

The following matters will be included in the Risk Register

.....
.....

2. The Parties' main responsibilities The *Employer* provides access to the following persons, places and things

access to

access date

.....
.....
.....
.....

3. Time *The starting date* is

The *Consultant* submits revised programmes at intervals no longer than Weeks.

4. Quality The quality policy statement and quality plan are provided within weeks of the Contract Date.

The *defects date* is weeks after Completion of the whole of the *services*.

5. Payment The *assessment interval* is.....

The *currency of this contract* is.....

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

- 8 Indemnity, insurance and liability The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	period following Completion of the whole of the services or earlier termination
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i> in respect of each claim, without limit to the number of claims
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> in respect of each claim, without limit to the number of claims
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract in respect of each claim, without limit to the number of claims

The *Employer* provides the following insurances

.....
.....
.....

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

.....

Optional statements **If the *Employer* has decided the *completion date* for the whole of the *services***

The *completion date* for the whole of the *services* is.....
.....

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

The *Consultant* is to submit a first programme for acceptance within weeks of the Contract Date.

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

The *key dates* and *conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
1
2
3

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is
.....

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

The period for payment is
.....

If the *Employer* states any *expenses*

The *expenses* stated by the *Employer* are

Item	amount
.....
.....
.....

If the *tribunal* is arbitration

The *arbitration procedure* is
.....

The place where arbitration is to be held is

.....

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

.....

If this contract is a subcontract and the main contract provides for joint adjudication of disputes

The main contract Adjudicator is.....

.....

If Option A is used

The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than weeks.

If Option C, E or G is used

The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than weeks.

The *exchange rates* are those published in on (date)

If Option C is used

The *Consultant's share percentages* and the *share ranges* are

<i>share range</i>	<i>Consultant's share percentage</i>
less than.....%%
from% to%%
from% to%%
greater than.....%%

If Option X1 is used

The index is

If Option X2 is used

The *law* of the project is

.....

If Option X3 is used

The *Employer* will pay for the items or activities listed below in the currencies stated

Items and activities	other currency	total maximum payment in the currency
1
2
3

The exchange rates are those published in
 on (date)

If Option X5 is used

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

<i>section</i>	<i>description</i>	<i>completion date</i>
1
2
3
4
5

If Options X5 and X6 are used together

The bonuses for each *section* of the *services* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1
2
3
4
5

Remainder of the *services*.....

If Options X5 and X7 are used together

Delay damages for each *section* of the *services* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1
2
3
4
5
Remainder of the <i>services</i>		
.....		

If Option X6 is used (but not if Option X5 is also used)

The bonus for the whole of the *services* is.....
per day

If Option X7 is used (whether or not Option X5 is also used; used only with main Options A, C and E)

Delay damages for Completion of the whole of the *services* are per day.

If Option X8 is used

The *collateral warranty agreements* are

<i>agreement reference</i>	<i>third party</i>
.....
.....
.....
.....

If Option X10 is used

The *Employer's Agent* is

Name

Address

.....
.....

The authority of the *Employer's Agent* is

.....

If Option X12 is used

The Client is

Name

Address

The Client's objective is

The Partnering Information is in

If Option X13 is used

The amount of the performance bond is.....

If Option X18 is used

The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to

The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to

The *end of liability date* is years after Completion of the whole of the services.

If Option X20 is used (but not if Option X12 is also used)

The *incentive schedule* for Key Performance Indicators is in

A report of performance against each Key Performance Indicator is provided at intervals of months.

If Option Y(UK)1 is used and the *Employer* is to pay any charges made and is paid any interest paid by the *project bank*

The *Employer* is to pay any charges made and is paid any interest paid by the *project bank*.

If Option Y(UK)3 is used

term	person or organisation
.....
.....
.....
.....

If Options Y(UK)1 and Y(UK)3 are both used

term	person or organisation
------	------------------------

The provisions of Option Y(UK)1 Names Suppliers

If Option Z is used

The *additional conditions of contract* are

.....

Applicable Z Clauses are set out following Section Part 2 herein

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.

Statements given in all contracts

The *Consultant* is

Name

Address.....

.....

.....

The *key people* are

(1) Name

Job.....

Responsibilities.....

Qualifications

Experience.....

(2) Name

Job.....

Responsibilities.....

Qualifications

Experience.....

The *staff rates* are

name/designation	rate
------------------	------

.....

.....

The following matters will be included in the Risk Register

.....

.....

.....

.....

Optional statements **If the *Consultant* is to decide the *completion date* for the whole of the *services***

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

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

If the *Consultant* states any *expenses*

The *expenses* stated by the *Consultant* are

Item	amount
.....
.....

If the *Consultant* requires additional access

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

access to	<i>access date</i>
.....
.....

If Option A or C is used

The *activity schedule* is

The tendered total of the Prices is

If Option G is used

The *task schedule* is

If Option Y(UK)1 is used

The project bank is

named Suppliers are

Z- Clauses

Clause Z1 Corrupt practices

Z1.1 The *Consultant* provides the Services in a way which does not constitute any corrupt practice and in particular the *Consultant* agrees not to:

offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or

enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on its behalf or to its knowledge.

Z1.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations.

Clause Z2 Not used

Clause Z3 Recovery of sums due from *Consultant*

Z3.1 The *Consultant* agrees that when, under the contract, any sum of money is recoverable from or payable by the *Consultant* such sum may be 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 Her Majesty's Government.

Clause Z4 Assignment

Z4.1 The *Consultant* will not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.

Z4.2 If requested by the *Employer*, the *Consultant* will execute an agreement to novate the benefit and burden of any Time Charge Order or Package Order to another Department or Office of Her Majesty's Government, a local authority or another public body exercising similar functions.

Clause Z5

Discrimination

Z5.1 The *Consultant* does not discriminate directly or indirectly against any person contrary to the Equality Act 2010 or any amendment or re-enactment of that Act from time to time (the “Equality Act”).

Z5.2 The *Consultant* co-operates where possible in providing the *Services* with and assists the *Employer* to satisfy its duty under the Equality Act to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups, and between disabled people and other people.

Z5.3 The *Consultant* ensures it and each of its employees or *Sub-Suppliers*, *Sub-consultants* providing the *Services* complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Equality Act in connection with this contract and:

provides any information requested by the investigating body, court or tribunal in the timescale allotted;

attends (and permits a representative from the *Employer* to attend) any associated meetings;

allows access to any relevant documents and information and co-operates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Equality Act resulting from any act or omission of the *Consultant*. The *Consultant* indemnifies the *Employer* against any claims, actions or damages brought against the *Employer* in connection with any act or omission of the *Consultant* or its employees, *Sub-suppliers* or *Sub-consultants* in relation to the Equality Act.

Z5.6 The *Consultant* includes in the conditions of contract for each *Sub-Supplier* and *Sub-consultant* obligations substantially similar to those set out above.

Clause Z6

Disclosure of information

Z6.1 The *Consultant* acknowledges that the *Employer* may receive requests for the disclosure of information relevant to the *Consultant* and the Contract and that the *Employer* may be obliged to disclose information (including commercially sensitive information) pursuant to such a request. The *Employer*, where practicable, consults with the *Consultant* before disclosure in accordance with the relevant Code of Practice. Where the *Employer* sends a notification of a Disclosure Request the *Consultant*, responds promptly and in any event within any deadline set by the *Employer*. The *Consultant* acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.

Z6.2 The *Consultant* co-operates with any request from the *Employer* for information in its possession relating to this Contract (whether or not it was generated by the *Consultant*) and assists and co-operates with the *Employer* to enable a Disclosure Request to be concluded within the time limits set out in the relevant legislation.

Z6.3 The *Consultant* promptly passes a Disclosure Request which it receives to the *Employer*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.

Z6.4 A Disclosure Request is a request for information relating to this Contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

Z6.5 The *Consultant* acknowledges that the *Employer* is obliged to publish the provisions of this Contract, including Package Orders and Time Charge Orders, in accordance with the Cabinet Office's Efficiency Reform Group Transparency - Publication of New Central Government Contracts of December 2010, or any later revision, except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Employer* has the final decision. The *Consultant* co-operates with and assists the *Employer* to publish this Contract, Package Orders and Time Charge Orders in accordance with the *Employer's* obligation.

Clause Z7

Conflict of interest

Z7.1 The *Consultant* is required to consider all potential Conflict of Interests relating to the delivery of required Services and they must not take an action which would cause a conflict of interest to arise in connection with this Contract. The *Consultant* notifies the

Employer if there is any uncertainty about whether a conflict of interest may exist or arise.

Z7.3 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations.

Clause Z8 Official Secrets Acts

Z8.1 The *Consultant* advises its employees and any *Sub-consultants* of how the Official Secrets Acts 1911 to 1989 apply to them during and after performance of the Services.

Z8.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations.

Clause Z9 Sub-Contracting

Z9.1 The *Consultant* includes in the contract for each subcontract a period for payment to the *Sub-Consultant* which is no greater than 30 days from receipt of an invoice issued in accordance with that contract, and any term in the subcontract to the contrary would not apply.

Clause Z10 Data protection

Z10.1 (1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.

(2) Personal Data is information collected by the *Consultant* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified from that information or from that information combined with other details in (or likely to come into) the possession of the *Employer*.

Z10.2 For the purposes of this contract and the Data Protection Acts the *Employer* is the Data Controller and the *Consultant* is the Data Processor.

Z10.3 The *Consultant* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this Contract.

Z10.4 The *Consultant* has in place for as long as it holds the Personal Data appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and adequate security programmes and procedures to ensure that unauthorised persons do not have access to the

Personal Data or to any equipment used to process the Personal Data.

Z10.5 The *Consultant* immediately notifies the *Employer* if it receives a request from any person whose Personal Data it holds to access that Personal Data or a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.

Z10.6 The *Consultant* assists and co-operates with the *Employer* in relation to any complaint or request received, including providing full details of the complaint or request, complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and promptly providing the *Employer* with any Personal Data and other information requested by him.

Z10.7 The *Consultant* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.

Z10.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z10.9 The *Consultant* does not process the Personal Data outside the European Economic Area without the agreement of the *Employer*. Where the *Employer* agrees, the *Consultant* complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the Eighth Data Protection Principle set out in Schedule 1 to the Data Protection Act 1998.

Clause Z11

Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

Z11.1 The *Consultant* provides to the *Employer* within 10 days of the *Employer's* request such information in connection with TUPE as the *Employer* may require. The *Consultant* promptly notifies the *Employer* of any later change to information provided by it.

Z11.2 The *Consultant* acknowledges that the *Employer* 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 *Employer* 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).

Z11.3 During the 8 month period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Employer* 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 Services.

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

Z11.4 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

Z11.5 The *Consultant* complies with, and ensures that any *Sub-consultant* 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 Her Majesty's Government.

Clause Z12

Merger, take-over or change of control

Z12.1 The *Consultant* notifies the *Employer* if a Change of Control of the *Consultant* has occurred or is expected to occur. The *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with its obligations if the Change of Control will not allow the *Consultant* to Provide the Services.

Change of Control means an event where any single person, or group of persons acting in concert, acquires control of the *Consultant* or any direct or indirect interest in the relevant share capital of the *Consultant*, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the *Consultant*.

Z12.2 The *Consultant* notifies the *Employer* immediately of 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 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*.

Z12.3 The *Consultant* notifies the *Employer* of any change, or proposed change in the name of or status of the *Consultant*.

Clause Z13

Audit by Comptroller and Auditor General

Z13.1 The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any *Sub-consultant*.

Z13.2 The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary.

Z13.3 This clause does not constitute a requirement or agreement for the purposes of section 6(3) (d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant*.

Clause Z14

Appointment of *Adjudicator*

Z14.1 The *Adjudicator's* appointment under the NEC3 *Adjudicator's Contract* (June 2005) 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 Agreement."

Clause Z15 and Z16 Not used

Clause Z17

Confidentiality

Z17.1 Clause 70.3 is deleted and replaced by the following.
The *Consultant* keeps (and ensures that its employees and *Sub-consultants* keep) confidential and does 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 Services except that the *Consultant* may disclose information to its legal or other professional advisers to its employees and *Sub-consultants* as needed to enable the *Consultant* to provide the Services 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 *Employer* and takes full account of the *Employer's* views about whether (and if so to what extent) the

information should be disclosed, which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, 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 *Employer*.

Clause Z18 Not used

Clause Z19 and Z20 Not used

Clause Z21 Termination by the *Employer*

Z21.1 The *Employer* may terminate the *Consultant's* obligation to provide the Services under a Package Order for a reason not stated in this Contract by notifying the *Consultant*.

Z21.2 If the *Employer* terminates the *Consultant's* obligation to provide the Services under a Package Order for a reason not stated in this Contract, an additional amount is due on termination which is 5% of the difference between the forecast of the final total of the Prices for the Services in the Package Order in the absence of termination and the amount due on termination for the Services in the Package Order excluding the additional amount.

Clause Z22 Not used

Clause Z23 Not used

Clause Z25 Not used

Clause Z26 Retention of Information

Z26.1 The *Consultant* retains information obtained or prepared for this Contract for a period of six (6) years following Completion. When requested by the *Employer*, the *Consultant* makes this information available for inspection by the *Employer* or Others.

Clause Z27 Payment options

Only used for time based Contracts under option E

Z27.1 The *Employer* notifies the *Consultant* that the total of the Prices are treated as a lump sum price or as a target price.

Z27.2 The Prices are reduced where the *Employer* notifies it as a target price if there is a compensation event, the effect of the compensation event is to reduce the total Time Charge, and the event is a change to the Scope rather than a change to the Scope which the *Consultant* proposed and the *Employer* accepted, or a correction of an assumption stated by the *Employer* for assessing an earlier compensation event.

Z27.3 The *Employer* assesses the *Consultant's* share of the difference between the total of the Prices and the Price for Services provided up to the assessment then

the *Consultant* is paid its share of the saving where the Price for Services Provided to Date is less than the total of the Prices, The *Consultant* pays its share of the excess where the Price for Services Provided to Date is greater than the total of the Prices.

The *Employer* adds the *Consultant's* share to the amount of money due to the *Consultant* on termination if there has been a saving or deducted if there has been an excess.

Z27.3 The *Employer* forecasts the final Price for Services and the final total of the Prices. The *Employer* then makes a preliminary assessment of the *Consultant's* share at Completion of the whole of the Services. The *Employer* includes this share in the amount due following Completion of the whole of the Services.

Z27.4 Where there is a termination, the *Employer* assesses the *Consultant's* share, using as the Price for Services Provided to termination, the total of the Time Charge which the *Consultant* has paid and which he is committed to pay for work done before termination.

Clause Z28
The following is
added to 13.2

Communications

Z28.1 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 Z29
To be added to
18.1

Prevention

Z29.1 Until the *Employer* acknowledges through such an instruction that the Contract can no longer be performed, the *Consultant* will use reasonable endeavors to continue to perform the Contract.

Clause Z30

Rights to Material

'Background Material' means discoveries, inventions, designs, drawings, works, know-how and information which have been used in producing the Results and any Intellectual Property Rights which are owned by or licensed to the *Consultant*;

'Consultant Mark' means a trade mark owned by the

Consultant, which the *Consultant* uses, or has used, in connection with the supply of the Results;

'Crown' means any Department of Her Majesty's Government, as defined by the Department;

'Department Mark' means a trade mark owned by the Department or the Crown;

'Intellectual Property Rights' means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case it includes these rights and interests in every part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement;

'Nominee' means a person nominated by the Department in accordance with Condition Z30.17 of these Intellectual Property Conditions to manufacture the Results;

'Project Mark' means any trade mark that (i) is not a Consultant Mark or a Department Mark, and (ii) is used in, or arises out of, the performance by the *Consultant* of the Contract;

'the Results' means anything made, derived from or arising out of the performance by the *Consultant* (or any *Sub-consultant*) of the Contract, including all reports, documents, computer software and software code, drawings, specifications, items, materials, works, know-how and data;

"*Employer*" means the Crown for the purposes of vesting of Intellectual Property Rights, Department Marks and Copyright.

Ownership of Intellectual Property Rights

Z30.1 All Intellectual Property Rights (including Copyright) in or arising from the Results vest in the *Employer*. If any Intellectual Property Rights in or arising from the Results vest in the *Consultant*, the *Consultant*, at the *Employer's* request, assigns those Intellectual Property Rights to the

Employer.

Z30.2 Nothing in the Contract obliges the *Employer* to assign or license to the *Consultant* any Intellectual Property Rights (i) belonging to any third parties, or (ii) existing at the date of this Contract and which at that date are owned by the *Employer* or any third party as appropriate.

Use and publication of the Results

Z30.3 The *Consultant* does not use, publish, or authorise or allow anyone else to use or publish the Results without the prior written permission of the *Employer* which shall not be unreasonably withheld. If the *Employer* gives the *Consultant* permission to use or publish the Results, the *Consultant* complies with any terms of use or publication specified by the *Employer*.

Z30.4 All Results that comprise reports and that are prepared for publication by the *Consultant* under this Contract carry the following disclaimer:

'This report has been produced by [name of Consultant] under a contract with the Department for Transport. Any views expressed in this report are not necessarily those of the Department for Transport.'

Z30.5 The *Employer* is entitled to use, reproduce, publish, modify, adapt, enhance and otherwise deal with the Results or any part of them for any purpose (including the right to grant third party licences), whether in connection with the Contract or otherwise, and without limitation.

Z30.6 The *Employer* determines whether the Results shall be published and, if so, on what terms.

Z30.7 Nothing in the Contract diminishes any Crown Copyright or any other rights which would apart from the Contract vest in the *Employer*.

Z30.8 At the request of the *Employer* the *Consultant* provides the *Employer* or any nominated person with a reasonable number of copies of the Results.

Z30.9 The *Employer* may undertake or request the *Consultant* or a third party to undertake further work in connection with the Results or any part of the Results ("Further Development").

Z30.10 Where there is Further Development the *Consultant* will

Z30.10.1 Use reasonable endeavours to assist the third party and

Z30.10.2 grant to the third party all licences necessary to enable the third party to manufacture and supply any items made in connection with, derived from or arising out of the further development. Those licenses will be irrevocable, perpetual, worldwide and royalty free.

Z30.11 The Intellectual Property Rights in Further Development vests in the *Employer*.

Background Material

Z30.12 The *Consultant* retains ownership of all Background Material and Intellectual Property Rights (including any licences) in those materials owned by the *Consultant* at the date of the Contract.

Z30.13 The *Consultant* grants to the *Employer* a perpetual, worldwide, royalty-free, non-exclusive licence to use, modify, adapt, develop and enhance the background Material in connection with the *Employer's* use of the Results. If any Intellectual Property Rights in the Background Material belong to a third party, the *Consultant* does not breach the Intellectual Property Rights of that third party and uses reasonable endeavours to procure an equivalent licence from that third party for the benefit of the *Employer*.

Z30.14 If the *Consultant* is itself a licensee of any Background Material, it grants to the *Employer* an authorised sub-licence, to use and maintain the relevant material. The *Employer* has the right under the sub-licence to transfer, novate or assign the benefit of the sub-licence to other Ordering Authorities, the replacement *Consultant* or to any other third party supplying services to the *Employer*.

Z30.15 The *Consultant* obtains at its own expense any licences from third parties necessary in order for it to fulfill its obligations under this provision and the Contract.

Computer code

Z30.16 To the extent that the Results comprise computer software code the *Consultant* shall at the request of the

Employer enter into a source code escrow agreement with NCC Group plc (or any other source code deposit agency agreed between the parties) permitting the *Employer* to have access to the source code for the purpose of maintaining and developing the Results if the *Consultant* fails or is unable to comply with its obligations to do so, whether those obligations arise under this Contract or any other agreement between the parties.

Manufacture of Results

Z30.17 At the request of the *Employer* the *Consultant*:

- (a) grants to any third party nominated by the *Employer* (a “Nominee”) a non-exclusive licence to enable that Nominee to manufacture the Results and
- (b) provides to such a Nominee a reasonable number of copies of the Results.

Z30.18 Where manufacture of the Results by a Nominee involves the use of Background Material, at the request of the *Employer* and to the extent that its rights in or ownership of the Intellectual Property Rights in Background Material permit it to do so the *Consultant* grants the Nominee a non-exclusive licence to use, modify, adapt and enhance the Background Material for the purposes of such manufacture. The *Consultant* uses best endeavors to procure an equivalent licence from the relevant third party for the benefit of the Nominee in relation to any of those materials for which the Intellectual Property Rights is owned by a third party.

Z30.19 Any licence granted in accordance with Conditions Z30.17 and Z30.18 of these Intellectual Property Conditions shall be on fair and reasonable terms.

Trade marks

Project Marks and Department Marks

Z30.20 All Project Marks, and all Intellectual Property Rights in them, vest in the *Employer*. The *Consultant* reimburses the *Employer* for all costs and expenses (including legal costs) the *Employer* incurs in seeking to register any Project Marks.

Z30.21 The *Employer* grants the *Consultant* a worldwide, royalty-free, non-exclusive licence to use the Project Marks in connection with the performance of the Contract for its duration.

Z30.22 The *Consultant* uses any Department Mark or any Project Mark only to the extent licensed to do so by the *Employer*, and the *Consultant* does not use any trade mark that is similar to any Department Mark or to any Project Mark.

Z30.23 The *Consultant* does not apply for, or obtain, registration of any Department Mark or any Project Mark or of any trade mark that is similar to any Department Mark or any Project Mark for any goods or services anywhere in the world.

Z30.24 The *Consultant* does not do, or omit to do, anything to diminish the rights of the *Employer* in any Department Mark or any Project Mark.

Z30.25 Any goodwill deriving from the use by the *Consultant* of a Department Mark or a Project Mark. The *Employer* may call for a confirmatory assignment of that goodwill and the *Consultant* shall immediately execute it.

Consultant Marks

Z30.26 The *Consultant* grants the *Employer* a perpetual, worldwide, royalty-free, non-exclusive licence to use the Consultant Marks in connection with the Results.

Z30.27 The *Employer* complies with reasonable directions notified to it by the *Consultant* from time to time in relation to the form and manner of the application of Consultant Marks.

Z30.28 The *Employer* does not apply for, or obtain, registration of any Consultant Mark for any goods or services anywhere in the world.

Z30.29 The *Employer* does not do, or omit to do, anything to diminish the rights of the *Consultant* in any Consultant Mark.

Z30.30 Any goodwill derived from the use by the *Employer* of a Consultant Mark accrues to the *Consultant*.

Consultant's obligations

Z30.31 The *Consultant* warrants to the *Employer* that none of the *Consultant's* employees, *Consultants*, *sub-consultants* and agents engaged in relation to this Contract will acquire any Intellectual Property Rights in the Results or in anything derived from or arising out of the Results.

Z30.32 The *Consultant*, at its own expense, takes all reasonable steps to ensure that the Intellectual Property Rights in the Results are adequately protected throughout the world, save where the parties agree that such protection is neither practical nor economic.

Z30.33 Where the *Consultant* acquires any Intellectual Property Rights for the purposes of fulfilling its obligations under the Contract, the *Consultant* acquires those Intellectual Property Rights on terms that enable it to perform all acts, execute any documents necessary to vest such Intellectual Property Rights in the Crown or the *Employer* to the full extent enjoyed by the *Consultant*, without any other permission, authorisation or consent.

Z30.34 Within 30 days of filing an application to protect the Intellectual Property Rights in the Results or any part of them, the *Consultant* shall provide the *Employer* with a copy of that application.

Z30.35 The *Consultant* does not assign or license, nor purport to assign or license, any Intellectual Property Rights in the Results without the prior written consent of the *Employer*.

Z30.36 The *Consultant* obtains at its own expense any licences from third parties that are necessary in order for the *Consultant* to fulfill its obligations under this Contract.

Z30.37 The *Consultant* has no authority to enter into any contractual or financial arrangements with any third party on behalf of the *Employer* or the Crown.

Z30.38 The *Consultant* monitors the existence and creation of Intellectual Property Rights (including patent applications, registered design applications and trade mark applications) owned by third parties which may be relevant to the performance of this Contract. If at any time any relevant third party Intellectual Property Rights (including anything capable of being patented or registered) come to the notice of the *Consultant* the *Consultant* shall inform the *Employer*, and the *Consultant* and the Department shall jointly consider what action, if any, is to be taken. If the parties cannot agree on what action is to be taken, the *Employer* has the right (at its option) to either:

Z30.38.1 take whatever action it sees fit (in which case the *Consultant* shall, at the request of the *Employer* but at the *Consultant's* expense, provide the *Employer* with all

reasonable assistance in connection with those third party Intellectual Property Rights); or

Z30.38.2 oblige the *Consultant* to take such action, at the *Consultant's* cost, as the *Employer* deems appropriate.

In either case the *Employer* shall be entitled to any costs and/or damages awarded in any such action.

Z30.39 The *Consultant* executes at its own expense such documents as the *Employer* requests and co-operates with and takes such actions as the *Employer* reasonably requires in order to give full force and effect to the rights granted or intended to be granted under this Contract including, but not limited to, any formal licence agreement required for the purposes of registering the licence of any such rights.

Z30.40 If the *Employer* terminates this Contract or notifies the *Consultant* of its intention to terminate this Contract (for whatsoever reason) and if the *Consultant* is requested to do so by the *Employer*, the *Consultant* grants to any third parties nominated by the *Employer* a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence to use, reproduce, publish, modify, adapt, enhance and develop the Results for the purpose of completing the Contract.

Z30.41 No Intellectual Property Rights arising from any work undertaken by any third party engaged by the *Employer* to complete the Contract belongs to the *Consultant*.

Breach of Intellectual Property Rights

Z30.42 The *Consultant* fully indemnifies the *Employer* against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights by or on behalf of the *Consultant* in the performance of the Contract, provided that such infringement is not knowingly caused by or materially contributed to by any act of the *Employer*. This indemnity covers claims concerning an actual or alleged infringement by the *Employer* if the infringement arises as a consequence of any actual or alleged infringement of an Intellectual Property Right by or on behalf of the *Consultant*.

Z30.43 The *Consultant* and the *Employer* notify the other

party of any Intellectual Property Rights claim and keep the other party informed of developments. The *Consultant* seeks the *Employer's* prior consent to any proposed settlement of any claim, which will not be unreasonably withheld. The *Employer* does not do anything which unreasonably affects such a settlement.

Z30.43 The *Consultant* negotiates and litigates any breach of Intellectual Property Rights claim in respect of Background Materials. The *Consultant* takes account of the *Employer's* interest in such proceedings and consults the *Employer* on substantive issues.

Z30.44 The *Consultant* uses best endeavours to avoid or rectify any Intellectual Property Rights claim by:

Z30.44.1 modifying any or all of the Services, without reducing performance or functionality, provided that the provisions herein shall apply mutates mutandis to such modified or substituted Services; or

Z30.44.2 procures a licence to use and supply the Services, which are the subject of the Intellectual Property Rights Claim, on terms which are acceptable to the *Employer*.

Clause Z31

Property

Z31.1 Where the *Employer* issues Property free of charge to the *Consultant* such Property shall be and remain the property of the *Employer* and the *Consultant* irrevocably licences the *Employer* and its agents to enter upon any premises of the *Consultant* during normal business hours on reasonable notice to recover any such Property. The *Consultant* does not have a lien or any other interest on the Property and the *Consultant* at all times possesses the Property as fiduciary agent and bailee of the *Employer*. The *Consultant* takes all reasonable steps to ensure that the title of the *Employer* to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-consultants and other appropriate persons and, at the *Employer's* request, stores the Property separately and ensures that it is clearly identifiable as belonging to the *Employer*.

Z31.2 The Property is deemed to be in good condition when received by or on behalf of the *Consultant* unless the *Consultant* notifies the *Employer* otherwise within 5 Working Days of receipt.

Z31.3 The *Consultant* maintains the Property in good order and condition (excluding fair wear and tear), and uses the Property solely in connection with the Order and for no other purpose without prior Approval.

Z31.4 The *Consultant* ensures the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the *Employer's* reasonable security requirements as required from time to time.

Z31.5 The *Consultant* is liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the *Employer's* Default. The *Consultant* shall inform the *Employer* within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

Clause Z32
To be added to
90

Termination

Z32.1 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.