Drafting for voluntary ex-ante notice

1. North London Waste Authority ("**NLWA**") is effecting certain modifications to its contract for the construction of a new energy from waste facility ("**the Contract**") entered into with Acciona Industrial SA ("**Acciona**"). The Contract is subject to the Public Contracts Regulations 2015 ("**the PCR 2015**").

2. The Contract provided that Acciona and its sub-contractors would be required to comply with the National Agreement for the Engineering and Construction Industry ("**NAECI**"). As a result of the United Kingdom's exit from the European Union and other unforeseen changes in the labour market, the NAECI terms have contributed to significant delays and cost increases. A number of significant disputes related to the Contract have also arisen between NLWA and Acciona, which have been subject to arbitration; and which NLWA summarises as follows:

   (i) **The NAECI/Social Value dispute –** Acciona alleged that the imposition of the NAECI terms and certain terms requiring it to provide apprenticeships, employment opportunities for local residents and equality and diversity training for its personnel was a breach by NLWA of s. 17 of the Local Government Act 1988.

   (ii) **The Administration Design dispute -** Acciona alleged that NLWA had issued instructions varying the administration building architectural design which caused delay, disruption and additional costs and that entitled it to an extension of time and/or an increase in the Contract price.

   (iii) **The Steam Turbine dispute –** Acciona alleged that NLWA wrongly rejected its proposed design for a demountable steam turbine "hood" which caused delay, disruption and additional costs and that entitled it to an extension of time and/or an increase in the Contract Price.

   (iv) **The Stay dispute –** NLWA and Acciona entered into a stay agreement between June 2024 and January 2025. Acciona alleged that it was entitled to a substantial increase in the Contract Price and/or damages as a result of the stay agreement.

(together, "**the disputes**").

3. Acciona's claimed quantum in respect of the disputes was stated to be £572,234,040. Litigating and resolving the disputes would: (i) be likely to require a number of years, (ii) require significant expenditure on legal costs, (iii) be likely to perpetuate and/or cause further delays in the implementation of the Contract, and (iv) give rise to significant uncertainty and risk as to outcome.

4. NLWA and Acciona have engaged in without prejudice negotiations to seek to resolve the disputes and agree a basis on which the Contract can successfully be implemented and have agreed that the Contract should be modified. A copy of the modifications and related commercial terms ("**the Modification**") is appended to this notice and all suppliers and/or third parties who may consider that they have an interest in relation to the Contract and/or the modifications should consider the detailed terms of that document.

5. The modifications, and related commercial terms, may be summarised as follows:

   (i) An increase in the Contract Price, as against the original Contract Price (which has since increased under the terms of the Contract on account of indexation and to reflect the contractual pass through of increases in NAECI rates and allowances), of c. £450,660,434. Acciona is to take the contractual risk of price indexation and increases in NAECI rates and allowances going forward.

   (ii) Acciona being granted an extension of time to 31 December 2029.

   (iii) Acciona being provided with relief from Liquidated Damages until the date that is six months after the Date for Take Over (currently, as above, to be 31 December 2029 although this date may be further extended in accordance with the Contract).

   (iv) Changes to Schedule 19 (Terms of payment) to facilitate claims assessment and explain how costs are to be evidenced and how changes to the Contract Price are to be effected in respect of various matters.

   (v) Changes to the contractual terms which reduce NLWA's contractual rights to intervene in respect of the manner in which Acciona provides the Works.

   (vi) The deletion of sub-Clause 28.6A of the Contract, which relates to the potential risk to NLWA for delay and consequential cost compensation arising from that delay as it relates to the In Scope NAECI Activities, in respect of industrial disputes, un-procedural actions of the Unions or actions of any employees or

works of the Contractor or their Subcontractors (whether acting under the direction of the Unions or independently) or falls in productivity attributable to the NAECI. Acciona will assume contractual risk in relation to NAECI and will no longer be entitled to claim additional time or costs in connection with industrial disputes, un-procedural actions or falls in productivity in the In Scope NAECI Activities which are attributable to those works being subject to NAECI.

(vii) The settlement of the disputes.

6. The Modification complies with reg. 72 of the PCR 2015 and, specifically, is not substantial within the terms of reg. 72(8) of the PCR 2015. Without prejudice to the generality of the foregoing:

(i) The Modification does not make the nature of the Contract materially different.

(ii) The Modification would not have allowed for the admission of different candidates, the acceptance of a different tender or attracted additional participants. NLWA notes that Acciona was the only tenderer that submitted a final tender in the procurement related to the Contract.

(iii) The Modification does not change the economic balance of the Contract in Acciona's favour having regard, *inter alia*, to: (a) the UK's exit from the EU and its commercial consequences, (b) the disputes, (c) the existing contractual terms of the Contract, and/or (d) the settlement terms.

(iv) The Modification does not considerably extend the scope of the Contract.

(v) The Modification does not cause a replacement of the contractor.

7. The Contract is voluminous. Many of the Contract documents are not proposed to be modified by the Modification and are considered by NLWA to be irrelevant to the Modification, such as certain Contract Schedules and technical documents within, or referred to within, Contract Schedules that are not proposed to be modified by the Modification.

8. As referred to at paragraph 4 above, appended to this notice are the following Contract documents that NLWA has assessed are relevant to the Modification:

(i) Heads of Terms between Acciona and NLWA dated 20 July 2026;

(ii) Draft Settlement and Variation Agreement (No. 3) between Acciona and NLWA including Schedules 1 to 4;

(iii) Agreement (forming part of the Contract) between Acciona and NLWA dated 24 January 2022;

(iv) Draft Special Conditions (incorporating the Modification) to the Model Form of Contract amending the General Conditions of Contract of the IChemE Form of Contract for Lump Sum Contracts, 5th Edition 2013 (the "Red Book"); and

(v) Draft amended Contract Schedules Nos 2, 7, 11, 12, 13, 14, 15, 17, 19, 24 and 25,

Contract documents (iv) and (v) are provided in redline form to show the Modification against the original Contract drafting.

9. If a reader considers that sight of some other part or section of the Contract is necessary to understand the Modification, they may contact NLWA explaining why they consider it to be necessary and to seek provision of those parts or sections. NLWA will consider any such reasonable requests and will respond.