



# **National Highways Limited**

## **NEC4 Professional Service Contract** (June 2017 with amendments January 2019, October 2020 and January 2023)

### **Contract Data** **Part 1**

in relation to a *service* for

### **National Spatial Planning Contract 2026 Lot 1 - North**

**CONTENTS AMENDMENT SHEET**

Issue No.	Revision No.	Amendments	Initials	Date
1	1	Inclusion of X29 as secondary option.	KM	12/08/25
2	2	Update Z59 to Not Used Remove optional clause X7 £20,000,000,00 amended to £20,000,000.00 Amend Contractor to Consultant (11.2(55), X20.5, Y1.5A, Z8.9, Z52.2, Z52.9, Z53.1)	KM	15/09/25

# Contract Data

## PART ONE – DATA PROVIDED BY THE CLIENT

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

### 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 with amendments January 2019, October 2020 and January 2023.

Main Option	E (as amended) as set out in the Task Schedule	Option for resolving and avoiding disputes	W2
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Secondary Options	X2, X8, X11, X18, X20 and X29, Y(UK)1, Y(UK)2, Y(UK)3 Z1 to Z106
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The <i>service</i> is	Advice to the <i>Client</i> on spatial planning issues including proposals affecting motorways and trunk roads.
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The *Client* is

Name	National Highways Limited
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Address for communications	Three Snowhill, Snow Hill Queensway Birmingham B4 6GA Registered number 09346363
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Address for electronic communications	[REDACTED]
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The *Service Manager* is

Name	[REDACTED]
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Address for communications	Brunel House 930 Hempton Court Aztec West Bristol BS32 4SR
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Address for electronic communications	[REDACTED]
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The Scope is in	PSC Scope – National Spatial Planning Contract 2026
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The <i>language of the contract</i> is	English
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The <i>law of the contract</i> is the law of	England, subject to the exclusive jurisdiction of the Courts of England
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The <i>period for reply</i> is	two weeks	except that
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The <i>period for reply</i> for	[...]	is	[...]
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The <i>period for reply</i> for	[...]	is	[...]
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The <i>period for retention</i> is	12	year(s) following Completion or earlier termination
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The following matters will be included in the Early Warning Register

Any matters related to the delivery of the scope that may cause the *Client* to miss any statutory deadlines. Any matters that may impact the quality of the service as a whole.

Early warning meetings are to be held at intervals no longer than	one month
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## 2 The *Consultant's* main responsibilities

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

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

<i>condition</i> to be met		<i>key date</i>
(1)	The <i>Consultant</i> is to be ready to deliver the full service.	18th February 2026

(2)	[...]	[...]
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(3)	[...]	[...]
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The <i>Consultant</i> prepares forecasts of the total expenses at intervals no longer than	4 weeks
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The <i>Consultant</i> prepares forecasts of the total Time Charge and expenses at intervals no longer than	4 weeks
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The <i>carbon cap</i> is	detailed in the Task Order as required
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## 3 Time

The <i>tender return date</i> is	17 September 2025
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The <i>starting date</i> is	the Contract Date.
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The *Client* provides access to the following persons, places and things

access			<i>access date</i>
(1)	N/A		[...]

(2)	[...]		[...]
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(3)	[...]		[...]
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The <i>Consultant</i> submits revised programmes at intervals no longer than	one month.
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The <i>completion date</i> for the whole of the <i>service</i> is	31 <sup>st</sup> January 2031.
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The period after the Contract Date within which the <i>Consultant</i> is to submit a first programme for acceptance is	2 weeks
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#### 4 Quality management

The period after the Contract Date within which the <i>Consultant</i> is to submit a quality policy statement and quality plan is	4 weeks
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The period between Completion of the whole of the <i>service</i> and the <i>defects date</i> is	13 weeks
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The *threshold level* is 25 Quality Management Points.

The *quality table* is:

Failure	Quality Management Points (QMPs)	Period of effect
Failure to appoint a suitable quality manager or to replace the quality manager when instructed by the <i>Service Manager</i> .	25	Until evidence confirms that failure corrected
Failure to have a complete quality plan in place and operating.	25	Until evidence confirms that failure corrected
The quality plan does not comply with the requirements of the contract.	10 per failure	Until evidence confirms that failure corrected
Failure to identify a Nonconformity.	5 per failure	6 months
Failure to raise a Nonconformity report for an identified Nonconformity. <i>(see note 1 below)</i>	10 per failure	Until evidence confirms that failure corrected
Failure to raise a Corrective Action plan after raising a Nonconformity report. <i>(see note 1 below)</i>	10 per failure	Until evidence confirms that failure corrected
Failure to correct a Nonconformity in the time and manner set out in the Corrective Action plan. <i>(see note 1 below)</i>	10 per failure	Until evidence confirms that failure corrected
Failure to implement actions contained in an audit report. <i>(see note 1 below)</i>	5 per action	Until evidence confirms that action implemented
Failure to carry out internal audit or to carry out assurance activity.	15 per audit	Until audit carried out
Carrying out work without release of hold point.	10 per item	6 months
Failure to make records available for inspection by the <i>Client</i> .	10 per failure	Until the records are made available

Failure to allow access for <i>Client</i> audits (excluding audits of the Supply Chain Maturity Matrix (SCMM)).	10 per failure	Until access is allowed
Failure by <i>Consultant</i> to accrue Quality Management Points that should have been accrued.	The number of QMPs that should have been accrued	The period applicable to the failure that should have accrued Points
	Plus an additional number of QMPs equivalent to the QMPs that should have been accrued	6 months from the date when the additional QMPs were accrued
Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

The <i>subcontract flowdown</i> is in a document called	PSC Flowdown Document
The <i>subcontract duration threshold</i> is	50% of the time period between the <i>starting date</i> and the <i>completion date</i>
The <i>subcontract percentage threshold</i> is	20% of the total of the Prices
The <i>subcontract threshold</i> is	£100,000.00

### 5 Payment

The <i>currency of the contract</i> is the	Pound sterling (£)
The <i>assessment interval</i> is	one month

The *expenses* stated by the *Client* are

Item	amount
travel and subsistence (T&S)	payments in accordance with the <i>Client's</i> T&S document/guide.

The <i>interest rate</i> is, (unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require) is	3	% per annum (not less than 2) above the base rate of the Bank of England in force from time to time.
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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	[...]
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The <i>Consultant's share percentages</i> and the <i>share ranges</i> are				
<i>share range</i>		<i>Consultant's share percentage</i>		
less than	80	%	25	%

from (and including)	80	%	to	100	%	5	0	%
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from (and including)	100	% to (and including)	120	%	5	0	%
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greater than	120	%	25	%
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The <i>exchange rates</i> are those published in	the Financial Times
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on	the assessment date when the payment in another currency is included in the Price for Service Provided to Date.
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## 6 Compensation events

These are additional compensation events

- The *Service Manager* issues an instruction changing a Task Order.

- The *Consultant* receives the Task Order after the *starting date* stated in the Task Order.
- A Task Completion Date is later than the Completion Date.
- The *Service Manager* give an instruction correcting a mistake in the Task Schedule which arises from an ambiguity or inconsistency in or between the documents which are part of the contract.

## 8 Liabilities and insurance

These are additional *Client's* liabilities

(1)	N/A
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The *Consultant* provides the insurances in accordance with the requirements in Annex B to this Contract Data.

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are stated in Annex B to this Contract Data.

The *Client* provides these insurances as stated in Annex B to this Contract Data.

The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to	[twenty million pounds (£20,000,000.00) excluding any tax (or equivalent) which the law requires the <i>Client</i> to pay]
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## Resolving and avoiding disputes

The <i>tribunal</i> is	arbitration
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The <i>arbitration procedure</i> is	The Chartered Institute of Arbitrator' Arbitration Rules (2000)
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The place where arbitration is to be held is	London
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The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

the President for the time being of the Chartered Institute of Arbitrators or his nominee
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The *Senior Representatives* of the *Client* are

Name (1)	██████████ National Highways Dispute Resolution Lead
Address for communications	Three Snowhill, Queensway, Birmingham, B4 6GA
Address for electronic communications	████████████████████ ██████
Name (2)	To be confirmed at Contract Award
Address for communications	To be confirmed at Contract Award
Address for electronic communications	To be confirmed at Contract Award

The *Adjudicator* is

Name	is the person chosen by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators
Address for communications	12 Bloomsbury Square, London, WC1A 2LP
Address for electronic communications	██████████
The <i>Adjudicator nominating body</i> is	The Chartered Institute of Arbitrators

**X1: Not Used**

**X2: Changes in the law**

The *law of the project* is

England, subject to the jurisdiction of the Courts of England.

**X 5: Not Used**

**X6: Not Used**

**X7: Not Used**

**X8: Undertakings to Others**

The *undertakings to Others* are

provided to

Incoming Consultant or replacement consultant (at any stage of remoteness from the *Client*).

[...]

**X10: Not Used**

**X12: Not Used**

**X13: Not Used**

**X18: Limitation of liability**

The *Consultant's* liability to the *Client*, except for excluded matters, for indirect or consequential loss is limited to

ten million pounds (£10,000,000.00) excluding any tax (or equivalent) which the law requires the *Client* to pay

The *Consultant's* liability to the *Client*, except for excluded matters, for Defects that are not found until after the *defects date* is limited to

ten million pounds (£10,000,000.00) excluding any tax (or equivalent) which the law requires the *Client* to pay

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

### X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in

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

months

### X29: Climate Change

The *performance table* is in

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

The period after the Contract Date within which the *Consultant* is to submit a first climate change plan for acceptance is

### Y(UK)1: Not Used

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

Term

*beneficiary*

the contract	The Secretary of State for Transport
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### Contract Data entries relating to Z Clauses

Z54	The <i>extension period</i> is	three (3) years

Z100 the *index* is the EARN01 Average Weekly Earnings excluding bonuses excluding arrears (seasonally adjusted) Tab 5. AWE Regular Pay Index, Column K54P, Finance and Business Services, published by the Office for National Statistics.  
The *base date* is [...]¹

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### Z: Additional conditions of contract

The *additional conditions of contract* are clause Z1 to Z106.

¹ Note to tenderer the month inserted here will be the latest month prior to the tender submission date which has firm/confirmed *index* value.

<b>Z Clause Contents</b>	
<b>Number</b>	<b>Title</b>
Z1	Changes to Core and Secondary Option clauses
Z2	Not Used
Z3	Recovery of sums due from the <i>Consultant</i> .
Z4	Assignment and transfer
Z5	Not used
Z6	Adjudication
Z7	Termination – Procurement Act 2023
Z8	Subcontracting
Z9	Not used
Z10	Joint ventures
Z11	Parent Company Guarantee, other Sureties and financial distress
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non – Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>service</i> from the Scope
Z18	Corruption or loss of data
Z19	Conflict of Interest
Z20	Other amounts to be paid by the Consultant
Z21– Z49	Not used
Z50	Not used
Z51	Not used
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z53	Pensions
Z54	Extension to the Completion Date
Z55	Not used
Z56	Not used
Z57	Infrastructure Act 2015
Z58	Revisions to Quality Submission
Z59	Not used
Z60	Tax Arrangements of appointees
Z61	Not Used
Z62 – Z99	Not used
Z100	Indexation
Z101	The accounting periods
Z102	Tasks
Z103	Liability for materials prepared by the <i>Consultant</i> previously
Z104	Liability for impacts on the Severn River Crossings
Z105	Payment options
Z106	Activation of secondary Option Y(UK)1

**Z1 Changes to core and Secondary Option clauses**

11 Identified and defined terms

11.2 Add the following defined terms

(24) Alternative Guarantee is an alternative form of guarantee or security (including on demand bonds) to a Parent Company Guarantee agreed by the *Client* prior to the Contract Date or the *Service Manager* on or after the Contract Date.

(25) Associated Company is any of

- a Consortium Member or
- any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Consultant* or a Consortium Member.

(26) Associated Person means a person that the *Consultant*, Consortium Member, subcontractor or subsubcontractor, as the context requires, is relying on in order to satisfy

- for the *Consultant* or a Consortium Member, the conditions of participation “Procurement Act 2023” section 22(8) (see link in Scope **Annex 02**), but not a person who is to act as guarantor as described in the “Procurement Act 2023” section 22(9) or
- for a subcontractor or subsubcontractor,
  - the conditions of participation in the competition for such subcontract or subsubcontract or
  - the performance or delivery of such subcontract or subsubcontract.

(27) Business Day means a day other than a Saturday, Sunday, public holiday and a bank holiday, on which clearing banks are open for non-automated commercial business in the City of London.

(28) Carbon Cap is the *carbon cap* unless later changed in accordance with the contract.

(29) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Consultant* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more

than 25% of) the relevant share capital of the *Consultant* or a Consortium Member.

- (30) Climate Change Plan is the climate change plan or is the latest climate change plan accepted by the *Client*. The latest climate change plan accepted by the *Client* supersedes previous Climate Change Plans.
- (31) Climate Change Requirements are the requirements relating to climate change stated in the Scope.
- (32) Community Partner is an organization (other than the *Consultant*) engaged by the *Client* to provide services in relation to the contract.
- (33) Connected Person is a connected person as defined in the “Procurement Act 2023”, schedule 6 mandatory exclusion grounds part 1 offences, paragraph 45 (see link in Scope **Annex 02**).
- (34) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company.
- (35) Consultant Employee means any person employed or engaged or formerly employed or engaged by the *Consultant* or any of its subcontractors (at any stage of remoteness from the *Client*) in Providing the Service.
- (36) Contract Management Duties are the services set out in Scope section S 515.
- (37) Control has the meaning set out in section 1124 of the “Corporation Tax Act 2010” (see link in **Annex 02**).
- (38) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Consultant* or a Consortium Member or
  - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member.
- (39) Corrective Action has the meaning given in “ISO9000:2015” (see link in Scope **Annex 02**).
- (40) Credit Rating is the *credit rating* or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Consultant*, a Consortium Member or any Guarantor.
- (41) Data Protection Legislation is
- the UK General Data Protection Regulation (the

retained EU law version of the General Data Protection Regulation (EU2016/679)),

- the LED (Law Enforcement Directive (Directive (EU) 2016/680),
- the Data Protection Act 2018,
- the Privacy and Electronic Communications (EC Directive) Regulations 2003, and
- any other laws or regulations applicable in England and Wales.

(See links in **Annex 02**).

- (42) Debarment List means the list kept under the “Procurement Act 2023” section 62 (see link in Scope **Annex 02**).
- (43) Contract Management Duties are the services set out in Scope section S 515.
- (44) Demobilisation Duties are the services stated in Scope section
- (45) Demobilisation Period is the period from the day six months prior to the Completion Date to the later of
- the Completion Date,
  - the last Task Completion Date and
  - the completion of the Demobilisation Duties.
- (46) Discretionary Exclusion means the discretionary exclusion grounds that are set out in the “Procurement Act 2023” schedule 7 (see link in Scope **Annex 02**).
- (47) The Discrimination Acts is the “Equality Act 2010” (see link in **Annex 02**) and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (48) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in “Part 7 of the Finance Act 2004” (see link in **Annex 02**) and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).
- (49) Eligible Contract is a contract entered into by a subcontractor with the *Consultant* which relates to the *service* irrespective of whether such contract is entered into prior to, on, or after the Contract Date (and including any contract which provides for call-off services, works or supply of plant and materials which are used in relation to the *service*).

- (50) Employment Liabilities means without limitation any costs, claims, demands or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred as a result of an indemnity or warranty given or to be given by the *Client*, the *Consultant*, an Incoming Consultant or an Incoming Consultant Subcontractor).
- (51) Enforcement Action is enforcement action brought by a regulatory authority against the *Consultant* or an Associated Company or a subcontractor (at any stage of remoteness from the *Client*) under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.
- (52) EU Reference is any European Union
- regulation,
  - decision,
  - tertiary legislation or
  - provision of the European Economic Area agreement
- (53) Excludable Supplier has the meaning set out in the “Procurement Act 2023” section 57(2) (see link in Scope **Annex 02**).
- (54) Excluded Supplier has the meaning set out in the “Procurement Act 2023” section 57(1) (see links in Scope **Annex 02**).
- (55) Exit Transferring Employee means any Consultant Employee who is assigned to Providing the Service whose employment (or Employment Liabilities in respect of whom) will transfer to the *Client*, an Incoming Contractor or an Incoming Contractor Subcontractor under TUPE at a relevant Transfer Date and whose name is set out in the Final Exit List and provided in accordance with clause Z52.8.
- (56) Final Exit List means the updated list of the Exit Transferring Employees provided pursuant to clause Z52.8 provided that there are no changes to the Exit Transferring Employees other than by agreement between the *Client* and the *Consultant*.
- (57) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the selection stage of the competition for the contract.

- (58) Form of Performance Security is a form of bond specified in the Scope (or such other form as the *Client* may reasonably require).
- (59) General Anti-Abuse Rule is
- the legislation in “Part 5 of the Finance Act 2013” (see link in **Annex 02**) and
  - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (60) Guarantor is any *guarantor* unless later changed in accordance with the contract.
- (61) Halifax Abuse Principle is the principle explained in the Court of Justice European Union case C-255/02 Halifax and others.
- (62) Health, Safety and Wellbeing Plans are
- a completed Supply Chain Maturity Matrix (SCMM) for the *Consultant* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM and
  - the SCMM Action Plan setting out the actions to be taken by the *Consultant* or each Consortium Member over a period of twelve months following the date of the SCMM in order to improve the scores recorded in the SCMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and the implementation of the action.
- (63) Incoming Consultant is any consultant appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Consultant*.
- (64) Incoming Consultant Subcontractor means any subcontractor (at any stage of remoteness from the *Client*) of the Incoming Consultant providing services which are fundamentally the same as any or all of the *service*.
- (65) Indemnified Claim is a matter for which the *Consultant* is liable under the contract.
- (66) Information Systems can be a combination of hardware, software, infrastructure and trained personnel organised to facilitate planning, control, co-ordination and decision making in an organization.
- (67) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those

trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

(68) IP Completion Day has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020.

(69) Key Subcontractor is

- each of the *key subcontractors*,
- any subcontractor replacing any Key Subcontractor,
- any subcontractor which in the opinion of the *Service Manager* performs a significant or critical role in Providing the Service, any subcontractor with a subcontract with a contract value in excess of the *subcontract percentage threshold* or the *subcontract threshold* excluding VAT of the total of the Prices,
- any subcontractor with a subcontract where the duration
  - between the subcontract's contract date (as defined under the subcontract) and its completion date (as defined under the subcontract) is *subcontract duration threshold* or more or
  - of the type of works, services or goods provided by the subcontract (whether delivered through the proposed subcontractor or not) is *subcontract duration threshold* or more
    - in accordance with the Accepted Programme or
    - if there is no Accepted Programme, under the *Service Manager's* assessment of the duration of the type of works or services provided by the subcontract.

(70) Licence is the document entitled "Highways England: Licence" dated April 2015 listed in **Annex 02** to the Scope.

(71) Listed Company is a company that is listed on a recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000) at the Contract Date, and remains so, that is subject to a Change of Control.

(72) Mandatory Exclusion means the mandatory exclusion grounds are set out in the "Procurement Act 2023" schedule 6 (see link in Scope **Annex 02**).

(73) Material Breach means a breach of the "Procurement Act

- 2023” (see link in Scope **Annex 02**) (including any regulation made under it) that the *Client* considers could reasonably result in a successful legal challenge under part 9 or otherwise of the “Procurement Act 2023” or any regulations made under it.
- (74) Maximum Staff Rate is the *maximum staff rate* unless later changed in accordance with the contract.
- (75) Mobilisation Duties are the services set out in Scope section S 559.
- (76) Mobilisation Period is the period from the *starting date* to the later of
- *go live date* or
  - the completion of the Mobilisation Duties.
- (77) Nonconformity has the meaning given in BS EN 9000:2015 (and includes Defects).
- (78) Off-Payroll Working Rules Costs are any and all costs, expenses, claims, demands, taxes, liabilities, losses, deductions, contributions or assessments, along with any and all related or associated penalties, fines or interest, in each case, which arise, have arisen, are imposed or are incurred under or as a result of the application of the Off-Payroll Working Rules (including as a result of any person being a "relevant person" for the purposes of section 688AA of the “Income Tax (Earnings and Pensions) Act 2003”) listed in **Annex 02** to the Scope.
- (79) Outgoing Consultant is any agent or consultant appointed by the *Client* or Others to provide services similar to the *service* during the period immediately prior to the *starting date*.
- (80) Outgoing Consultant Contract is any contract between the *Client* and the *Consultant* to provide services similar to the *service* during the period immediately prior to the *starting date*.
- (81) Pay is all emoluments and outgoings relating to employment including to
- income tax (including pay as you earn (PAYE),
  - national insurance contributions (NICs) in accordance with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs,
  - remuneration and benefits.
- (82) Parent Company Guarantee is a guarantee of the *Consultant's* performance in the form set out in the Scope

- (83) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.
- (84) Personal Data is any data relating to an identified or identifiable natural individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- (85) The Prudential Regulation Authority is a United Kingdom financial services regulatory body responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers, major investment firms and other bodies.
- (86) Potential Exit Transferring Employee is a Consultant Employee who is, at the relevant time, assigned to Providing the Service for the purposes of the application of TUPE and any person who would have been an Exit Transferring Employee had they not objected or resigned under Regulation 4(7), 4(9) or 4(11) TUPE.
- (87) Quality Management Points are points accrued by the *Consultant* in accordance with the quality table in the Contract Data.
- (88) Quality Submission is the *quality submission* unless later changed in accordance with the contract.
- (89) Quality Warning Notice is a warning given in accordance with Scope section S 542 (Quality Management Points).
- (90) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to this contract.
- (91) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (92) Relevant Tax Authority is His Majesty’s Revenue and Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.
- (93) Reputational Damage is suffered by the *Client* where
- any shareholder, director or shadow director of
    - the *Consultant*,
    - any Consortium Member,
    - any Guarantor or
    - any Controller,
  - the *Consultant*,
  - any Consortium Member,

- any Guarantor or
- any Controller

is subject to any Sanction or in the opinion of the *Client*, may cause reputational damage to the *Client*, any *Client's* shareholder or the Crown.

- (94) RIDDOR Incident is an incident occurring under any contract between
- the *Consultant* or an Associated Company or a subcontractor (at any stage of remoteness from the *Client*) and
  - the *Client* or any other person which results in death or serious injury to any worker or non-worker and for which the *Consultant*, an Associated Company or subcontractor (at any stage of remoteness from the *Client*) is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013” (see link in **Annex 02**) (or any replacement of it) or equivalent laws outside England applicable to such a contract.
- (95) Sanctions means any laws or regulations relating to economic or financial, trade, immigration or other sanctions, export controls, trade embargoes or such other restrictive measures as may from time to time be imposed administered or enforced by a Sanctions Authority.
- (96) Sanctions Authority means the United Nations, the United Kingdom’s Government or any other governmental authority (or equivalent) and in each case the respective governmental, judicial or regulatory institutions, agencies, departments and authorities, including the UN Security Council, His Majesty’s Treasury and the UK Office of Financial Sanctions Implementation and Department of International Trade.
- (97) The Secretary of State is the Secretary of State for Transport.
- (98) Staff are persons employed or engaged by the *Consultant*, an Associated Company or any subcontractor (at any stage of remoteness from the *Client*) to Provide the Services at any time.
- (99) Subcontract Flowdown Document is the *subcontract flowdown document* unless changed in accordance with the contract.
- (100) Supply Chain Maturity Matrix (SCMM) is the document formed by completing the “Supply Chain Maturity Matrix (SCMM) template” in Scope **Annex 02** of the Scope and is about measuring suppliers safety maturity.

- (101) Supply Chain Safety Leadership Group (SCSLG) is a group formed to give focus to improving safety performance across the *Client's* strategic road network through collaborative working across the supply chain where common risks exist.
- (102) Supply Chain Maturity Matrix Action Plan (SCMMAP) is the document created by the *Consultant* compiling its actions to improve its safety maturity scoring.
- (103) A Task is work within the *service* which the *Service Manager* may instruct the *Consultant* to carry out within a stated period of time.
- (104) Task Completion is when the *Consultant* has done all the work which the Task Order requires it to do by the Task Completion Date, and corrected Defects which would have prevented the *Client* or Others from using the *service* and Others from doing their work.
- (105) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.
- (106) A Task Order is the *Service Manager's* instruction to carry out a Task and includes
- a detailed description of the work in the Task
  - a priced list of the items of work in the Task and
  - the starting and completion dates for the Task.
- (107) The Task Schedule is the *task schedule* unless later changed in accordance with the contract.
- (108) Tax Non-Compliance is where a tax return submitted by the *Consultant* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012
- is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Consultant* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
  - the failure of an avoidance scheme in which the *Consultant* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
  - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related

offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

- (109) Tender Commitments are the measurable commitments contained within the Quality Submission.
- (110) Tender Commitments Register is the tender commitments contained in the Tender Commitments Register within the Quality Submission.
- (111) Tier Two Suppliers are all subcontractors who have been accepted in accordance with clause Z8 and have entered into an Eligible Contract with the *Consultant*.
- (112) The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total time appropriate to that rate properly spent on work on the contract.
- (113) Transfer Date is the relevant date or dates on which a relevant transfer for the purposes of TUPE takes effect on the expiry or termination of the contract.
- (114) Transferring Employees are employees of an Outgoing Consultant (or of a Subcontractor of an Outgoing Consultant) employed for the carrying out of work or the provision of services similar to the *service* during the period immediately prior to the *starting date*, other than employees who object to being transferred to the *Consultant*.
- (115) TUPE means the “Transfer of Undertakings (Protection of Employment) Regulations 2006” (see link in **Annex 02**).

In clause 11.2 delete definitions (6), (8), (17), (21) and (23) and replace with

- (6) A Defect is
- a Nonconformity either
    - in Providing the Services or
    - in the *services*
- in compliance with the quality plan or as the quality plan should have been if changes to the Quality Statement had been correctly implemented from the date the change should have been implemented by the *Consultant* (all as required by the contract),
- a part of the *services* which is not in accordance with the Scope or

- a part of the *services* designed by the *Consultant* which is not in accordance with the applicable law or the *Consultant's* design which the *Service Manager* has accepted.

(8) Not Used.

(17) Not Used.

(21) The Price for Service Provided to Date is the total of

- for Mobilisation Duties,
  - a proportion of the lump sum price for Mobilisation Duties stated the Task Schedule which is the proportion of the Mobilisation Period which has elapsed. The lump sum price includes for the cost of everything necessary to meet the performance requirements and service levels set out in the Scope and all other obligations under the contract for Contract Management Duties, save where otherwise expressly provided in the contract,
- for Contract Management Duties,
  - the sum of the lump sum price per month for Contract Management Duties in the Task Schedule multiplied by the number of months from the *starting date* to and including the current assessment date. The lump sum price per month includes for the cost of everything necessary to meet the performance requirements and service levels set out in the Scope and all other obligations under the contract for Contract Management Duties, save where otherwise expressly provided in the contract,
- for each Task,
  - the Time Charge for work which has been completed on time based and target cost Tasks items on the Task Schedule and
  - a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item,
- for each secondment,
  - the amount payable under each secondment agreement and
- for Demobilisation Duties,
  - the lump sum price for Demobilisation Duties in

the Task Schedule at the end of the Demobilisation Period. The lump sum price includes for the cost of everything necessary to meet the performance requirements and service levels set out in the Scope and all other obligations under the contract for Demobilisation Duties, save where otherwise expressly provided in the contract.

- (23) The Prices are
- the Time Charge for items described as time based on the Task Schedule and
  - the lump sum price in the Task Schedule for each other item.

## 12 Interpretation and the law

Delete existing clause 12.2 and replace it with

- 12.2 The contract is governed by the *law of the contract*. In the contract,
- unless the context otherwise requires, any reference which immediately before IP Completion Day is a reference to (as it has effect from time to time)
    - any EU References which are to form part of domestic law by application of section 3 of the “European Union (Withdrawal) Act 2018” (see link in **Annex 02** of the Scope) and are read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time and
    - any European Union
      - institution,
      - authority or
      - other such body
- is read on and after IP Completion as a reference to the United Kingdom institution, authority or body to which its functions are transferred,
- the words
    - “includes” or “including” are construed without limitation and
    - “other”, “in particular”, “for example” and

similar words do not limit the generality of the preceding words and are construed as if they are immediately followed by the words “without limitation”,

- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to persons or organisations
  - include bodies corporate, unincorporated associations, partnerships and any other legal entity and
  - includes any replacement person or organisation.

14            *The Service Manager*

Add new clause 14.6

14.6            When a third party has entered a collaboration agreement with the *Client* and the *Consultant*, the third party may replace the person fulfilling the role of the *Service Manager* for Task Orders placed by the third party after notifying the *Consultant* and the *Client*.

**2                The Consultant’s main responsibilities**

**20              Providing the Service**

Delete existing clauses 20.2 and 20.3 and replace it with

20.2            “The *Consultant*’s obligation is to use the skill and care expected of a qualified, experienced and competent member of its profession providing professional services in connection with services of equivalent type size and complexity to the *service*.”

20.3            “The *Consultant* is not liable for a Defect as far as it proves that it used the skill and care that would be expected of a qualified, experienced and competent member of its profession providing professional services in connection with works and services of equivalent type size and complexity to the *service*.”

20.5            In line 1 of clause 20.5 delete “Defined Cost” and insert “Time Charge”.

**23 Subcontracting**

In clause 23.3 insert an additional bullet point after “A reason for not accepting the subcontract documents is that”

- they do not include all the provisions regarding subcontracts specified in the Scope.

**25 Assignment**

Delete clause 25.

**26 Disclosure**

Delete clause 26.

**50 Assessing the amount due**

Delete clause 50.5 and replace it with

50.5

“If

- no programme is identified in the Contract Data, one quarter of the Service Provided to Date is retained in assessments of the amount due until the *Consultant* has submitted a first programme to the *Service Manager* for acceptance showing the information which the contract requires and
- the *Consultant* has not produced all the Health, Safety and Wellbeing Plans in the form which the contract requires, and the *Client* does not terminate, one quarter of the Service Provided to Date is retained in assessments of the amount due until the *Consultant* has produced such plans.”

50.8

In line 1 of clause 50.8 delete “of Defined Cost” and after “*Consultant*” insert

“for staff whose *staff rate* in the Contract Data or items whose prices in the Task Schedule are stated”.

Delete the second sentence of clause 50.8.

50.9

In clause 50.9 delete

“Defined Cost” where it appears (five instances) and in each case insert “the Time Charge”

In the first and fifth bullet point of clause delete “Defined Cost” and insert “the Time Charge”.

## **52 Defined Cost**

In title to clause delete “Defined Cost” and replace with “Time Charge”

52.1 Delete clause and replace with

“All the *Consultant’s* costs except *expenses* are treated as included in the *staff rates*.”

52.3 In the first bullet point of clause 52.3 delete “Defined Cost” and insert “the Time Charge”.

## **60 Compensation events**

In clause 60.1(1)

delete “or” at the end of the first bullet point and insert a comma.

At the end of the clause delete the full stop and insert “or

- a change to the
  - Information Systems or the introduction of a new Information System or
  - method of or requirements for performance measurement or
- a change which is stated elsewhere in these *conditions of contract* not to be a compensation event.”

60.1 (4) In clause 60.1 (4) insert at the end (before the full stop)  
“unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise”.

## **61 Notifying compensation events**

61.2 In the second bullet point of clause 61.2 delete  
“Defined Cost” and insert “Time Charge”.

61.4 In the sixth bullet point of clause 61.4 delete “Defined Cost” and insert “Time Charge”.

### **63 Assessing compensation events**

- 63.1 In clause 63.1
- bullet point 1
    - delete “Defined Cost” and insert “Time Charge” and
    - at the end delete “,” and insert “and” and
  - bullet point 2
    - delete “Defined Cost” and insert “Time Charge” and
    - at the end of the sentence delete, “and”
  - bullet point 3
    - delete the “the resulting Fee”.
- 63.3 In clause 63.3 delete “Defined Cost” in line 1 and insert “Time Charge”.
- 63.4 In clause 63.4
- delete “Defined Cost” in line 1 and insert “Time Charge” and
  - after “Scope” in the first bullet point insert “or the Task”.
- 63.5 At the end of the first paragraph of clause 63.5 insert the following additional paragraph
- A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the Accepted Programme current at the dividing date.
- 63.9 In line 2 of clause 63.9 delete “Defined Cost” and insert “Time Charge”.
- After clause 63.11 insert the new clause 63.12.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Task Schedule.

### **66 Implementing compensation events**

- 66.2 In line 1 of clause 66.2 after “Completion Date” insert “the total of the Prices for the Task, the Task Completion Date, the programme for the Task”.

**81 Consultant's liabilities**

Delete clause 81.1 and replace with

81.1 The following are *Consultant's* liabilities unless they are stated as being *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Consultant* Providing the Service.
- Costs incurred by the *Client* which arise from a failure by the *Consultant* to use the skill and care expected of a qualified, experienced and competent member of its profession providing professional services in connection with services of equivalent type size and complexity to the *service*.
- Death or bodily injury to the employees of the *Consultant*.

**82 Recovery of costs**

Delete clause 82.1 and insert new clause

82.1 Any

- cost which the *Client* has paid or will pay as a result of an event for which the *Consultant* is liable or
- costs, losses, liabilities, fines, penalties and expenses (including legal expenses) which might be suffered or incurred by the *Client* in connection with taxes or registration requirements arising in the country where the *Consultant* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims against the *Consultant*

is paid by the *Consultant*.

**83 Insurance Cover**

Delete clauses 83.2, 83.3 and the Insurance Table and insert new clause 83.2

83.2 The *Consultant* provides the insurances as stated in the Contract Data.

**84 Insurance policies**

In clause 84.1, delete

“for acceptance certificates which state that the insurance required by the contract is in force.

After the defects date and on each renewal of the insurance policy until the end of the periods stated in the Contract Data for which insurance is to be maintained, the *Consultant* submits to the *Client* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Consultant's* insurer or insurance broker.

The *Service Manager* or *Client's* acceptance of an insurance certificate provided by the *Consultant* does not change the responsibility of the *Consultant* to provide the insurances stated in the Contract Data.”

and insert

“either certificates or letter of confirmation from its insurance broker or insurer which state that the insurance required by the contract is in force.

After the *defects date* and on each renewal of the insurance policy until the end of the periods stated in the Contract Data for which insurance is to be maintained, the *Consultant* submits to the *Client* either certificates or letter of confirmation from its insurance broker which state that the insurance required by the contract is in force. The certificates are signed by the *Consultant's* insurer or insurance broker.

The *Service Manager* or the *Client* acknowledges receipt of either the certificates or letter of confirmation from its insurance broker or insurer (as applicable).

Neither inspection, nor receipt of such evidence constitutes acceptance by the *Client* of the terms thereof, nor be a waiver of the *Consultant's* liability under the contract.”

## **87.1 Limitation of liability**

In clause 87.1, delete the bullet points and insert

“The excluded matters are amounts payable by the *Consultant*, or for which the *Consultant* is liable to the *Client*, as stated in each Task or in *law of the contract* for

- loss of or damage to the *Client's* property,
- delay damages if Option X7 applies,
- *Consultant's* share if Option C applies,

- loss or damage
  - to the third party property or
  - due to pollution,
- interest on debt,
- losses caused by the *Consultant's* illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct,
- death of or personal bodily injury caused by negligence,
- fraud or fraudulent misrepresentation,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- infringement of the rights of Others and
- any other events which are not excluded above for which the *Consultant* is required to provide insurance against as stated in the contract, provided that only amounts up to the minimum levels of insurance required by the contract are excluded.”

In line 2 of clause 87.1 delete “the contract” and insert “each Task”.

## **90 Termination**

90.2 In clause 90.2, in the Termination Table,

- in “REASON” column delete  
“R1-R15, R18 or R22”  
and replace with  
“R1-R15, R18, R22 or R23”  
and
- in the “AMOUNT DUE “column delete  
“and A3”.

## **91 Reasons for termination**

Insert a new clause 91.9 after clause 91.8

91.9 The *Client* may terminate if the *Client* suffers Reputational Damage (R23).”

**93 Payment on termination**

- 93.1 In clause
- at end of bullet 1 delete “,” and insert “and” and
  - delete bullet 2.
- 93.2 Delete item “A3” in clause 93.2 of the *conditions of contract*.

**Option E: Cost reimbursable contract**

Delete clause 11.2(17) and replace with  
(17) Not Used.

In clause 50.9

delete “Defined Cost” where it appears (four instances) and  
in each case insert “the Time Charge” and

delete “the cost” in the fifth bullet point and insert “(as  
appropriate) the *Consultant’s* original or corrected  
assessment”.

In the first bullet point of clause 52.3 delete “Defined Cost”  
and insert “the Time Charge”.

**Option X2 Changes in the law**

- X2.1 In line 2 after “Contract Date” add “unless the change and  
its effects could reasonably have been anticipated by the  
*Consultant* prior to the *tender return date*”.

**Option X7 Delay damages**

Add new clauses X7.3 and X7.4

- X7.3 The *Consultant* pays delay damages at the rate stated in  
the Task Order for each day from the Task Completion  
Date until and including the day of Task Completion.
- X7.4 If the Task Completion Date is changed to a later date  
after delay damages have been paid, the *Client* repays the  
overpayment of delay damages and the repayment is

included in the next assessment of the amount due.

**Option X11 Termination by the *Client***

X11.2 In line 2 of clause delete

“the amounts due on termination are A1 and A3.”  
and replace it with “the amount due on termination is A1.”

**Option X20 KEY PERFORMANCE INDICATORS (NOT USED WITH OPTION X12)**

Add new clause X20.4A

X20.4A The *Consultant* pays to the *Client* the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is not achieved. Payment of the amount is due when the target has not been achieved.

X20.5 Delete clause and replace with

X20.5 The *Client* may modify the Incentive Schedule to reflect any revised business priorities provided that the change is not specifically intended to

- penalise the *Contractor* for poor performance in relation to any particular performance measures or
- prejudice the *Consultant's* ability to earn an incentive payment.

The *Client* consults with the *Consultant* before modifying the Incentive Schedule, but the *Consultant* acknowledges that the *Client* has the final decision. The *Service Manager* issues any revised Incentive Schedule to the *Consultant*.

**Option X29 Climate Change**

In clause X29.4 (3)

- at the end of the first bullet point, delete “or” and replace with a comma,
- at the end of the second bullet point, remove the full stop and replace with “and”,
- add a third bullet point and

- it does not demonstrate how the *Consultant* will avoid breaching the *carbon cap*.”

### Option X29 Climate Change

In clause X29.4 (3)

At the end of the first bullet point, delete “or” and replace with a comma, at the end of the second bullet point, remove the full stop and replace with “and”. Add a third bullet point and add

“it does not demonstrate how the *Consultant* will avoid breaching the *carbon cap*.”

### Option Y(UK)1

#### Project Bank Account

Y(UK)1 Amend the following terms in clause Y(UK)1 Project Bank Account,

#### Y1.1 Definitions

Y1.1 (1) Delete “the Supplier joins the Trust Deed” and replace with “a Supplier becomes a Named Supplier”.

Y1.1 (2) After “who have signed the Joining Deed” insert “and, Tier Two Suppliers (except those excluded in accordance with clause Y1.5A).

Y1.1(6) After “A Supplier is a person or organisation” insert “(at any stage of remoteness from the *Client*) other than the Tier Two Suppliers”.

Y1.1(7) Delete “an agreement” and replace with “a deed” and before the full stop insert “and which creates a trust in respect of the Project Bank Account under which the *Consultant* and Named Suppliers are beneficiaries”.

#### Y1.4 Project Bank Account

Y1.4 after “copies of communications” insert “(including all bank statements)”.

#### Y1.5 Named Supplier

- Y1.5 delete clause Y1.5 and replace with
- “The *Consultant* includes in its contracts with Named Suppliers
- the arrangements in the contract for the operation of the Project Bank Account,
  - confirmation of the trust created in respect of the Project Bank Account by the Trust Deed and
  - the *Consultant* informs the Named Suppliers it appoints, the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.”

After clause Y1.5 insert new clauses Y1.5A and Y1.5B

- Y1.5A The *Contractor* seeks the *Service Manager’s* agreement prior to appointing any Tier Two Supplier who it considers to not be a beneficiary of the trust created by the Trust Deed on the basis that the Tier Two Supplier is not willing to be a Named Supplier and provides evidence that they are making that decision in full cognisance of the trust’s benefits.

The *Service Manager* notifies the *Consultant* that

- it agrees that the Tier Two Supplier will not be a beneficiary to the trust or
- the Tier Two Supplier is to be a beneficiary to the trust.”

- Y1.5B *named suppliers* are beneficiaries of the Project Bank Account without signing a Joining Deed. Tier Two Suppliers become beneficiaries of the trust over the Project Bank Account upon the later of the

- date the account holder establishes the Project Bank Account with the project bank or
- date of appointment

unless the *Service Manager* agrees otherwise in accordance with clause Y1.5A.

**Y1.17 Trust Deed**

- Y1.17 In clause

- delete the comma after “The *Client*” and replace it with “and” and
- delete “and *named suppliers*”.

### Trust Deed

delete the form of Trust Deed and replace it with the form in the Scope, **Annex 11**.

### Joining Deed

Delete the form of Joining Deed and replace with the form in the Scope, **Annex 12**

### Schedule of Cost Components and Short Schedule of Cost Components

Delete the Schedule of Cost Components and Short Schedule of Cost Components.

<b>Z2</b>	<b>Not Used</b>
	•
<b>Z3</b>	<b>Recovery of sums due from the <i>Consultant</i>.</b>
Z3.1	Where, under the contract a sum of money is recoverable from or payable by the <i>Consultant</i> , 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 <i>Consultant</i> under the contract or any other contract with the <i>Client</i> .
<b>Z4</b>	<b>Assignment and transfer</b>
Z4.1	The <i>Consultant</i> does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the <i>Client</i> .
Z4.2	If requested by the <i>Client</i> , the <i>Consultant</i> executes a novation agreement in the form specified in the Scope (or such other form as the <i>Client</i> may reasonably require), transferring the benefit and burden of the contract (including any Task Orders) to <ul style="list-style-type: none"><li>• a replacement organisation established to take over the <i>Client</i>'s functions or part of it,</li><li>• another public body exercising similar functions or part thereof of such functions,</li></ul>

- a Department or Office of His Majesty's Government or
- a local authority.

Z4.3

If the *Consultant* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement through the *Service Manager* to do so. The *Consultant*

- explains the reasons for the proposed transfer and
- provides any further information requested by the *Service Manager*.

If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new consultant execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require.

**Z6**

### **Adjudication**

Z6.1

The NEC4 Dispute Resolution Service Contract (June 2017 including January 2019 amendments) includes the following *additional conditions of contract*,

Any information concerning the contract obtained by either the *Dispute Resolver* or any person advising or aiding the *Dispute Resolver* is confidential and is not used or disclosed by the *Dispute Resolver* or any such person except for the purposes of this Agreement. The *Dispute Resolver* complies and takes all reasonable steps to ensure that any persons advising or aiding the *Dispute Resolver* comply, with the Official Secrets Acts 1911 to 1989.

Z6.2

If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Z6.3

The *Consultant* keeps the adjudication and all matters (including any materials) arising in the course thereof confidential and private except

- insofar as necessary to its employees and subcontractors (at any stage of remoteness from the *Client*) to implement or enforce any decision of the *Adjudicator*,
- as may be required for the purpose of any subsequent proceedings,
- in order for an *Adjudicator nominating body* to deal with any complaint against an *Adjudicator*,
- insofar as necessary, to its legal or other professional advisers,
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental, parliamentary or other public bodies, provided that prior to disclosure the *Consultant* consults the *Service Manager* and

takes full account of the *Client's* views about whether (and if so to what extent) the information is to 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 *Service Manager*.

## Z7

### Termination – Procurement Act 2023

#### Z7.1

The *Consultant* notifies the *Service Manager* within three Business Days of

- any Mandatory Exclusion or Discretionary Exclusion (including the dates applicable to the relevant grounds for exclusion and details thereof) arising in respect of
  - the *Consultant* or Consortium Member or
  - any guarantor (which is not a body governed by the Prudential Regulation Authority or equivalent) providing a performance and financial guarantee, bond or equivalent,

including by reference to a Connected Person or an Associated Person or

- any of the bodies (including by reference to a Connected Person or an Associated Person) listed in bullet one or a surety company (or equivalent), including bodies regulated by the Prudential Regulation Authority (or equivalent), providing a bond or equivalent
  - is or is placed upon the Debarment List or
  - subject to Sanctions.

The *Consultant* provides or procures the provision of additional information requested by the *Service Manager* to enable the *Client* to determine whether the relevant entity is an Excluded Supplier or Excludable Supplier (including by reference to a Connected Person or an Associated Person).

#### Z7.2

The *Consultant* ensures that each subcontract (and procures that each subsubcontract) includes an obligation upon the subcontractor (or subsubcontractor as applicable) to notify the *Consultant* within three Business Days of becoming aware of any Mandatory Exclusions or Discretionary Exclusion applying to that subcontractor or subsubcontractor (as applicable) or if that subcontractor or subsubcontractor (as applicable) is placed on the Debarment List.

The *Consultant* notifies the *Service Manager* immediately of receiving

any notice from a subcontractor or subsubcontractor if

- any Mandatory Exclusion or Discretionary Exclusion (including the date applicable to the relevant grounds for exclusion and details thereof) arising in respect of
  - a subcontractor or
  - subsubcontractorincluding by reference to a Connected Person or an Associated Person or
- any of the bodies (including by reference to a Connected Person or an Associated Person) listed in bullet one is or is placed upon the Debarment List.

The *Consultant* provides (or procures the provision of) additional information requested by the *Service Manager* to enable the *Client* to determine whether the relevant entity is an Excluded Supplier or Excludable Supplier (including by reference to a Connected Person or an Associated Person).

Z7.3

Following a notification under either clauses Z7.1 or Z7.2, the *Service Manager* notifies the *Consultant* whether or not the *Client* has determined that (as applicable)

- the *Consultant*,
- a subcontractor or
- a subsubcontractor

is an Excluded Supplier or Excludable Supplier and in each case whether the *Client* is minded to terminate the contract as a result thereof. The *Service Manager* identifies the ground which applies and why the *Client* is minded to terminate.

Within the *period for reply*, the *Consultant* may make representations to the *Client* (via the *Service Manager*) about whether a termination ground applies and the *Client's* decision to be minded to terminate.

Z7.4

The *Client* may terminate the *Consultant's* obligation to Provide the Services if

- either
  - the *Consultant* is or becomes an Excluded Supplier or Excludable Supplier,
  - the *Consultant* was on the Debarment List  
(including by reference to a Connected Person or an Associated Person) at the Contract Date, reason T1, after considering the *Consultant's* representations,
- the *Client* considers that the contract was awarded or modified in Material Breach, reason T2,
- the *Consultant*

- is or has become an Excluded Supplier or Excludable Supplier,
- is placed on the Debarment List or
- fails to provide any further information requested by the *Service Manager* within the *period for reply* to support the *Client's* determination if it is an Excluded Supplier or Excludable Supplier

after the Contract Date (including by reference to a Connected Person or an Associated Person), reason T3, after considering the *Consultant's* representations or

- a subcontractor or a subsubcontractor (including by reference to a Connected Person or an Associated Person)
  - is (or has become) an Excluded Supplier or Excludable Supplier,
  - is placed on the Debarment List or
  - the *Consultant* fails to provide or procure the provision of any further information requested by the *Service Manager* within the *period for reply* to support the *Client's* determination as to whether the subcontractor or a subsubcontractor is an Excluded Supplier or Excludable Supplier (including by reference to Connected Person or an Associated Person), reason T4.

Z7.5

The *Client* does not exercise reason T4 if the *Consultant* agrees that it, within the *period for reply* or any other period agreed by the *Client* via the *Service Manager*

- stops the use of the subcontractor which is an Excluded Supplier or Excludable Supplier or
- procures that its subcontractor stops the use of the subsubcontractor which is an Excluded Supplier or Excludable Supplier and

and if necessary, finds an alternative subcontractor or procures that its subcontractor finds an alternative subsubcontractor (as applicable).  
The

- *Consultant* ceasing the use of such subcontractor and if necessary, finding an alternative subcontractor or
- the subcontractor ceasing the use of the subsubcontractor and if necessary, finding an alternative subsubcontractor

is not a compensation event.

Z7.6

If Options C or E apply to the contract,

- any costs resulting from ceasing of the use of a subcontractor which is (or becomes) an Excluded Supplier or Excludable Supplier, including
  - the termination of the subcontract and

- the procurement of a replacement subcontractor and
- any costs resulting from stopping of the use of a subsubcontractor which is (or becomes) an Excluded Supplier or Excludable Supplier, including
  - the termination of the subsubcontract and
  - the procurement of a replacement subsubcontractor

including any direct or indirect cost of delay to Providing the Services are not Time Charge.

- Z7.7 The procedure and amount due on termination are the same as for
- R18 for reasons
    - T1 and T2 if the modification or infringement was due to a default by the *Consultant* or
    - T3 and T4,
  - R19 for reasons T1 and T2 if the modification or infringement was due to a default by the *Client* or
  - R20 for reason T2 if the modification or infringement was due to any other reason.

- Z7.8 If the *Consultant* fails to comply with this clause Z7 then such failure is treated as the *Consultant* having substantially hindered the *Client* or Others.

## **Z8 Subcontracting**

- Z8.1 Not used.
- Z8.2 If the *Consultant* subcontracts work to an Associated Company, the Time Charge of the work subcontracted is assessed as if the work had not been subcontracted.
- Z8.3 The *Service Manager* may, having stated the reasons, instruct the *Consultant* to remove a subcontractor (at any stage of remoteness from the *Client*). The *Consultant* then arranges the removal of the subcontractor (at any stage of remoteness from the *Client*) and the appointment of a replacement in accordance with the contract.
- Z8.4 Not used.
- Z8.5 Before
- appointing a proposed subcontractor or
  - allowing a subcontractor to appoint a proposed subsubcontractor
- the *Consultant* submits to the *Service Manager* for acceptance
- a statement regarding the proposed subcontractor or subsubcontractor confirming

- confirming whether any Mandatory Exclusion applies to it, a Connected Person or an Associated Person
- confirming whether any Discretionary Exclusion applied to it, a Connected Person or an Associated Person

and if so, whether the circumstances giving rise to the application of any exclusion ground are continuing or likely to occur again and the *Consultant* includes the evidence and other matters set out in the “Procurement Act 2023” section 58 (see link in **Annex 02**) and

- is not on the Debarment List,
- a statement confirming that any Associated Person is not on the Debarment List and
- details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor.

The *Consultant* provides to the *Client* (via the *Service Manager*) any further information requested by the *Service Manager* to enable the *Client* to determine if a proposed subcontractor or subsubcontractor is an Excluded Supplier or an Excludable Supplier.

#### Z8.6

The *Consultant* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Service Manager* has accepted the submission. A reason for not accepting the submission is that

- the *Consultant* has not supplied sufficient information to enable the *Client* to determine if the proposed subcontractor or subsubcontractor is an Excluded Supplier or and Excludable Supplier,
- the proposed subcontractor or subsubcontractor is an Excluded Supplier or and Excludable Supplier or
- the *Service Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

If the *Consultant* appoints a subcontractor or does not prevent a subcontractor appointing a subsubcontractor before the *Service Manager* has accepted the proposed subcontractor or subsubcontractor, then

- where Option C or E is used, the relevant subcontractor’s costs are not Time Charge or if the item is a lump sum in the Task Schedule, the activities the relevant subcontractor is working on are not completed for the purposes of the Price for Service Provided to Date or
- where Option A is used, the activities the relevant subcontractor is working on are not completed for the purposes of the Price for Service Provided to Date.

Z8.7 If requested by the *Service Manager*, the *Consultant* provides further information to support, update or clarify a submission under clause Z8.5.

Z8.8 If, following the acceptance of a subcontractor or subsubcontractor under clause Z8.6, it is found that the subcontractor or subsubcontractor

- is an Excluded Supplier or an Excludable Supplier or
- has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

the *Service Manager* may instruct the *Consultant* to

- replace the subcontractor or
- require the subcontractor to replace the subsubcontractor.

Such an instruction is not a compensation event.

Where main Option C, or E is used, following such an instruction, the *Consultant*, with due diligence,

- replaces the relevant subcontractor or
- requires the subcontractor to replace the relevant subsubcontractor

and

- any costs resulting from stopping of the use of a subcontractor which is (or becomes) an Excluded Supplier or Excludable Supplier, including
  - the termination of the subcontract and
  - the procurement of a replacement subcontractor and
- any costs resulting from stopping of the use of a subsubcontractor which is (or becomes) an Excluded Supplier or Excludable Supplier, including
  - the termination of the subsubcontract and
  - the procurement of a replacement subsubcontractor

the relevant subcontractor's costs are not Time Charge.

If the *Consultant* does not stop the use of such subcontractor or such subsubcontractor within three days of the instruction, then the *Service Manager* advises the *Consultant* that it is not acting with due diligence and after three days of such instruction

- where Option C or E is used, the relevant subcontractor's ongoing costs are not Time Charge or where such subcontractor or such subsubcontractor is working on a lump sum item in the Task Schedule the activities or part there of the relevant subcontractor is working on are not completed for the purposes of the Price for Service Provided to Date or

- where Option A is used, the activities or part there of the relevant subcontractor is working on are not completed for the purposes of the Price for Service Provided to Date.

Z8.9 The *Consultant* submits

- the name of each proposed subcontractor and its competence to undertake the relevant proposed subcontract and
- a brief description of the proposed subcontract including the *Consultant's* assessment of whether the proposed subcontractor would be a Key Subcontractor

to the *Service Manager* for acceptance.

If the *Consultant* proposes to omit one or more of Subcontract Flowdown requirements from the subcontract, the *Contractor* seeks the *Service Manager's* agreement to such omissions prior to the awarding the subcontract.

A reason for not accepting the proposed subcontractor is that

- it will not be subject to the Subcontract Flowdown requirements,
- its appointment does not allow the *Consultant* to Provide the Services
- the *Service Manager* considers the proposed subcontractor should be treated as a Key Subcontractor or
- it is on the Debarment List

The *Consultant* does not appoint a proposed subcontractor until the *Service Manager* has accepted it. Once appointed, the *Consultant* submits a copy of the subcontract to the *Service Manager* along with any subsequent amendment.

Z8.10 The *Consultant* submits the proposed subcontract for each Key Subcontractor together with a completed Subcontract Flowdown Document to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required.

The *Service Manager* may issue an instruction changing the Subcontract Flowdown Document, such an instruction is not a compensation event.

Z8.11 The *Consultant* does not appoint a Key Subcontractor on the proposed subcontract until the *Service Manager* has accepted it. A reason for not accepting the proposed subcontract is it does not

- comply with the contract including any Subcontract Flowdown requirements,
- allow the *Consultant* to Provide the Services or
- include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.

Z8.12 If Option Y(UK)1 is used, the *Consultant* provides and keeps up to date a project bank account tracker in accordance with paragraph S 1606.1 of the Scope which identifies

- all Tier Two Suppliers and subcontractors (at any stage of remoteness from the *Client*),
- which Tier Two Suppliers and subcontractors (at any stage of remoteness from the *Client*) are beneficiaries of any Project Bank Account,
- if a Tier Two Supplier is not a Named Supplier, the reason why and the date of the *Service Manager's* agreement in accordance with clause Y1.5A

and allows the *Service Manager* to inspect and provide a copy of the project bank account tracker immediately upon demand and provides a copy of the project bank account tracker with each application for payment.

Z8.13 If at any time the *Consultant* does not provide a copy of the up to date project bank account tracker, then one quarter of change in the Price for Service Provided to Date may be retained in assessments of the amount due until the *Consultant* provides a copy of the up to date project bank account tracker as required by the contract.

**Z9 Not used**

**Z10 Joint ventures**

Z10.1 This clause applies if the *Consultant* is an unincorporated joint venture.

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant's* obligations under this contract.

Z10.3 The *Consultant* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Consultant* acknowledges that receipt of a communication by the *Consultant's* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Client* in advance of any change to the identity of the *Consultant's* nominated representative.

Z10.4 The *Consultant* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Consultant*.

Z10.5 A Consortium Member gives not less than four weeks' notice to the *Service Manager* of any proposed termination of the joint venture arrangement.

Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z10.7 Where two or more Consortium Members comprise the *Consultant*, clause 90.1 and 91.1 of the conditions of contract are amended by inserting after “the other Party” the words “or in the case of the *Consultant*, any Consortium Member”.

**Z11 Parent Company Guarantee, other Sureties and financial distress**

Z11.0 The *Consultant*

- ensures that any Guarantor including by reference to a Connected Person or Associated Person providing a Parent Company Guarantee (or an alternative performance and payment guarantee) at the Contract Date
  - is not subject to Sanctions,
  - is not on the Debarment List and
  - does not have any Mandatory Exclusions or Discretionary Exclusion and

unless agreed otherwise by the *Client* and

- ensures that any Guarantor providing a Form of Performance Security, or alternative form of bond accepted by the *Client*, at the Contract Date is not subject to Sanctions or on the Debarment List.

Z11.1 Where a *Consultant* or Consortium Member has a Controller, if required by the *Service Manager*, the *Consultant* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date, or of the *Service Manager*'s request, whichever is later. Parent Company Guarantees are given for

- a standalone company – from the Guarantor or
- a joint venture (whether incorporated or unincorporated) – from the Guarantor of each Consortium Member.

In all cases it is for the *Client* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Guarantor.

Z11.2 Where

- the *Client* has agreed an Alternative Guarantee for the *Consultant* or a Consortium Member and
- a *Consultant* or Consortium Member has a Controller,

the *Consultant* gives to the *Client* the Alternative Guarantee(s). If the Alternative Guarantee(s) are not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Service Manager*'s request, whichever is later.

Alternative Guarantees are given for

- a standalone company – from its Guarantor or
- a joint venture (whether incorporated or unincorporated) from the Guarantor of each relevant Consortium Member (which has a Controller).

In all cases it is for the *Client* to decide (in its discretion) whether it will accept an Alternative Guarantee from a company other than the Guarantor.

Z11.3

Where

- a *Consultant* or Consortium Member has no Controller and
- the *Client* has agreed one or more Alternative Guarantees,

the *Consultant* gives to the *Client* the Alternative Guarantees. If the Alternative Guarantee is not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Service Manager's* request, whichever is later.

The Alternative Guarantees is given for

- a standalone company – from its Guarantor or
- a joint venture (whether incorporated or unincorporated) - from the Guarantor of each relevant Consortium Member (which does not have a Controller).

In all cases it is for the *Client* to decide whether it will accept an alternative form of guarantee from the Guarantor.

Z11.4

If

- the Controller or
- an alternative guarantor (including any bank or surety provider) proposed by the *Consultant* and agreed by the *Client*

(in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion which is given signed and issued by an independent regulated legal firm which is

- independent from the *Consultant*, any Consortium Members, any Controller, any Guarantors and any alternative guarantors,
- qualified and registered to practice in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Service Manager*.

The legal opinion is addressed to the *Client* on a full reliance basis and the liability of the independent regulated legal firm giving the opinion is not subject to any financial limitation.

The legal opinion confirms that the method of execution of the Parent Company Guarantee (or any alternative guarantee agreed by the *Client*) is valid and binding under applicable local law and covers the matters listed in the Scope, section S 1102 (Legal Opinion).

If accepted by the *Service Manager*, the alternative guarantor becomes the Guarantor for the *Consultant* or the relevant Consortium Member and the credit ratings become the *credit rating* for the Guarantor.

Z11.5

Not used.

**Change of Control, financial distress etc.**

Z11.6

The *Consultant* notifies the *Service Manager* immediately if a Change of Control has occurred.

Z11.7

Except for a Listed Company, if a Change of Control occurs without the *Service Manager's* prior consent or does not allow the *Consultant* to Provide the Service, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.

Z11.8

The *Consultant* notifies the *Service Manager* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* (or a Consortium Member). A change is material if (in aggregate) 3% or more of the issued share capital of the *Consultant* (or a Consortium Member) or of an entity that has direct or indirect legal or beneficial ownership in the *Consultant* (or a Consortium Member) is acquired by a person at any time during before the *defects date*, whether in addition to any existing shareholding or otherwise or
- the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Consultant*.

Z11.9

The *Consultant*

- notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member and
- provides any necessary information and validation/confirmations requested by or on behalf of the *Client* to validate the name or status of the *Consultant*.

If the *Consultant* does not provide any necessary information and validation/confirmations requested by or on behalf of the *Client* and such failure prevents the *Client's* payment systems from being amended to reflect any change of name or status due to its governance procedures and processes, then the *Client* may withhold any further payment until such issues are resolved.

Z11.10

The *Consultant* notifies the *Client* immediately if

- any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor
  - it becomes subject to Sanctions,
  - its Credit Rating falls below the relevant *credit rating*,

- there is a further fall in its Credit Rating below the relevant *credit rating*,
  - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
  - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
  - it commits a material breach of its covenants to its lenders or
  - its financial position or prospects deteriorate to such an extent that had it been part of the original assessment of Financial Standing Test the outcome of the Financial Standing Test would have been a failure or
- any Parent Company Guarantee, Form of Performance Security or any Alternative Guarantee becomes invalid or unenforceable for any reason.

Z11.11 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.

Z11.12 If a Change of Control occurs, the *Consultant* (or the Consortium Member) provides to the *Service Manager*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Service Manager*,
- any other information required by the *Client* in order to determine whether, had the Controller been included in the original Financial Standing Test, such inclusion would not have resulted in the outcome of the Financial Standing Test being a failure and
- any other information requested by the *Service Manager* in order to satisfy itself that the *Consultant* remains in a position to Provide the Service.

Z11.13 If a Change of Control or any of the events listed in clauses Z7.1, Z11.8 to Z11.10 occurs, the *Service Manager* may require the *Consultant* (or the Consortium Member) to give to the *Client* within four weeks of the notification

- a Parent Company Guarantee from the relevant Controller or (if the Controller had been part of the original Financial Standing

Test and the outcome of the Financial Standing Test would have been a failure) an alternative guarantor proposed by the *Consultant* (or the Consortium Member) and accepted by the *Service Manager* or

- a Form of Performance Security, (or an alternative form of bond or security agreed by the *Service Manager* from an alternative guarantor proposed by the *Consultant* (or the Consortium Member) and accepted by the *Service Manager*)
  - if there is no Controller,
  - if the Controller had been included in the original Financial Standing Test and the outcome of the Financial Standing Test would have been a failure and a suitable alternative guarantor is not acceptable or
  - if agreed by the *Service Manager* and the *Consultant* or relevant Consortium Member.

If the Guarantor or an alternative guarantor proposed by the *Consultant* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion in accordance with Z11.4.

Z11.14 The *Consultant* provides the *Service Manager* with the information listed in clause Z11.12 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Service Manager*) and any further information requested by the *Service Manager* concerning the alternative guarantor.

Z11.15 A reason for not accepting an alternative guarantor (for a form of performance and financial guarantee) proposed by the *Consultant* is that

- it is subject to Sanctions,
- it has a Mandatory Exclusions, Discretionary Exclusion or is on the Debarment List including by reference to Connected Person or an Associated Person,
- had it been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure,
- it does not provide the legal opinion required in clause Z11.13 or
- it does not have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z11.10 has occurred.

The *Consultant* provides or procures the guarantor to provide any further information required to enable the *Client* to understand the reasons for any grounds for Mandatory Exclusions or Discretionary Exclusion applying to the proposed alternative guarantor.

Z11.16 A reason for not accepting an alternative guarantor (for a Form of Performance Security, or an alternative a form of bond agreed by the *Service Manager*) proposed by the *Consultant* is that it

- is subject to Sanctions or is on the Debarment List,
- does not have a Credit Rating at least equal to
  - long term credit rating of A or short-term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
  - long term credit rating of Aa or short-term rating of Prime-1 (Moody's Investor Service Inc.) or
  - long term credit rating of A or short-term issues credit rating of F2 (Fitch Ratings Inc.)

(or any replacement person to the bodies above) unless agreed otherwise by the *Service Manager*,

- does not have a commercial position which is strong enough to carry the bond,
- is not issued by an office of the proposed alternative guarantor located in England or the Form of Performance Security (or an alternative a form of bond agreed by the *Service Manager*) is not subject to the *law of the contract* or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

Z11.17

Following a Change of Control, if so required by the *Service Manager*, the *Consultant* within four weeks after the *Service Manager* notifies the requirement, gives to the *Client*

- a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* or
- a Form of Performance Security, or an alternative form of bond agreed by the from an Alternative Guarantor accepted by *Service Manager*

for the *Consultant* or relevant Consortium Member the notification refers to.

Z11.18

The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* (or relevant Consortium Member) who if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure if the *Consultant* (or relevant Consortium Member) gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Service Manager's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass by the end of that period.

Z11.19

If

- the *Consultant* fails to notify the *Service Manager* that an event listed in clause Z11.8 to Z11.10 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant*, if it had been included in the original Financial

Standing Test, the outcome of the Financial Standing Test would have been a pass within the timescale stated in clause Z11.18 or fails to provide the legal opinion required by clause Z11.13,

- the *Consultant* does not give to the *Client* a
  - Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* or
  - a Form of Performance Security or an alternative form of bond agreed by the *Service Manager*

within four weeks of a request from the *Service Manager* to do so or

- the *Consultant* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass within eighteen (18) months of the *Service Manager's* acceptance

the *Client* may treat such failure as a substantial failure by the *Consultant* to comply with its obligations.

Z11.20 Not used.

Z11.21 If accepted by the *Service Manager*, the alternative guarantor becomes the Guarantor for the *Consultant* or the relevant Consortium Member and the credit ratings become the *credit rating* for the Guarantor.

Z11.22 A failure to comply with this clause Z11 is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z11.23 If the *Consultant* does not give to the *Client* a

- legal opinion required by clauses Z11.4 or Z11.13,
- certified copy of a board minute of the Guarantor confirming that it will give to the *Client* a Parent Company Guarantee or Alternative Guarantee if so required by the *Service Manager*,
- Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* or
- an Alternative Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager*

within four weeks of a request from the *Service Manager* to do so, then

- the *Client* may retain
  - one quarter of the Price for Service Provided to Date in assessments of any amount due until the *Consultant* provides such Parent Company Guarantee or Alternative Guarantee and
  - any outstanding incentive payment (including any *Consultant's* share if Option C is used) and any future

incentive payments (including any *Consultant's* share if Option C is used) due to be made to the *Consultant*

until such times as the *Consultant* complies with clauses Z11.11 and Z11.13. When the *Consultant* complies with this bullet any amount retained under this bullet is included in the amount due at the next assessment date and

- the *Consultant* pays back any incentive payment (including any *Consultant's* share if Option C is used) received from the *Client*. When the *Consultant* complies with clauses Z11.11 and Z11.13, the amounts repaid to the *Client* in accordance with this bullet is included in the amount due at the next assessment date.

Z11.24

If any Guarantor or any proposed guarantor is (or has become)

- for a Parent Company Guarantee (or other form of guarantee), an Excluded Supplier or Excludable Supplier or
- subject to Sanctions

the *Service Manager* may notify the *Consultant* that the *Client* may require the *Consultant* (or a Consortium Member) to replace its Guarantor and provide a new guarantee from a replacement guarantor (in accordance with the clause Z11) within four weeks.

**Z12**

### **Discrimination, Bullying & Harassment and Modern Slavery**

Z12.1

The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

- any investigation or proceedings under the Discrimination Acts and
- any allegation of bullying or harassment

resulting from any act or omission of the *Consultant* in connection with the contract.

**Z13**

### **Intellectual Property Rights (IPRs)**

Z13.1

The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Consultant* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client* and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Consultant* provides to the *Client*, the documents which transfer these IPRs to the *Client*.

Z13.2

The *Consultant* waives or procures a waiver of any moral rights in any copyright works assigned to the *Client* under the contract.

Z13.3

The *Consultant* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause

survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party. The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client*.

The *Consultant's* or third-party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause, are damages and equitable relief.

Z13.4 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the "Contracts (Rights of Third Parties) Act 1999") (see link in **Annex 02**) to enforce the obligations in this clause.

Z13.5 Not Used.

Z13.6 Not Used.

Z13.7 Not Used.

**Z14 Project Bank Account**

Z14.1 The *Service Manager* may at any time notify the *Consultant* that payments under the contract are no longer to be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Service Manager's* notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with its contracts.

**Z15 Tax Non – Compliance**

Z15.1 The *Consultant* warrants that it has notified the *Service Manager* of any Tax Non-Compliance or any litigation in which the *Consultant* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z15.2 The *Consultant* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information requested by the *Service Manager*.

Z15.3 The *Consultant* is treated as having substantially failed to comply with its obligations if the

- warranty given by the *Consultant* under clause Z15.1 is untrue,
- *Consultant* fails to notify the *Client* of a Tax Non-Compliance or

- *Client* decides that any mitigating factors notified by the *Consultant* are unacceptable.

## **Z16 Value Added Tax (VAT) Recovery**

Z16.1 An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax (VAT) only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group).

## **Z17 Termination and removal of part of the service**

Z17.1 The *Service Manager* may at any time instruct the *Consultant* that

- part or all of the *service* is to be permanently removed from the contract or
- for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the contract.

In either case the *Consultant* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Consultant* to provide services similar to the removed *service* (or part of it).

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22 or the *Consultant* has a Quality Warning Notice. The assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*, and if all of the remaining *service* is to be permanently removed, the *Consultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another consultant to complete the *service* or any part of it.

Z17.3 If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant* if instructed by the *Service Manager*

- completes the performance of any part of the *service* started prior to the date of termination and
- co-operates with the *Client* or any Incoming Consultant to ensure a smooth transfer of functions.

## **Z18 Corruption or loss of data**

Z18.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultants* default so as to be unusable, the *Consultant* immediately reports this to the *Service Manager* and the

- *Service Manager* may instruct the *Consultant* to restore the data in accordance with the *Service Manager's* requirements (and any cost incurred by the *Consultant* in so doing is not Time

Charge) or

- *Client* may itself restore the data (and the *Consultant* pays to the *Client* any costs which the *Client* incurs in so doing).

**Z19 Conflict of Interest**

Z19.1 Any steps taken in accordance with paragraph S 508.1 in the Scope is not a compensation event.

Z19.2 A failure to comply with paragraph S 508.1 in the Scope is treated as a substantial failure by the *Consultant* to comply with its obligations.

**Z20 Other amounts to be paid by the *Consultant***

Z20.1 The *Consultant* pays the *Client's* costs incurred for additional audits when the number of Quality Management Points in effect exceeds the *threshold level*.

**Z21- Z49 Not Used**

**Z50 Not Used**

**Z51 Not Used**

**Z52 Transfer of Undertakings (Protection of Employment) Regulations (TUPE)**

Z52.1 The inclusion of this clause Z52 does not indicate or confirm that the *Client* considers or anticipates that TUPE will apply at the termination or expiry of the contract.

Z52.2 The *Contractor* represents, warrants and undertakes to the *Client* that no *Consultant* Employee is assigned to the *service* to the extent that his or her employment or any Employment Liabilities in respect of his or her employment will or is likely to transfer to the *Client* or an Incoming *Consultant* under TUPE in respect of the termination or expiry of the contract.

Z52.3 The *Consultant* provides to the *Client* within 10 days of the *Client's* request such information in connection with TUPE as the *Client* may require, including

- an anonymised list of all current *Consultant* Employees and for each such employee the job description, length of service, age, immigration status, remuneration and the proportion of their working time spent on Providing the Service, indicating whether any such employee is a Potential Exit Transferring Employee,
- an organisational chart setting out how the *Consultant* Employees fit in with the *Consultant* or the subcontractor (at any stage of remoteness) organisation as a whole, indicating teams, team leaders, reporting lines and management for the Potential Exit Transferring Employee,
- details of any other terms and conditions of employment of such Potential Exit Transferring Employee,

- details of the current (and, if different, the contractual) place or location of work of the Potential Exit Transferring Employee and
- details of any other agreement or arrangement (including with any trade union or any other representative body) which may affect the employment of any Potential Exit Transferring Employee.

The *Consultant* promptly notifies the *Client* of any later change to information provided by it.

Z52.4 The *Consultant* acknowledges that the *Client* may disclose information provided by the *Consultant* to

- any replacement provider of *service* similar to the *service* and
- any person tendering to become a replacement provider.

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

Z52.5 During the eight months period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Client* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the Scope of the contract,
- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or
- move or deploy any key person away from the performance of the service.

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

Z52.6 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *service*.

Z52.7 The *Consultant* complies with and ensures that any subcontractor (at any stage of remoteness from the *Client*) complies with any requirements relating to pensions in His Majesty's Treasury Fair Deal for Staff Pensions: Staff Transfer from Central Government issued in October 2013 and the associated guidance documents Staff Transfers: Public Service Pension schemes and the Local Government Pension Regulations (SI 2013/2356), including any amendments or revisions to these prior to the commencement of the contract or any staff transfer.

Z52.8 No later than 30 days prior to a relevant Transfer Date, the *Consultant* provides to the *Client*, any Incoming Consultant and Incoming Consultant Subcontractor, as relevant, the information set out in clause Z52.3 in relation to each Potential Exit Transferring Employee such information to include the Final Exit List and such additional information

as is required by Regulation 11 of TUPE.

Z52.9

The *Contractor* is responsible for, and indemnifies the *Client*, the Incoming Contractor and any Incoming Contractor Subcontractor, in respect of all Pay and other Employment Liabilities

- in relation to the Consultant Employees and payable in respect of any period before any relevant Transfer Date,
- as a result of any failure by the *Contractor* or any direct or indirect subcontractor to comply with regulations 13 and 14 of TUPE except where the failure arises from the failure of the *Client*, Incoming Contractor or any Incoming Contractor Subcontractor to comply with its obligation under regulations 13 and 14 of TUPE and
- the employment and termination of employment whether before or after the Transfer Date of any persons employed or engaged by the *Contractor* or any subcontractors (at any stage of remoteness from the *Client*) (other than any employee who immediately before the Transfer Date is an Exit Transferring Employee and whose name is included on the Final Exit List provided in accordance with the provisions of clause Z52.8) whose employment or claims or liabilities arising out of their employment or its termination transfers to the *Client* or an Incoming Contractor following the Transfer Date pursuant to or by virtue of TUPE or who claim that their employment or those claims or liabilities transfer.

**Z53**

**Pensions**

Z53.1

The *Consultant* indemnifies the *Client* any Incoming Contractor and any Incoming Contractor Subcontractor and holds them harmless at all times from any from any Employment Liabilities suffered or incurred by it arising from claims by Exit Transferring Employees or by trade unions, elected Exit Transferring Employee representatives or staff associations in respect of all or any Exit Transferring Employees which

- relate to pension rights, rights benefits or liabilities arising in respect of periods of employment on or before the Transfer Date including any pension rights, benefits or liabilities which are alleged to transfer to the Incoming Consultant, any Incoming Consultant Subcontractor or the *Client* following any such Transfer Date or
- arise out of the failure of the *Consultant*, any of its direct or indirect subcontractor or any subsequent transferee of the Exit Transferring Employees to comply with the relevant provisions of the section headed “Pensions” in the Scope.

**Z54**

**Extension to the Completion Date**

Z54.1

The *Client* may notify the *Consultant* that the Completion Date is to be extended by the *extension period* or such lesser period as the *Client*

may specify.

Z54.2 If the Completion Date is extended by less than the *extension period*, the *Client* may further extend the Completion Date so that the total period of extension does not exceed the *extension period*.

Z54.3 The *Client* does not notify the *Consultant* of any extension or further extension to the Completion Date later than 12 months before the Completion Date.

**Z55 Not Used**

**Z56 Not Used**

**Z57 Infrastructure Act 2015**

Z57.1 The *Consultant* Provides the Service in compliance with, and so as not to put the *Client* in breach of

- the Licence and
- any other directions and guidance issued by the Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Service Manager* to the *Consultant*).

Z57.2 The *Service Manager* notifies the *Consultant* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *service*. The *Consultant* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act where the fine results from an act or omission of the *Consultant*.

**Z58 Revisions to Quality Submission**

Z58.1 The *Consultant* may submit to the *Service Manager* proposed revisions to the Quality Submission for acceptance. A reason for not accepting the proposed revision is that it

- does not enable the *Consultant* to meet a Performance Requirement,
- unacceptably increases the risk of failure to meet a Performance Requirement,
- does not enable the *Consultant* to achieve the level of performance specified in the Quality Submission,
- unacceptably increases the risk of failure to achieve the level of performance specified in the Quality Submission,
- does not allow the *Consultant* to comply with the *conditions of contract* or
- cannot be made in compliance with section 74 of the Procurement Act 2023.

Z58.2 A revision to the Quality Submission accepted by the *Service Manager* is not a compensation event.

- Z58.3 The *Service Manager* may instruct the *Consultant* to amend the Quality Submission
- where it is not compliant with the Scope provided by the *Client*,
  - to remove a work, design, construction or similar methodology/process,
  - where it does not demonstrate how it enables the *Consultant* to comply with the Scope provided by the *Client*,
  - where it does not enable the *Consultant* to Provide the Service or
  - to address any reason the *Client* provides to the *Consultant* for not accepting the proposed revised Quality Submission set out in clause Z58.1

This instruction is not a compensation event.

## Z59 Indemnified claims

- Z59.1 The *Client* notifies the *Consultant* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Consultant* is liable under the contract (an Indemnified Claim).
- Z59.2 The *Consultant* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Consultant* in defending the Indemnified Claim.
- Z59.3 The *Consultant* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Consultant* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Consultant*.
- Z59.5 The *Consultant* bears the costs which it incurs in defending an Indemnified Claim. The *Consultant* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Consultant's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Consultant* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice, the *Consultant*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Client* in respect of it.

## Z60 Tax Arrangements

Z60.1	Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the <i>Consultant</i> complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
Z60.2	Where any Staff are liable to national insurance contributions (NICs) in respect of consideration received under this contract, the <i>Consultant</i> complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
Z60.3	The <i>Client</i> may, at any time during the term of this contract, request the <i>Consultant</i> to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.
Z60.4	<p>If the <i>Consultant</i> fails to provide information in response to a request under clause Z60.3</p> <ul style="list-style-type: none"> <li>• within the period for reply or</li> <li>• which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it</li> </ul> <p>the <i>Client</i> may</p> <ul style="list-style-type: none"> <li>• treat such failure as a substantial failure by the <i>Consultant</i> to comply with its obligations or</li> <li>• instruct the <i>Consultant</i> to replace the relevant member of Staff.</li> </ul>
Z60.5	If the <i>Client</i> receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the <i>Client</i> may treat such non-compliance as a substantial failure by the <i>Consultant</i> to comply with its obligations.
Z60.6	<p>The <i>Consultant</i> acknowledges that the <i>Client</i> may</p> <ul style="list-style-type: none"> <li>• supply any information which it receives under clauses Z60.3 or Z60.5 or</li> <li>• advise the non-supply of information</li> </ul> <p>to the Commissioners of His Majesty's Revenue &amp; Customs for the purpose of the collection and management of revenue for which they are responsible.</p>

**Z61 Not Used**

**Z62–Z99 Not Used**

**Z100 Indexation**

Z100.1	<p>On each anniversary of the Contract Date, the <i>Consultant</i> calculates a price adjustment factor (PAF), equal to <math>(L-B)/B</math>, where</p> <ul style="list-style-type: none"> <li>• L is the last published confirmed/firm value of the <i>index</i> and</li> </ul>
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- B is the last confirmed/firm value of the *index* published before the Contract Date

rounded to three decimal places. The PAF calculated at the Completion Date for the whole of the *service* is used for calculating adjustments after this date.

Z100.2 On each anniversary of the Contract Date, the *Consultant* calculates each Maximum Staff Rate as

$$\text{Maximum Staff Rate} = \text{staff rate} \times (1 + \text{PAF})$$

The *Consultant* submits the Maximum Staff Rates including the calculations to the *Service Manager* for acceptance. A reason for not accepting the Maximum Staff Rates is that

- a rate does not comply with the contract,
- the supporting calculations are not submitted to the *Service Manager* or
- the supporting calculations do not comply with the contract.

Z100.3 Each amount due after the first anniversary of the Contract Date includes an amount for price adjustment which is the sum of

- for the lump sum items on the Task Schedule for Contract Management Duties and Demobilisation Duties, the change in the lump sums included in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the PAF calculated at the last anniversary of the Contract Date before the assessment and
- the amount for price adjustment included in the previous amount due.

Z100.4 The Time Charge for compensation events relating to lump sum items for Contract Management Duties and Demobilisation Duties on the Task Schedule is assessed using the *staff rates* current at the time of assessing the compensation event adjusted to the Contract Date by dividing by (1+PAF), where PAF is the price adjustment factor calculated at the last anniversary.

## Z101 The accounting periods

Z101.1 Within thirteen weeks after the end of each *accounting period* the *Service Manager*

- makes an assessment of the final amount due for the *service* provided during the *accounting period* and
- notifies the *Consultant* of that assessment and provides details of how the assessment has been made.

Z101.2 The *Service Manager's* assessments at the end of each *accounting period* are conclusive evidence of the final amount due for the *service* provided during the *accounting period* unless a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,

- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

Z102	Tasks
Z102.1	<p>The <i>Service Manager</i> may issue a Task Order to the <i>Consultant</i>. Before issuing a Task Order, the <i>Service Manager</i> instructs the <i>Consultant</i> to submit a quotation for the Task. The instruction includes</p> <ul style="list-style-type: none"><li>• a detailed description of the work in the Task</li><li>• a priced list of items of work in the Task in which items taken from the Task Schedule are identified</li><li>• the amount of delay damages for late completion of the Task and</li><li>• the Task's starting date and Task Completion Date.</li></ul>
Z102.2	<p>The delay damages in a Task Order, if any, are not more than the estimated cost to the <i>Client</i> of late completion of the Task</p>
Z102.3	<p>The <i>Consultant</i> submits a quotation for a Task within three Business Days of being instructed to do so by the <i>Service Manager</i>. The <i>Consultant</i> submits details of its assessment with the quotation. The <i>Service Manager</i> replies within two Business Days of the submission. The reply is</p> <ul style="list-style-type: none"><li>• acceptance of the quotation and the issue of the Task Order,</li><li>• an instruction to submit a revised quotation,</li><li>• that the <i>Service Manager</i> will be making the assessment or</li><li>• a notification that the Task's will not be instructed.</li></ul>
Z102.4	<p>The <i>Service Manager</i> instructs the <i>Consultant</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Consultant</i>. The <i>Consultant</i> submits the revised quotation within three Business Days of being instructed to do so.</p>
Z102.5	<p>The <i>Service Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"><li>• the <i>Consultant</i> to submit quotations for a Task or</li><li>• the <i>Service Manager</i> to reply to a quotation</li></ul> <p>if the <i>Service Manager</i> and the <i>Consultant</i> agrees to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Consultant</i> of the extension which has been agreed.</p>
Z102.6	<p>The <i>Service Manager</i> assesses the pricing for the Task if</p> <ul style="list-style-type: none"><li>• the <i>Consultant</i> has not submitted a quotation and details of its assessment within the time allowed or</li><li>• the <i>Service Manager</i> decides that the <i>Consultant</i> has not</li></ul>

assessed the Task correctly in a quotation and has not instructed the *Consultant* to submit a revised quotation.

The *Service Manager* notifies the *Consultant* of the assessment of the pricing of a Task, giving details of the assessment and issues the Task Order within the period allowed for the *Consultant's* submission of its quotation for the same Task. This period starts when the need for the *Service Manager's* assessment becomes apparent.

Z102.7 The assessment of a Task is in the form of a Task price list. Where items of work in the Task price list are covered by rates in the Task Schedule, the items are priced using those rates. The prices for items in the Task price list which are not taken from the Task Schedule are assessed in the same way as a compensation event is assessed.

Z102.8 When a Task Order is issued

- the Task price list is inserted in the Task Schedule and
- the work involved is added to the Scope.

The issue of a Task is not a compensation event.

Z102.9 The *Consultant* does not start any work included in the Task until it has received the Task Order and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.

Z102.10 The *Service Manager* may instruct the *Consultant* to carry out a Task in an emergency before the requirements of clauses Z102.1 to Z102.5 have been fully complied with. If so

- the *Service Manager* provides any of the matters listed in clause Z102.1 which it has not provided and
- the *Consultant* submits its quotation for the Task as soon as practical after the Task Order is issued.

Z102.11 The *Consultant* provides information which shows how each item included in a Task relates to the operations on each programme which it submits for acceptance.

Z102.12 Not used.

Z102.13 When requested by the *Service Manager*, the *Consultant* enters into a collaboration agreement in the form specified in the Scope (or such other form as the *Client* may require) with the *Client* and a third party named by the *Service Manager*.

## **Z 103 Liability for materials prepared by the *Consultant* previously**

Z 103.1 Where

- the *Consultant* is the Outgoing Consultant and
- a Task uses, relies upon or develops materials prepared under the Outgoing Consultant Contract, (“previous task materials”)

then the *Consultant* agrees

- to adopt such previous task materials under the contract and has the same liabilities under the contract for such materials as if they had been prepared under the contract. This bullet applies to any previous task materials corrected under the Outgoing Consultant Contract,
- to correct any defects in the previous task materials under the Outgoing Consultant Contract in accordance with the provisions of the Outgoing Consultant Contract and
- it does not
  - include in an assessment of the Price for Service Provided to Date
    - for correcting any defects in such previous task materials and
    - the costs of any delay resulting from correcting a defect in previous task materials,
  - seek any compensation event or any delays resulting from such defects and
  - use any effects of such defects in any compensation event.

Z 103.2

If the *Consultant* identifies any defects in the previous task materials, the *Consultant*

- assess the impact of any such defects on any Task,
- informs the *Service Manager* of such defects and
- informs the *Service Manager* of any such acts upon delivering any Task.

## Z104

### Liability for impacts on the Severn River Crossings

Z104.1

Where in Providing the Service, if the Secretary of State's Severn River crossing assets or the road network for which it is the highway authority are affected, impacted, included within or otherwise affected by a Task, the Parties agree that the *Consultant's* liabilities to the *Client* under the contract apply equally mutatis mutandis to the Secretary of State as if it was joint *Client* under the contract.

Z104.2

The Parties agree that the obligation to pay for such a Task remain with the *Client*.

## Z105

### Payment options

Z105.1

The *Service Manager* may notify the *Consultant* that the total of the Prices for a proposed Task Order be treated as a lump sum or target price.

Z105.2

If the *Service Manager* notifies the *Consultant* that the total of the Prices for a proposed Task Order be treated as a target price,

- the Prices are lump sum price in the Task Schedule for each item.
- If the effect of a compensation event is to reduce the total Time Charge and the event is a change to the Task, other than a change to the Task which the *Consultant* proposed and the *Client* has accepted, the Prices are reduced.
- The *Service Manager* assesses the *Consultant's* share of the difference between the total of the Prices and the Time Charge for the Task. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Time Charge divided by the total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each *share range* and the corresponding *Consultant's share percentage*.
- If the Time Charge is less than the total of the Prices, the *Consultant* is paid his share of the saving. If the Time Charge is greater than the total of the Prices, the *Consultant* pays its share of the excess.
- The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Completion of the whole of the services in the Task Order using its forecasts of the final Time Charge and the final total of the Prices. This share is included in the amount due following Completion of the whole of the services in the Task Order.
- The *Service Manager* makes a final assessment of the *Consultant's* share using the final Time Charge and the final total of the Prices. This share is included in the final amount due for the services in the Task Order.
- If, prior to Completion of the whole of the services in the Task Order, the Time Charge for the Task exceeds the total of the Prices, the *Service Manager* makes an assessment of the *Consultant's* share of the difference between the total of the Prices and the Time Charge for the Task at each assessment date. This share is included in the amount due to the *Consultant*. The total of the Prices includes the *Service Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.
- If there is a termination, the *Service Manager* assesses the *Consultant's* share. The *Service Manager's* assessment uses the total of the Time Charge which the *Consultant* has paid and which it is committed to pay for work done before termination and a proportion of the total of the Prices which is the proportion of the work which has been completed. The *Service Manager's* assessment of the *Consultant's* share is added to the amount due to the *Consultant* on termination if there has been a saving or deducted if there has been an excess.

**Z106**

**Activation of secondary Option Y(UK)1**

- Z106.1            Until notified by the *Service Manager*, secondary Option Y(UK)1 and associated provisions for secondary Option Y(UK1) in the *conditions of contract*, Contract Data and the Scope does not apply to the contract.
- Z106.2            The *Service Manager* may notify the *Consultant* that provisions of secondary Option Y(UK)1 and associated provisions for secondary Option Y(UK1) in the *conditions of contract*, Contract Data and the Scope applies from the date stated in the notification.
- Z106.3            In secondary Option Y(UK1) clause Y1.2,
- delete “Contract Date” and replace with “the date stated in the *Service Manager’s* notification issued in accordance with clause Z106”.

