



National Highways Limited

**NEC4 Engineering and Construction Contract
(June 2017 with amendments January 2019,
October 2020 and January 2023)**

**Contract Data
Parts 1 and 2**

in relation to *works*

[Insert contract name and tender date]

CONTENTS AMENDMENT SHEET

Issue. No.	Revision No.	Amendments	Initials	Date
11	0	Model publication January 2025 (including Procurement Act 2023).	TM & AD	24/02/2025

[Note to compiler: all text in red or contained in the comment boxes are for the Procurement Officer to review and must be removed when finalising the tender document. Delete comment boxes once complete and prior to publication]

Black text must not be changed and any proposed departures from the approach set out in this model Contract Data must be discussed and agreed between the Procurement Officer and the Contract Development & Assurance (CD&A) Team.

When filling in these documents please refer to the following NEC4 books:

- [NEC4 Engineering and Construction Contract](#)
- *The chosen NEC4 Option [A](#), [B](#), [C](#), [D](#), [E](#), [F](#).*
- [Preparing and Engineering and Construction Contract](#)
- [Managing an Engineering and Construction Contract](#)

Contract Data

PART ONE – DATA PROVIDED BY THE CLIENT

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

[Note to compiler - remove all text in red (either by making black or deleting) and delete comment boxes once complete and prior to publication]

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 Engineering and Construction Contract June 2017 including amendments dated January 2019, October 2020 and January 2023.

Main Option	A, B, C, D, E or F	Option for resolving and avoiding disputes	W2
Secondary Options	X1, X2, X5, X6, X7, X8, X10, X11, X12, X13, X14, X15, X17, X18, X20, X21, X22, X29 Y(UK)1, Trust Deed, Joining Deed, Y(UK)2, Y(UK)3 Z1 to Zxx]		
The works are	[...]		
The Client is	National Highways Limited, a company incorporated in and in accordance with the laws of England, having as its registered number (company No. 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ		
Address for electronic communications	[...]		
The Project Manager is			
Name	[...]		

Address for communications

[...]

Address for electronic communications

[...]

The *Supervisor* is

Name

[...]

Address for communications

[...]

Address for electronic communications

[...]

The Scope is in

Volume [insert]

The Site Information is in

Volume [insert]

The *boundaries of the site* are

[...]

The *language of the contract* is

English

The *law of the contract* is the law of

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

The *period for reply* is

[two weeks]

except that

The *period for reply* for

[...]

is

[...]

weeks

The *period for reply* for

[...]

is

[...]

weeks

The following matters will be included in the Early Warning Register

[...]

Early warning meetings are held at intervals no longer than

[one month]

The *Client's Environment Management Plan first iteration* is in

[insert]

2 The Contractor'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 to be met</i>	<i>key date</i>
(1)	[...]	[...]
(2)	[...]	[...]
(3)	[...]	[...]

[The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than one month.]

The *carbon cap* is

[...] % reduction from the 2020 baseline

3 Time

The *tender return date* is

[...]

The *starting date* is

[...]

The access *dates* are

part of the Site

date

1 [...]	[...]
2 [...]	[...]
3 [...]	[...]

[The *go live date* is

The *completion date* for the whole of the works [(excluding landscaping aftercare)] is

The *Client* [is/is not] willing to take over the works before the Completion Date.

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

The *Contractor* submits revised programmes at intervals no longer than

4 Quality Management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

 weeks

The period between Completion of the whole of the works [(other than landscaping aftercare)] and the *defects date* is

 weeks

The *defect correction period* is four weeks except that:

The *defect correction period* for

 is weeks

The *defect correction period* for

 is weeks

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>Project 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 report an identified Nonconformity in accordance with document requirements. <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 is implemented
Failure to carry out internal audit.	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>Contractor</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 QMPs.

	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.

5 Payment

The *currency of the contract* is the

Pound Sterling (£)

The *assessment interval* is

[one]

calendar month

The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require,

[3]

% per annum above the Bank of England base rate in force from time to time

[The *Contractor's share percentages and the share ranges* are:

share range

Contractor's share percentage

less than

[90%]

[25%]

from

[90 to 100%]

[50%]

from

[100% to 110%]

[50%]

from

[110% to 120%]

[65%]

greater than

[120%]

[75%]

[The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Work Done to Date]

6 Compensation events

The place where weather is to be recorded is

[...]

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at [...] hours GMT

and these measurements:

[...]

The *weather measurements* are supplied by

[...]

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

[...]

and which are available from

[...]

Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are

[...]

[The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

[...] %

[The *method of measurement* is

[...]

These are additional compensation events

- The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.

8 Liabilities and insurance

These are additional *Client's* liabilities

(1)

[...]

(2)

[...]

(3)

[...]

The *Contractor* provides the insurances from the Insurance Table below and in accordance with the requirements in **Annex 03** of the Scope.

EVENT

The minimum amount of cover of insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one occurrence is

MINIMUM AMOUNT OF COVER

Not less than [£to be completed by Compiler] in respect of any one occurrence without limit to the number of occurrences in any annual policy period.

But [£to be completed by Compiler] any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).

[Note to Compiler: The limit of indemnity should be set by way of a review of insurable risk. The level specified in the limit of indemnity above should be based upon the insurable risk profile represented by the requirement in question, the potential frequency and severity of claims and losses (not the value of the contract). In connection with Third Party Public and Products Liability insurance this will relate to an incurred legal liability of the *Contractor* causing death / bodily injury to persons not an employee of the *Contractor* and loss, damage or destruction to third party physical property (which would include National Highways physical property as third party property).

Optional text if appropriate for any work over, under, or in the vicinity of the railway or rail network as required by Network Rail Asset Protection Agreement or similar ORR regulatory requirement. A limit of not less than (one hundred and fifty-five million pounds) £155,000,000 in respect of any one occurrence, without limit to the number of occurrences in any annual policy period. As specified in any relevant Asset Protection Agreement (or similar ORR regulatory requirement) Network Rail (or other relevant party) to be a named insured party where the *works* involve work over, under or in the vicinity of a railway and Network Rail requires an increased limit of indemnity.]

The minimum amount of cover of insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one occurrence is

Not less than ten million pounds (£10,000,000) any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of the contract or such greater period as is required by law.

If the *Client* is to provide Plant and Materials.

A sum insured to represent the reinstatement or replacement cost of the relevant insured property

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

If the *Client* is to provide any of the insurances stated in the Insurance Table below:

The *Client* provides these insurances from the Insurance Table

(1) Insurance against

[None]

Minimum amount of cover is

[N/A]

The deductibles are

[N/A]

If additional insurances are to be provided:

The *Client* provides these additional insurances

(1) Insurance against

[None]

Minimum amount of cover is

[N/A]

The deductibles are

[N/A]

The *Contractor* provides these additional insurances

(1) Insurance against

Liability of the *Contractor* for claims made against it arising out of the *Contractor's* failure to use the skill and care normally used by professionals providing services similar to the *works*

Minimum amount of cover is

A limit of indemnity of not less than [XX] million pounds [(£XX)] in respect of any one claim and in the aggregate per annum, [and to include one (1) automatic reinstatement of the limit of indemnity].
See **option 1** and **option 2** below for further detail

The deductibles are

[...]

[Note to Compiler: Include if *Contractor* is to carry out elements of design and / or provide professional advice that National Highways will rely upon in connection with the requirement. Insert insurance levels as appropriate for the contract being prepared. Insurance limits of indemnity will need to be reviewed against the National Highways requirement in connection with the insurable risk profile of the contract. The optimum position is for insurance limits of indemnity to be set commensurate with the potential losses that could occur in relation to the insured risk, the subject matter of the contract and due reference should be made to the potential for frequency / severity in respect of financial / pecuniary loss associated with *Contractor* breach of professional duty.

It should be noted and understood that the insurance market does not provide professional indemnity insurance in a consistent or uniform manner. There is no single prevailing United Kingdom insurance market policy wording and as such each insurer's offerings and wording is different.

This variability is also reflected in the structure of professional indemnity insurance policy limits of indemnity where the *Contractor* can procure both (**option 1**) any one claim and in the annual aggregate and (**option 2**) any one claim, the number of claims being unlimited in any annual policy period.

The purchase of contract specific professional indemnity insurance is unusual in the United Kingdom insurance market and it is generally the case that *Contractors* will seek to meet their contractual insurance obligations through use of their existing insurance arrangements. Such arrangements normally manifest themselves in an "annually renewable professional indemnity insurance" programme covering the whole of the *Contractor's* professional services / business activities. As a consequence, if the *Contractor's* professional indemnity insurance arrangements are underwritten on an annual aggregate basis (**option 1**) it will be difficult for the *Contractor* to comply with any one claim unlimited in the annual policy period requirement and it will not be possible for them to do so under an annual aggregate policy wording.

National Highways contracts that include requirements for professional services (e.g. advice, design and specification services) need to address the issue to ensure that there is compliant *Contractor* professional indemnity insurance cover in respect of the breach of professional duty risk. The different types of professional indemnity insurance limit of indemnity are set out below. There may also be a lower inner limit relating to pollution / contamination and asbestos. If these risks exist, then any inner limits may need to be reflected in the drafting

Option 1 - "Annual aggregate limit of indemnity"

A limit of indemnity of not less than [XX] million pounds [(£XX)] in respect of any one claim and in the aggregate per annum, [and to include one (1) automatic reinstatement of the limit of indemnity]

Option 2 - "Any one claim limit of indemnity"

A limit of indemnity of not less than [(XX)] million pounds [(£XX)] in respect of any one claim without limit to the number of claims in any annual policy period,

but [XX] million pounds [(£XX)] any one claim and in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and [XX] million pounds [(£XX)]

any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant policy).]

(2) Insurance against

[...]

The minimum amount of cover is

[...]

The deductibles are

[...]

Resolving and avoiding disputes

The *tribunal* is

arbitration

The *arbitration procedure* is

the Institution of Civil Engineers Arbitration Procedure ([April 2012]).

The place where *arbitration* is to be held is

[London]

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 Institution of Civil Engineers or their nominee

The *Senior Representatives* of the *Client* are

Name (1)

[...]

Address for communications

[...]

Address for electronic communications

[...]

Name (2)

[...]

Address for communications

[...]

Address for electronic communications

[...]

The *Adjudicator* is the person chosen by

the Parties from the list of adjudicators published by the Institution of Civil Engineers

The person or organisation who will choose an *Adjudicator* if the Parties cannot agree a choice is

the President for the time being of the Institution of Civil Engineers or their nominee

The *Adjudicator nominating body* is

the Institution of Civil Engineers

Option X1: Price adjustment for inflation (for use only with Options A, B, C and D)

The proportions used to calculate the Price Adjustment Factor are

0.

[...]

linked to the index for

[...]

0.

[...]

[...]

0.

[...]

[...]

0.

[...]

[...]

0.

[...]

[...]

0.

[...]

[...]

0.

[...]

non-adjustable

[...]

1.00

The *base date* for indices is

Enter date

These indices are

[...]

Option X5: Sectional Completion

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

<i>Section</i>	Description	<i>completion date</i>
(1)	[...]	[...]
(2)	[...]	[...]
(3)	[...]	[...]
(4)	[...]	[...]

Option X6: Bonus for early Completion

The bonus for the whole of the *works* is per day

The bonus for each *section* of the *works* is

<i>section</i>	Description	<i>amount per day</i>
(1)	[...]	[...]
(2)	[...]	[...]
(3)	[...]	[...]
(4)	[...]	[...]

The bonus for the remainder of the *works* is

Option X7: Delay damages

Delay damages for Completion of the whole of the *works* are per day

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

<i>section</i>	description	<i>amount per day</i>

(1)	[...]	[...]
(2)	[...]	[...]
(3)	[...]	[...]
(4)	[...]	[...]

The delay damages for the remainder of the *works* are

[...]

Option X8: Undertakings to the *Client* or Others

The *undertakings to Others* are provided to

[...]

[...]

The *Subcontractor undertaking to Others* are

works

provided to

[...]

[...]

[...]

[...]

The *Subcontractor undertaking to the Client* are

works

[...]

[...]

Option X10: Information modelling

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

[insert]

Option X12: Multiparty collaboration

The *Promoter* is

National Highways Limited, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ

The Schedule of Partners is in

[...]

The *Promoter's objective* is

[...]

The Partnering Information is in

[...]

Option X13: Performance bond

The amount of the performance bond is

[...]

Option X14: Advanced payment to the *Contractor*

The amount of the advanced payment is

[...]

The period after the Contract Date from which the *Contractor* repays the instalments in assessments is

[...]

The instalments are (either an amount or a percentage of the payment otherwise due)

[...]

An advanced payment bond

[is/is not]

Required

The amount of the advanced payments and the dates when they are to be paid and repaid are

[Description of event or Date payment due]	Amount (£)	Date repayment commences	Repayment instalments
(1) [..]	[..]	[..]	[..]
(2) [..]	[..]	[..]	[..]
(3) [..]	[..]	[..]	[..]
(4) [..]	[..]	[..]	[..]

Advanced payment bonds [are/are not] required

Option X15: The Contractor's design

The *period for retention* following Completion of the whole of the works or earlier termination is

[12] Years

Option X17: Low performance damages

the amounts for low performance damages are

amount

performance level

[..]	for	[..]

Option X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect and consequential loss is limited to

[..]

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

[...]

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

[...]

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters listed in X18.5, is limited to

[...]

The *end of liability date* is

[12]

years after Completion of the whole of the works.

Option X20: Key Performance Indicators

The *incentive schedule* for Key Performance Indicators is in

[...]

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

[...]

months

Option X22: Early *Contractor* involvement

The Budget is

Item	description	amount
(1)	[...]	[...]
(2)	[...]	[...]
(3)	[...]	[...]
(4)	[...]	[...]
Total		[...]

The Pricing Information is in

[...]

The *Contractor* prepares forecasts of the total Defined Cost of the work to be done in Stage One at intervals no longer than

[...]

The *Contractor* prepares forecasts of the total Project Cost at intervals no longer than

[...]

These are additional events which could change the Budget

(1)[...]

(2)[...]

(3)[...]

Delivery phase incentive schedule is in

[...]

Development phase incentive schedule is in

[...]

Option 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 *Contractor* is to submit a first climate change plan for acceptance is [...]

Option Y(UK)1: Project Bank Account

The *account holder* is the [*Contractor/ Parties*].

The *Contractor* [*is/ is not*] to pay any charges made and to be paid any interest paid by the *project bank*.

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

Term

beneficiary

The provisions of Option Y(UK)1

Named Suppliers

Prompt Payment Scope section S 1212	subcontractors (at any stage of remoteness from the <i>Client</i>)
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Subcontracting Scope section S 1200	subcontractors (at any stage of remoteness from the <i>Client</i>)
-------------------------------------	---

Option Z: Additional conditions of contract

The *additional conditions of contract* are the following clauses

[Z1 – Zxx]

Contract Data entries relating to Z Clauses

[Clause Z106 Extended liability period for Plant

The *extended liability period* for

[state Plant]

is

[...]

months following correction of a Defect or until the *defects date*, whichever is later]

[state Plant]

is

[...]

[state Plant]

is

[...]

[Clause Z107 Network Rail Possessions

The *Network Rail possession charge* is

Type [x] £ [...]

per possession

Type [y] £ [...]

per possession]

Contract Data entries relating to Scope

The *relevant services* and the *relevant service conditions* are

<i>relevant service</i>		<i>relevant service conditions</i>
Reference	Reference sections of the Scope	

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PART TWO – DATA PROVIDED BY THE CONTRACTOR

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

1 General

The *Contractor* is

Name

[insert]

Address for communications

[insert]

Address for electronic communications

[insert]

The *Contractor's* nominated representative is (Note to compiler - fill in if the *Contractor* is an unincorporated JV)

Name

[insert]

Address for communications

[insert]

Address for electronic communications

[insert]

The *design consultants* are

name	design service

The *fee percentage* is

[insert] %

The *working areas* are

[insert]

The key persons are those identified in the *key persons schedule* in

[insert]

The following matters will be included in the Early Warning Register

[insert]

2 The *Contractor's* main responsibilities

The Scope for the *Contractor's* design is in

[insert]

3 Time

The programme identified in the Contract Data is in

[insert]

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

[insert]

4 Quality Management

The *quality submission* is in

[insert]

The *pre-appointment iep* is in

[insert]

The *pre-appointment b-iep* is in

[insert]

5 Payment

The *activity schedule* is in

[insert]

The *bill of quantities* is in

[insert]

The tendered total of the Prices is

[insert]

Work which the *Contractor* will do is

activity	price	(lump sum or rate)
[insert]	[insert]	[insert]

Resolving and Avoiding Disputes

The *Senior Representatives* of the Contractor are

Name (1) [insert]

Address for communications [insert]

Address for electronic communications [insert]

Name (2) [insert]

Address for communications [insert]

Address for electronic communications [insert]

Contract Data entry relating to Data Protection Legislation

The contact details of the Contractor's Data Protection Officer or Data Protection nominated lead are [insert]

X10: Information modelling

The *information execution plan* identified in the Contract Data is [insert]

X22: Early Contractor involvement (only used with Options C and E)

The Stage One key persons are

Name (1):

[insert]

Job:

[insert]

Responsibilities:

[insert]

Qualifications:

[insert]

Experience:

[insert]

Name (2):

[insert]

Job:

[insert]

Responsibilities:

[insert]

Qualifications:

[insert]

Experience:

[insert]

The Pricing Information is in

[insert]

X29: Climate Change

If a *climate change plan* is to be identified in the Contract Data

The *climate change plan* identified in the Contract Data is in
[insert]

Option Y(UK)1: Project Bank Account

The *project bank* is

[insert]

named suppliers are

the suppliers who will be beneficiaries of the Project Bank Account (PBA) without signing a Joining Deed.

Option Z: Additional conditions of contract

Clause Z11 Parent Company Guarantee, other sureties and financial distress

Contractor or Consortium Member	<i>guarantor</i> ¹
[insert]	[insert]

The *credit ratings* at the date of award of the contract and the rating agencies issuing them are

Party	rating agency	credit rating
Contractor	[insert]	[insert]
Consortium Member	[insert]	[insert]
<i>guarantor</i>	[insert]	[insert]

[Clause Z107 Network Rail Possessions]

The *Network Rail possessions* required to Provide the Works are

Type [x]	[insert]
Type [y]	[insert]

Contract Data entries relating to the Scope

The *Software Schedule* is in the document called “the Software Schedule”.

Data for Schedule of Cost Components

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

¹ Where the *Contractor* or Consortium Member has a Controller (as defined in the contract), the *guarantor* is the Controller unless the economic standing tests identify and other exchanges prior to the Contract Date identifies another guarantor.

Equipment	time-related on cost charge	per time period
[insert]	[insert]	[insert]

The rates for special Equipment are

Equipment	rate
[insert]	[insert]

The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the Contractor are

category of person	rate
[insert]	[insert]

Data for the Short Schedule of Cost Components

The *people rates* are

category of person	unit	rate

[insert]	[insert]	[insert]

The published list of Equipment is the edition current at the Contact Date of the list published by

[insert]

The percentage for adjustment for Equipment in the published list is

[insert]

% (state plus or minus)

The rates for other Equipment are

Equipment	rate
[insert]	[insert]

The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the Contractor are

category of person	rate
[insert]	[insert]

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Z Clause Contents	
Number	Title
Z1	Changes to Core and Secondary Option Clauses
Z2	Interpretation
Z3	Recovery of sums due from <i>Contractor</i>
Z4	Assignment and transfer
Z5	Not Used
Z6	Adjudication and Arbitration
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>works</i> from the Scope
Z18	Corruption or loss of data
Z19	Conflict of interest
Z20	Other amounts to be paid by the <i>Contractor</i>
Z21 – Z50	Not Used
Z51	[Changes to Prices]
Z52	[Transfer of Undertakings (Protection of Employment) Regulations (TUPE)]
Z53	[Pensions]
Z54	[Extension to the Completion Date]
Z55	[Payment of the <i>Contractor's</i> share]
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z58	[Revisions to Quality Submission]
Z59	Indemnified Claims
Z60	Tax Arrangements of Public Appointees
Z61	[Enhancements]
Z62	Not Used
Z63	Not Used
Z64 – Z102	Not Used
Z103	[Landscaping aftercare]
Z104	[Single point design responsibility]
Z105	[Innovation - Title to Equipment]
Z106	[Extended liability period for Plant]
Z107	[Network Rail Possessions]

Z1 Changes to core and Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms

(36) [Affiliate is in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.]

(37) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client* or *Project Manager*.

(38) Associated Company is any of

- a Consortium Member,
- 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 *Contractor* or a Consortium Member or
- another Design Consultant but excluding
 - a subcontractor (at any stage of remoteness from the *Client*) that provides the design for
 - temporary works,
 - Equipment or
 - an item of Plant and Materials (but not the integration of such item into the *works*) only and
 - a subcontractor (at any stage of remoteness from the *Client*) that provides the design for the permanent works where design account for less than 20% of the total of the prices of such subcontract.

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

- the *Contractor* 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) (see link in Scope **Annex 02**) or
- 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.

(40) 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.

- (41) Carbon Cap is the *carbon cap* unless later changed in accordance with the contract.
- (42) [Central Government Body is a body listed in one of the following sub-categories of the Central Government classification of the “Public Sector Classification Guide,” (see link in Scope **Annex 02**) as published and amended from time to time by the Office for National Statistics
- a Government department,
 - a non-departmental public body or assembly sponsored public body (advisory, executive, or tribunal),
 - a non-ministerial department or
 - an executive agency of one of the above
- and any body corporate that is a wholly owned subsidiary of one of the above.]
- (43) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Contractor* 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 *Contractor* or a Consortium Member.
- (44) [Client Background IPR is IPR owned by the *Client* before the Contract Date, or created by the *Client* independently of the contract, and Crown copyright which is not available to the *Contractor* other than under the contract but excluding IPRs owned by the *Client* subsisting in the Client Software.]
- (45) [Client Software is software which is owned by or licensed to the *Client* (other than under or pursuant to the contract) and which is, or will be, used by the *Contractor* in order to Provide the Works.]
- (46) 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.
- (47) Climate Change Requirements are the requirements relating to climate change stated in the Scope
- (48) [Community Partner is an organization (other than the *Contractor*) engaged by the *Client* to provide works in relation to the contract.]
- (49) Confidential Information is
- information, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party in connection with the contract, that relates to
 - the Disclosing Party Group or

- the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how and personnel of the Disclosing Party Group,
 - other information provided by the disclosing Party in accordance with the contract that is clearly designated as being confidential or equivalent, or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with the contract,
 - discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with the contract and all matters arising therefrom and
 - information derived from any of the above,
- but not including any information which
- was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the disclosing Party,
 - the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the Recipient,
 - was already generally available and in the public domain at the time of disclosure otherwise than by a breach of the contract or breach of a duty of confidentiality or
 - was independently developed without access to the Confidential Information.]
- (50) 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**).
- (51) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Contractor*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company.
- (52) [Contractor Background IPR is IPR owned by the *Contractor* or a third party before the Contract Date or created by the *Contractor* or a third party independently of the contract, which is, or will be, used before or after the *defects date* for, Providing the Works (including its design, testing, implementation), its maintenance operation and improvement, but excluding IPRs owned by the *Contractor* and subsisting in the Contractor Software or by any third party in Third Party Software.]
- (53) [Contractor Software is software (including firmware) which is proprietary to the *Contractor* (or an Affiliate of the *Contractor*) and

- which is or will be used by the *Contractor* for the purposes of Providing the Works,
 - which is or will be used by the *Client* for the purposes of maintaining, operating or improving the *works* and including the software specified as such in the Software Schedule.]
- (54) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010 (see link in Scope **Annex 02**).
- (55) [Control (in the context of clause Z13) is the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise). **Controls** and **Controlled** are to be interpreted accordingly.]
- (56) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Contractor* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member.
- (57) Corrective Action has the meaning given in “ISO 9000:2015 Quality management systems – Fundamentals and vocabulary” (see link in Scope **Annex 02**).
- (58) 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 *Contractor*, a Consortium Member or any Guarantor.
- (59) 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 data protection laws and regulations applicable in England and Wales.
- (60) Debarment List means the list kept under the “Procurement Act 2023” section 62 (see link in Scope **Annex 02**).
- (61) [Delivery Phase Incentive Schedule is the *delivery phase incentive schedule* unless later changed in accordance with the contract.]
- (62) Design Consultant is
- a subcontractor (at any stage of remoteness from the *Client*) that provides the design for the *works* or temporary works or
 - a *design consultant*.

- (63) [Development Phase Incentive Schedule is the *development phase incentive schedule* unless later changed in accordance with the contract.]
- (64) [Disclosing Party Group is
- where the disclosing Party is the *Contractor*, the *Contractor* and any *Affiliates of the Contractor* and
 - where the disclosing Party is the *Client*, the *Client* and any Central Government Body with which the *Client* or the *Contractor* interacts in connection with the contract.]
- (65) Discretionary Exclusion means the discretionary exclusion grounds that are set out in the “Procurement Act 2023”, schedule 7 (see link in Scope **Annex 02**).
- (66) The Discrimination Acts are the Equality Act 2010 (see link in Scope **Annex 02**) and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (67) [Documentation is descriptions of the *works*, the *Contractor’s works* solution, performance measures, details of the Contractor System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as
- is required to be supplied by the *Contractor* to the *Project Manager* under the contract,
 - would reasonably be required by a competent third party capable of Good Industry Practice, contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *works* or make use of the *works*,
 - is required by the *Contractor* in order to Provide the Works and
 - has been or is generated in order to Provide the Works.
- (68) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 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) (see link in Scope **Annex 02**).
- (69) Eligible Contract is a contract entered into by a subcontractor with the *Contractor* which relates to the *works* 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 *works*).

- (70) Enforcement Action is enforcement action brought by a regulatory authority against the Contractor or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.
- (71) [Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements proposed by the Contractor or a Community Partner which has not previously been adopted by the Client and which (if implemented by the Client) is expected to provide a significant long-term benefit to the Client in terms of
- reducing the cost to the Client of the works,
 - improving the quality or effectiveness of delivery of the works
 - otherwise enhancing the achievement of the Client's vision, outcomes and key objectives,
- but excludes design solutions proposed by the Contractor in the course of developing the design for works relating to the Site intended to be carried out by any Community Partners.]
- (72) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement.
- (73) Excludable Supplier has the meaning set out in the "Procurement Act 2023" section 57(2) (see link in Scope **Annex 02**).
- (74) Excluded Items are [insert project specific requirements].]
- (75) Excluded Supplier has the meaning set out in the "Procurement Act 2023" section 57(1) (see link in Scope **Annex 02**).
- (76) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018 (see link in Scope **Annex 02**), as amended.
- (77) Financial Standing Test is the financial test for the Contractor, a Consortium Member or a proposed guarantor used in the selection stage of the competition for the contract.
- (78) Form of Performance Security is a form of bond specified in the Scope (or such other form as the Client may reasonably require).
- (79) General Anti-Abuse Rule is
- the legislation in Part 5 of the Finance Act 2013 (see link in Scope **Annex 02**) and
 - any future legislation introduced to counteract tax advantages

arising from abusive arrangements to avoid National Insurance contributions.

- (80) [Good Industry Practice is at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a skilled and experienced person or body engaged in services similar to the *works* to a customer like the *Client*, such supplier seeking to comply with its contractual obligations in full and complying with any applicable laws.]
- (81) Guarantor is any *guarantor* unless later changed in accordance with the contract.
- (82) Halifax Abuse Principle is the principle explained in the Court of Justice European Union case C-255/02 Halifax and others.
- (83) Health, Safety and Wellbeing Plans are
- a completed Supply Chain Maturity Matrix (SCMM) for the *Contractor* 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 *Contractor* 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.
- (84) [Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the *Contractor* if an Enhancement is successfully implemented.]
- (85) Incoming Contractor is any contractor appointed by the *Client* to Provide the Works or part of it (or similar works or part of it) in place of the *Contractor*.
- (86) Indemnified Claim is a matter for which the *Contractor* is liable under the contract.
- (87) [Indemnified Person is the *Client* and each and every person to whom the *Client* (or any direct or indirect sub-licensee of the *Client*) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with the contract.]
- (88) 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 organisation.
- (89) [Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.]

(90) [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.]

OR

(91) [Intellectual Property Rights or IPRs are

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks (and goodwill attaching to those trade marks), rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information (as set out in the Scope),
- applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction and
- all other rights having equivalent or similar effect in any country or jurisdiction.]

(92) [IPR Claim s any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs, save for any such claim to the extent that it is caused by any use by, or on behalf of, that Indemnified Person of any Relevant IPRs, or the use of the Client Software by, or on behalf of the *Contractor*, in either case for a purpose not reasonably to be inferred from the Scope or the provisions of the contract.]

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

(94) 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.

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

(96) 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” (see link in Scope **Annex 02**) or any regulations made under it.

(97) [Network Rail Possessions is the Network Rail possessions unless later changed in accordance with the contract.]

- (98) Nonconformity has the meaning given to it in “ISO 9000 - Quality management systems – Fundamentals and vocabulary” (“ISO 9000”) (see link in Scope **Annex 02**) (and includes Defects).
- (99) 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.
- (100) [Open Source Software is software (including firmware) that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes, free of charge.]
- (101) [Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to carry out works similar to the *works* in relation to the Site during the period immediately prior to the *access date*.]
- (102) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope.
- (103) Performance Requirement is the required standard for performance of each element of the *works* as specified in the Scope.
- (104) 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.
- (105) 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.
- (106) Quality Management Points are points accrued by the *Contractor* in accordance with the *quality table* in the Contract Data.
- (107) Quality Submission is the *quality submission* (unless later changed in accordance with the contract).
- (108) Quality Warning Notice is a warning given in accordance with Scope section S 625 (Quality Management Points).
- (109) [Recipient is the Party which receives or obtains, directly or indirectly, Confidential Information.]
- (110) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.
- (111) Related Dispute Adjudicator is an adjudicator appointed to determine a

Related Dispute.

- (112) [Relevant IPR is IPRs used to Provide the Works or as otherwise provided and licensed by the *Contractor* (or to which the *Contractor* has provided access) to the *Client* or a third party, in the fulfilment of the *Contractor's* obligations under the contract, including IPRs in the Specially Written Software, the Contractor Software, the Contractor Background IPRs and the Third Party Software, but excluding any IPRs in the Client Software and the Client Background IPRs.]
- (113) Relevant Tax Authority is His Majesty's Revenue and Customs (see link in Scope **Annex 02**) or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.
- (114) Reputational Damage is suffered by the *Client* where
- any shareholder, director or shadow director of
 - the *Contractor*,
 - any Consortium Member,
 - any Guarantor or
 - any Controller,
 - the *Contractor*,
 - 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.
- (115) RIDDOR Incident is an incident occurring under any contract between
- the *Contractor*, an Associated Company and 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 *Contractor*, 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 Scope **Annex 02**) (or any replacement of it) or equivalent laws outside England applicable to such a contract.
- (116) The Secretary of State is the Secretary of State for Transport.
- (117) 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.
- (118) 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.
- (119) [Software is Specially Written Software, Contractor Software and Third Party Software.]
- (120) [Software Schedule is the *software schedule* unless later changed in accordance with the contract.]
- (121) [Specially Written Software is any software (including firmware, database software, linking instructions, test scripts, compilation instructions and test instructions) created by the *Contractor* (or by a Subcontractor (or any subcontractor of any tier to the *Contractor*) or other third party on behalf of the *Contractor*) specifically for the purposes of the contract, including
- any Contractor Background IPRs that are embedded in or which are an integral part of such software and
- any modifications or enhancements to Contractor Software or Third Party Software created specifically for the purposes of the contract.]
- (122) Staff are persons employed or engaged by the *Contractor*, an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Works at any time.
- (123) [Stage One Incentive is the incentive for Stage One calculated in accordance with the Development Phase Incentive Schedule.]
- (124) [Stage Two Incentive is the incentive for Stage Two calculated in accordance with the Delivery Phase Incentive Schedule.]
- (125) Supply Chain Maturity Matrix (SCMM) is the document formed by completing the "Supply Chain Maturity Matrix (SCMM)" template in **Annex 02** of the Scope and is about measuring suppliers' safety maturity.
- (126) Supply Chain Maturity Matrix Action Plan (SCMMAP) is the document created by the *Contractor* compiling its actions to improve its safety maturity scoring.
- (127) 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.
- (128) Tax Non-Compliance is where a tax return submitted by the *Contractor* 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 *Contractor* 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 *Contractor* 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 the contract or to a civil penalty for fraud or evasion.
- (129) Tender Commitments Register is the tender commitments contained in the Tender Commitments Register within the Quality Submission.
- (130) [Third Party Software is software (including firmware) which is proprietary to a third party (other than an Affiliate of the *Contractor*) and
- which is, or will be, used by the *Contractor* for the purposes of Providing the Works,
 - which is, or will be, used by the *Client* for the purposes of maintaining, operating or improving the *works* and
- including the software specified as such in the Software Schedule (including Open Source Software).]
- (131) Tier Two Suppliers are all subcontractors who have been accepted in accordance with clause Z8 (Subcontracting) and have entered into an Eligible Contract with the *Contractor*.
- (132) [Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of works similar to the *works* in relation to the Site during the period immediately prior to the *access date*, other than employees who object to being transferred to the *Contractor*.]
- (133) [TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006 (see link in Scope **Annex 02**).]
- (134) [Note to compiler: Insert any further defined terms alphabetically within the list above and re-adjust the numbering using the formatting options already provided. The numbering of defined terms follows the numbering order used in the NEC4 ECC meaning the first number available for use in this list within Z1 is (36) as stated above.]

Amend the following terms

- (6) In the definition of “Defects”
- At the end of the first bullet delete “or” and insert a comma. At the end of the second bullet delete the full stop and insert “or” and insert the following third bullet
- a Nonconformity either
 - in Providing the Works or
 - in the *works*

in compliance with the quality plan or as the quality plan should have been if changes to the Quality Submission had been correctly implemented from the date the change should have been implemented by the *Contractor* (or as required by the contract).

(26) **Disallowed Cost**

In the definition of “Disallowed Cost”

(i) add three new bullet points before first bullet point and insert the following

- is Off-Payroll Working Rules Costs,
- is any payment by the *Contractor*, to any member of Staff, to the extent that such payment arises or is increased as a result of any Off-Payroll Working Rules Costs (either of the *Contractor* or any other person),
- is any Off-Payroll Working Rules Costs forming part of
 - the cost of people under section 1 of the schedule of cost components whether employed by the *Contractor* or any other person including by any subcontractor (at any stage of remoteness from the *Client*),
 - Subcontractor costs under section 4 of the schedule of cost components incurred by any subcontractor (at any stage of remoteness from the *Client*) or
 - the cost of Plant and Materials including design of Plant and Materials carried out by any subcontractor (at any stage of remoteness from the *Client*),

(ii) after “and the cost of” insert the following additional bullet points

- “implementing any modifications or enhancements to the *Contractor’s* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client’s* requirements as stated in the Scope,
- carrying out additional audits of the *Contractor’s* quality management system during any period while the number of Quality Management Points in effect is above the *threshold level*,
- replacing a *key person* (and any associated costs),
- complying with Scope sections
 - S 250.3 (Customer - Consideration of Others),
 - S 1116 (Alcohol and substance abuse) and resulting costs and
 - S 272 (Behavioural Attributes).
- taxes and registration requirements arising in the country where the *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims by or against the *Contractor* and
- additional incurred by
 - not complying with the quality plan and

- not implementing changes into the quality plan (as required by the contract) from the date the change should have been implemented by the *Contractor*,

(iii) after the last bullet point insert an additional paragraph as follows, “and any other cost stated in the *additional conditions of contract* as being a Disallowed Cost.”

[(31) Price for Work Done to Date

Amended definition to read as follows

“The Price for Work Done to Date is

- for all sections of the *works* (other than the landscaping aftercare section), the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee, and
- for the landscaping aftercare section of the *works*, the total of the Prices for each completed activity.”]

12 Interpretation and the law

12.2 Delete existing clause 12.2 and replace it with

“The contract is governed by the *law of the contract*. In the contract, unless the context otherwise requires, any reference which immediately before Exit 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 Exit 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 Exit Day as a reference to the United Kingdom institution, authority or body to which its functions are transferred.”

26 Subcontracting

26.3 In clause 26.3, insert an additional bullet point after “A reason for not accepting the subcontract documents is that”

- “they do not include all the provisions specified in the Scope.”

28 Assignment

Delete clause 28.

29 Disclosure

Delete clause 29.

[44 Correcting Defects

44.3 In the first bullet point after “*defect correction period*” insert
“(other than any such period relating to landscaping aftercare)”.

In the second bullet point after “Defects” insert
“(other than any Defects relating to landscaping aftercare).”]

50 Assessing the amount due

50.5 Delete clause 50.5 and replace it with
“If

- no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which the contract requires and
- the *Contractor* 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 Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has produced such plans.”

60 Compensation events

60.1(1) 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,
 - 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(1) In clause 60.1(1) in the second main bullet point, after “design” insert
“or for which the *Contractor* is responsible under clause Z104.1”.

Insert an additional sub-bullet after the second main bullet point
“in order to rectify a Defect in the design of the *works*,”.]

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 *Contractor* that a conflict of interest may exist or arise”.

[80 Client’s liabilities

- 80.1 Insert at the end of the second main bullet point (before the full stop)
“(excluding a fault in any design for which the *Contractor* has responsibility under the contract)”.
Delete the third main bullet point.]
- 82 Recovery of costs**
- 82.1 Delete clause 82.1 and replace it with
- “82.1 Any
- cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* 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 *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims against the *Contractor*
- is paid by the *Contractor*.”
- 83 Insurance cover**
- 83 Delete clauses 83.2, 83.3 and the Insurance Table and insert
- “83.2 The *Contractor* provides the insurances as stated in the Contract Data.”
- 84.1 Delete
- “for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor*’s insurer or insurance broker. The *Project Manager* accepts the certificates if the insurance complies with the contract and if the insurer’s commercial position is strong enough to carry the insured liabilities.”
- 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. The certificates or letter of confirmation are signed by the *Contractor*’s insurer or insurance broker. The *Project Manager* 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 shall constitute acceptance by the *Client* of the terms thereof, nor be a waiver of the *Contractor*’s liability under the contract.”
- 90 Termination**
- 90.2 In clause 90.2, in the Termination Table, delete “R1-R15, R18 or R22” and replace with “R1-R15, R18, R22 or R23”
- and
- Delete A4 in the “Amount Due” column of the Termination Table.

91 Reasons for termination

91.8 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

93.2 Delete item A4 in clause 93.2 of the *conditions of contract*

[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 *Contractor* prior to the *tender return date*”].

[Option X5 Sectional Completion

Delete clause X5.1 and replace it with

“X5.1 In the contract, unless stated as the whole of the *works*, each reference (including in the Scope) and clause relevant to

- the *works*,
- Completion and
- Completion Date

applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.”]

[Option X10 Information modelling

X10.7(1) Delete this clause.

X10.7(2) In clause X10.7(2)

- insert “Subject to the Excluded Items, the” before “The” and then delete “The” and

insert “described in clause X15.1” after care and delete “normally used by professionals”.

X10.7(3) Delete this clause.]

Option X11 Termination by the *Client*

X11.2 In line 2 of clause X11.2 delete “A1, A2 and A4” and insert “A1 and A2”.

[Option X14 Advanced Payment to the *Contractor*

Delete clause X14 and replace it with

- “X14.1 The *Client* makes advanced payments to the *Contractor* of the amounts and at the dates [or on the occurrence of the events] stated in the Contract Data. Each advanced payment is included in the assessment made at the next assessment date after the associated date [or the occurrence of the associated event] stated in Contract Data or, if an advanced payment bond is required, at the next assessment date after
- the associated date [or the occurrence of the associated event] and
 - the *Client* receives the advanced payment bond.

X14.2 X14.2

An advanced payment bond for each advanced payment is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting a proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the *Contractor* has not repaid and is in the form set out in the Scope. Delay in making the advanced payment in accordance with the contract is a compensation event.

- X14.3 Each advanced payment is repaid to the *Client* by the *Contractor* in instalments of the relevant amount stated in the Contract Data. An instalment is included in each amount due assessed after the repayment commencement date stated in the Contract Data until the relevant advanced payment has been repaid.”]

[Option X15 The Contractor’s design

Delete clause X15.1 and replace it with

- “X15.1 Except for the Excluded Items, the *Contractor* is not liable for a Defect in the *works* due to its design so far as it proves that it used reasonable 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 *works*.”]

Option X18 Limitation of liability

- X18.5 In clause X18.5, delete the second paragraph including its bullet points and insert in its place

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

- “loss of or damage to the *Client*’s property,
- delay damages if Option X7 applies,
- low performance damages if Option X17 applies,
- *Contractor*’s share if Option C or D applies,
- loss or damage
 - to third party property or
 - due to pollution,
- interest on debt,
- losses caused by the *Contractor*’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 *Contractor* 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. Where the *Contractor's* liability for an insured event exceeds the minimum level of insurance required by the contract, the amount over the minimum level is not an excluded matter and is included in the *Contractor's* total liability to the *Client* which is limited to the amount stated in the Contract Data.”

[Option X22 Early Contractor Involvement

X22.1(3) In clause X22.1(3), after “the *Contractor*” delete “and Others”.

X22.7 Delete existing clause and replace it with

“X22.7 On issue of the notice to proceed to Stage Two, the *Project Manager* calculates the Stage One Incentive in accordance with the Development Phase Incentive Schedule. The Stage One Incentive is included in the amount due following issue of the notice to proceed to Stage Two.

If the notice to proceed is not issued, then the bonus becomes void.”

Add new clauses X22.8 and X22.9

“X22.8 At the last *defects date*, the *Project Manager* calculates the Stage Two Incentive in accordance with the Delivery Phase Incentive Schedule. The Stage Two Incentive is included in the amount due following the last *defects date*.”

“X22.9 The *Client* may modify the Development Phase Incentive Schedule or the Delivery Phase Incentive Schedule to reflect

- any revised business priorities and
 - identified work that needs to be delivered by a Key Date
- 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 *Contractor's* ability to earn a Stage One Incentive and a Stage Two Incentive.

The *Client* consults with the *Contractor* before modifying the Development Phase Incentive Schedule or the Delivery Phase Incentive Schedule, but the *Contractor* acknowledges that the *Client* has the final decision.”]

Option X29 **Climate Change**

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 insert

- “it does not demonstrate how the *Contractor* avoids breaching the *carbon cap*.”

Option Y(UK)1 **Project Bank Account**

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

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” and before the full stop, 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 a Tier Two Supplier”.

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 *Contractor* and Named Suppliers are beneficiaries”.

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

Y1.5 In Named Suppliers clause Y1.5, delete clause Y1.5 and replace with

“The *Contractor* 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 *Contractor* 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 *Project 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 cognizance of the trust’s benefits.

The *Project Manager* notifies the *Contractor* 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 *Project Manager* agrees otherwise in accordance with clause Y1.5A.”

Trust Deed clause Y1.17

In clause Y1.17

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

Form of Trust Deed

Delete the form of Trust Deed and replace with the form in **Annex 11** of the Scope.

Form of Joining Deed

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

Schedule of Cost Components

Delete the existing Schedule of Cost Components and replace it with the document entitled “Schedule of Cost Components (SoCC)” in **Annex A**.

Z2 Interpretation

Z2.1 In the contract, except where the context shows otherwise

- references to a document include any revision made to it in accordance with the contract,
- 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,
- references to a British, European or International standard include any current relevant standard that replaces it,
- references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity and
- the words “includes” or “including” are construed without limitation.

Z3 Recovery of sums due from the Contractor

Z3.1 Where, under the contract a sum of money is recoverable from or payable by the *Contractor*, 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 *Contractor* under the

contract or any other contract with the *Client*.

Z4 Assignment and transfer

Z4.1 The *Contractor* 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 *Client*.

Z4.2 If requested by the *Client*, the *Contractor* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the contract to

- a replacement organisation established to take over the *Client*'s functions or part of it,
- another public body exercising similar functions,
- a Department or Office of His Majesty's Government or
- a local authority.

Z4.3 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client*'s agreement through the *Project Manager* to do so. The *Contractor*

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

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

Z4.4 If

- a new contractor or
- a guarantor, an alternative guarantor (including any bank or surety provider) proposed by the *Contractor* and agreed by the *Client* for any new contractor

(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 *Contractor* provides a legal opinion is given signed and issued by an independent regulated legal firm which is

- independent the *Contractor*, Consortium Members, Guarantors and alternative guarantors,
- for any new contractor, independent the new contractor, Consortium Members, Guarantors and alternative guarantors,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Project Manager*

The legal opinions are 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 opinions confirms that the method of execution of

- the Parent Company Guarantee (or any alternative guarantee agreed by the *Client*) and

- any novation deed

is valid and binding under applicable local law and covers the matters listed in the Scope, section S 1602 (Legal Opinion).

Z5 Not Used.

Z6 Adjudication and Arbitration

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 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” (see link in Scope **Annex 02**).

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 *Contractor* 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 *Contractor* consults the *Project 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 *Contractor* or
- with the consent of the *Project Manager*.

Z7 Termination – Procurement Act 2023

Z7.1 The *Contractor* notifies the *Project 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 *Contractor* 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
- 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 *Contractor* provides or procures the provision of additional information requested by the *Project 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 *Contractor* ensures that each subcontract (and procures that each subsubcontract) includes an obligation upon the subcontractor (or subsubcontractor as applicable) to notify the *Contractor* 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 *Contractor* notifies the *Project 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
 - subsubcontractor

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 is or is placed upon the Debarment List.

The *Contractor* provides (or procures the provision of) additional information requested by the *Project 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 *Project Manager* notifies the *Contractor* whether or not the *Client* has determined that (as applicable)

- the *Contractor*,
- 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 *Project Manager* identifies the ground which applies and why the *Client* is minded to terminate.

Within the *period for reply*, the *Contractor* may make representations to the *Client* (via

the *Project Manager*) about whether a termination ground applies and the *Client's* decision to be minded to terminate.

Z7.4 The *Client* may terminate the *Contractor's* obligation to Provide the Works if

- either
 - the *Contractor* is or becomes an Excluded Supplier or Excludable Supplier,
 - the *Contractor* 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 *Contractor's* representations,
- the *Client* considers that the contract was awarded or modified in Material Breach, reason T2,
- the *Contractor*
 - 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 *Project 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 *Contractor'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 *Contractor* fails to provide or procure the provision of any further information requested by the *Project 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 *Contractor* agrees that it, within the *period for reply* or any other period agreed by the *Client* via the *Project 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

- *Contractor* 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 main Options C, D, E or F 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 Works are a Disallowed Cost.
- 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 *Contractor* 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 *Contractor* fails to comply with this clause Z7 then such failure is treated as the *Contractor* having substantially hindered the *Client* or Others.

Z8 Subcontracting

- Z8.1 Not Used.
- Z8.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted.
- Z8.3 The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor (at any stage of remoteness from the *Client*). The *Contractor* 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 *Contractor* submits to the *Project Manager* for acceptance
- a statement regarding the proposed subcontractor or subsubcontractor

- 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, the circumstances giving rise to the application of any exclusion ground are continuing or likely to occur again and the *Contractor* 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 *Contractor* provides to the *Client* (via the *Project Manager*) any further information requested by the *Project Manager* to enable the *Client* to determine if a proposed subcontractor or subsubcontractor is an Excluded Supplier or an Excludable Supplier.

Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Project Manager* has accepted the submission. A reason for not accepting the submission is that

- the *Contractor* 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 *Project 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 *Contractor* appoints a subcontractor or does not prevent a subcontractor appointing a subsubcontractor before the *Project Manager* has accepted the proposed subcontractor or subsubcontractor, then

- where main Option C, D, E or F is used, the relevant subcontractor’s costs are a Disallowed Cost,
- where main Option A is used, the activities the relevant subcontractor is working on are not completed for the purposes of the Price for Work Done to Date or
- where main Option B is used, no proportion of any lump sum which the relevant subcontractor is working on is completed and no quantity of work for an item in the Bill of Quantities which the relevant subcontractor is working on is completed for the purposes of the Price for Work Done to Date.

Z8.7 If requested by the *Project Manager*, the *Contractor* 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 subcontract or subcontractor

- 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 *Project Manager* may instruct the *Contractor* to

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

Such an instruction is not a compensation event.

Where main Option C, D, E or F is used, following such an instruction, the *Contractor*, 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 a Disallowed Cost.

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

- where main Option C, D, E or F is used, the relevant subcontractor's ongoing costs are a Disallowed Cost
- where main 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 Work Done to Date or
- where main Option B is used, no proportion of any lump sum which the relevant subcontractor is working on is completed and no quantity of work for an item in the Bill of Quantities which the relevant subcontractor is working on is completed for the purposes of the Price for Work Done to Date.

Z8.9 The *Contractor* submits

- the name of each proposed subcontractor and its competence to undertake the relevant proposed subcontract and
- a brief description of the proposed subcontract

to the *Project Manager* for acceptance. A reason for not accepting the subcontractor is that

- its appointment does not allow the *Contractor* to Provide the Works or
- the subcontractor is on the Debarment List.

- The *Contractor* does not appoint a proposed subcontractor until the *Project Manager* has accepted it.
- Z8.10 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.
- Z8.11 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that they do not
- allow the *Contractor* to Provide the Works 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 *Contractor* provides and keeps up to date a project bank account tracker in accordance with S 2705.1 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 and
 - if a Tier Two Supplier is not a Named Supplier, the reason why and the date of the *Project Manager's* agreement in accordance with clause Y1.5A.
- and allows the *Project 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 *Contractor* does not provide a copy of the up-to-date project bank account tracker, then one quarter of change in the Price for Work Done to Date may be retained in assessments of the amount due until the *Contractor* 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 *Contractor* is an unincorporated joint venture.
- Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under the contract.
- Z10.3 The *Contractor* 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 *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.

- Z10.4 The *Contractor* 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 *Contractor*.
- Z10.5 A Consortium Member gives not less than four weeks' notice to the *Project 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 *Contractor* to comply with its obligations.
- Z10.7 Where two or more Consortium Members comprise the *Contractor*, clauses 90.1 and 91.1 of the conditions of contract is amended by inserting after "the other Party" the words "or in the case of the *Contractor*, any Consortium Member".

Z11 Parent Company Guarantee, other sureties and financial distress

- Z11.0 The *Contractor*
- 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 andunless agreed otherwise by *Client* via the *Project Manager* 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 *Contractor* or Consortium Member has a Controller, if required by the *Project Manager*, the *Contractor* 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 *Project 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 *Contractor* or a Consortium Member and
 - a *Contractor* or Consortium Member has a Controller,
- the *Contractor* 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 *Project 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 *Contractor* or Consortium Member has no Controller and
- the *Client* has agreed one or more Alternative Guarantees,

the *Contractor* 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 *Project 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 *Contractor* 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 *Contractor* provides a legal opinion which is given signed and issued by an independent regulated legal firm which is

- independent from the *Contractor*, any Consortium Members, any Controller, any Guarantors and any alternative guarantors,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Project 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 1605 (legal opinion).

If accepted by the *Project Manager*, the alternative guarantor becomes the Guarantor for the *Contractor* 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 *Contractor* notifies the *Project Manager* immediately if a Change of Control has occurred.

Z11.7 Except for a Listed Company, if a Change of Control occurs without the *Project Manager's* prior consent or does not allow the *Contractor* to Provide the Works, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.

Z11.8 The *Contractor* notifies the *Project Manager* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (or a Consortium Member). A change is material if (in aggregate) 3% or more of the issued share capital of the *Contractor* (or a Consortium Member) or of an entity that has direct or indirect legal or beneficial ownership in the *Contractor* (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 *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Contractor*.

Z11.9 The *Contractor*

- notifies the *Project Manager* immediately of any change or proposed change in the name or status of the *Contractor* 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 *Contractor*.

If the *Contractor* 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 *Contractor* notifies the *Client* immediately if

- any of the following events occurs in relation to the *Contractor*, 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 *Contractor* and the *Project 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 *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.

Z11.12 If a Change of Control occurs, the *Contractor* (or the Consortium Member) provides to the *Project 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 *Project 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 *Project Manager* in order to satisfy itself that the *Contractor* remains in a position to Provide the Works.

Z11.13 If a Change of Control or any of the events listed in clauses Z7.1, Z11.8 to Z11.10 occurs, the *Project Manager* may require the *Contractor* (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 *Contractor* (or the Consortium Member) and accepted by the *Project Manager* or
- a Form of Performance Security, (or an alternative form of bond or security agreed by the *Project Manager* from an alternative guarantor proposed by the *Contractor* (or the Consortium Member) and accepted by the *Project 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 *Project Manager* and the *Contractor* or relevant Consortium Member.

If the Guarantor or an alternative guarantor proposed by the *Contractor* (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 *Contractor* provides a legal opinion in accordance with Z11.4.

Z11.14 The *Contractor* provides the *Project Manager* with the information listed in clause Z11.12 and the credit ratings for the proposed alternative guarantor (unless agreed

otherwise by the *Project Manager*) and any further information requested by the *Project 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 *Contractor* 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 *Contractor* 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 form of bond agreed by the *Project Manager*) proposed by the *Contractor* 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 *Project 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 *Project 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 Not Used.

Z11.18 The *Project Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* (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 *Contractor* (or relevant Consortium Member) gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Project 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 *Contractor* fails to notify the *Project Manager* that an event listed in clause Z11.8 to Z11.10 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Contractor*, 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 *Contractor* does not give to the *Client* a
 - Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
 - a Form of Performance Security or an alternative form of bond agreed by the *Project Manager*

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

- the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project 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 18 months of the *Project Manager's* acceptance

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

Z11.20 Not Used.

Z11.21 If accepted by the *Project Manager*, the alternative guarantor becomes the Guarantor for the *Contractor* 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 *Contractor* to comply with its obligations.

Z11.23 If the *Contractor* 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 *Project Manager*,
- Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
- an Alternative Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager*

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

- the *Client* may retain
 - one quarter of the Price for Work Done to Date in assessments of any amount due until the *Contractor* provides such Parent Company Guarantee or Alternative Guarantee and

- any outstanding incentive payment (including any *Contractor's* share if main Option C or D is used) and any future incentive payments (including any *Contractor's* share if main Option C or D is used) due to be made to the *Contractor*

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

- the *Contractor* pays back any incentive payment (including any *Contractor's* share if main Option C or D is used) received from the *Client*. When the *Contractor* 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 *Project Manager* may notify the *Contractor* that the *Client* may require the *Contractor* (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 and Harassment

Z12.1 The *Contractor* 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
- allegation of bullying or harassment

resulting from any act or omission of the *Contractor* 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 *Contractor* 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 *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z13.2 The *Contractor* waives or procures a waiver of any moral rights in any copyright works assigned to the *Client* under the contract.

Z13.3 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who also has 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 *Contractor* or its assignees or any third party. The

Contractor provides to the *Client* the documents which license these IPRs to the *Client*. The *Contractor'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 *Contractor* 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.

[OR

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 *Contractor* 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 *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z13.2 The *Contractor* waives or procures a waiver of any moral rights in any copyright works assigned to the *Client* under the contract.

Z13.3 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who also has 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 *Contractor* or its assignees or any third party. The *Contractor* provides to the *Client* the documents which license these IPRs to the *Client*.

The *Contractor'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 *Contractor* 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 The *Contractor* warrants that

- the Software does not contain any Open Source Software other than that set out in the Software Schedule and
- the Open Source Software is licensed upon terms which permit the use by the *Contractor*, the *Client* and the *Client's* end users for all purposes contemplated by the contract and
 - all components of the Software are free from material design and programming errors,
 - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Submission,

- o the Documentation and do not infringe any Intellectual Property Rights.

Z13.6 The *Contractor* at all times, during and after the Completion, indemnifies the *Client* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.]

Z13.7 The Parties agree that software which is supplied electronically by the *Contractor* as part of the permanent works and not on any tangible medium constitutes a sale of goods.]

Z14 Project Bank Account

Z14.1 The *Project Manager* may at any time notify the *Contractor* 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 *Project Manager's* notice, the *Contractor* 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 *Contractor* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Contractor* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.

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

- the steps the *Contractor* 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 *Project Manager*.

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

- warranty given by the *Contractor* under clause Z15.1 is untrue,
- *Contractor* fails to notify the *Client* of a Tax Non-Compliance or
- *Client* decides that any mitigating factors notified by the *Contractor* 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 the works

Z17.1 The *Project Manager* may at any time instruct the *Contractor* that

- part or all of the remaining works is to be permanently removed from the contract or

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

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

Z17.2 An instruction given under clause 17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 [or R22] or if a Quality Warning Notice is in effect, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*, and if all of the remaining *works* is to be permanently removed, the *Contractor* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the *works* or any part of them.

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

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

[Z17.4 The *Project Manager* may give the *Contractor* an instruction to Provide the Works (or parts of the *works*) in relation to highway assets outside the Site owned by the *Client* or a third party. The instruction states

- the assets to which it relates,
- the parts of the *works* which the *Contractor* is to provide in relation to them,
- the expected duration of the instruction and
- any constraints on how the *Contractor* is to Provide the Works.

Before giving an instruction under this clause, the *Project Manager* consults with the *Contractor* and confirms that giving the instruction will not prejudice the *Contractor's* ability to comply with its obligations under the contract.]

Z18 Corruption or loss of data

Z18.1 If any data of the *Client* is corrupted, lost or degraded as a result of the *Contractor's* default so as to be unusable, the *Contractor* immediately reports this to the *Project Manager* and the

- *Project Manager* may instruct the *Contractor* to restore the data in accordance with the *Project Manager's* requirements (and any cost incurred by the *Contractor* in so doing is Disallowed Cost) or
- *Client* may itself restore the data (and the *Contractor* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

Z19 Conflict of interest

Z19.1 Any steps taken in accordance with paragraph S 212.1 in the Scope is not a compensation event.

Z19.2 A failure to comply with S 212 in the Scope is treated as a substantial failure by the

Contractor to comply with its obligations.

Z20 Other amounts to be paid by the Contractor

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

[Z20.2 The *Contractor* pays the *Client's* costs incurred if the *Contractor* seeks the *Client's* assistance in the recovery of a vehicle in accordance with the Scope. The [total of the Prices/Total of the Prices] is reduced by the *Client's* costs incurred.]

Z20.3 The *Contractor* pays the *Client's* costs incurred if the *Contractor* seeks the *Client's* assistance in repairing damaged or faulty technology Plant and Materials which is attributable to the *Contractor* in accordance with the Scope.

**Z21 –
Z50 Not Used**

[Z51 Changes to Prices

Z51.1 The Parties may at any time agree a reduction to the Prices.

Z51.2 The reduced Prices apply to any work carried out after the reduction is agreed.

Z51.3 If the *Contractor* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Contractor's* obligation to Provide the Works by notifying the *Contractor*.]

[Z52 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

Z52.1 The *Contractor* provides to the *Client* within ten days of the *Client's* request such information in connection with TUPE as the *Client* may require. The *Contractor* promptly notifies the *Client* of any later change to information provided by it.

Z52.2 The *Contractor* acknowledges that the *Client* may disclose information provided by the *Contractor* to

- any replacement provider of works similar to the *works* 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).

Z52.3 During the eight months period immediately prior to the Completion Date, the *Contractor* 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 the contract or
- move or deploy any key person away from the performance of the *works*.

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

Z52.4 The *Contractor* does not do anything which may adversely affect the orderly transfer

of responsibility for provision of the *works*.

- Z52.5 The *Contractor* 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 (see link in Scope **Annex 02**) and the associated guidance documents “Staff Transfers: Public Service Pension schemes” and the “Local Government Pension Regulations (SI 2013/2356)” (see link in Scope **Annex 02**), including any amendments or revisions to these prior to the commencement of the contract or any staff transfer.

[Z53 Pensions

- Z53.1 The *Contractor* indemnifies the *Client* and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which
- relate to pension rights in respect of periods of employment on or after the Contract Date or
 - arise out of the failure of the *Contractor*, any Subcontractor or any subsequent transferee of the 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 *Contractor* 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 *Contractor* of any extension or further extension to the Completion Date later than [6 months] before the expiry of the Completion Date.]

[Z55 Payment of the Contractor’s share

- Z55.1 If, prior to Completion of the whole of the *works*, the Price for Work Done to Date exceeds the total of the Prices, the *Project Manager* makes an assessment of the *Contractor’s* share of the difference between the total of the Prices and the Price for Work Done to Date at each assessment date. The total of the Prices includes the *Project Manager’s* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.
- This share is included in the amount due to the *Contractor*.
- Z55.2 In clause 54.3, in two places, after *works* insert “other than the *section* comprising landscaping aftercare”.]

Z56 Construction Industry Scheme

- Z56.1 In this clause (but not otherwise)
- the “Act” is the Finance Act 2004 (see link in Scope **Annex 02**) and

- the “Regulations” are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) (see link in Scope **Annex 02**).
- Z56.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the “Act”.
- Z56.3 The *Contractor* provides the information required by the “Regulations” to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the “Act” is
- registered for gross payment,
 - registered for payment under deduction,
 - exempt from registration as a local authority or other public body or
 - neither registered nor exempt from registration.
- Z56.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration, the
- *Contractor* submits an application for payment which separately identifies the cost of labour and
 - *Client* deducts the relevant percentage from the payment in accordance with the “Act” and the “Regulations”.

Z57 Infrastructure Act 2015

- Z57.1 The *Contractor* Provides the Works 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 (see link in Scope **Annex 02**) (and notified by the *Project Manager* to the *Contractor*).
- Z57.2 The *Project Manager* notifies the *Contractor* 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 *works*. The *Contractor* 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 *Contractor*.

[Z58 Revisions to Quality Submission

- Z58.1 The *Contractor* may submit to the *Project Manager* proposed revisions to the Quality Submission for acceptance. A reason for not accepting the proposed revision is that it
- does not enable the *Contractor* to meet a Performance Requirement,
 - unacceptably increases the risk of failure to meet a Performance Requirement,
 - does not enable the *Contractor* 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 *Contractor* 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 *Project Manager* is not a compensation event.

Z58.3 The *Project Manager* may instruct the *Contractor* to amend the Quality Submission where it is not compliant with the Scope provided by the *Client* including

- where it is not compliant with the Scope provided by the *Client*,
- [to remove any design process/methodology, construction process/methodology, Plant and Materials or Equipment],
- where it does not demonstrate how it enables the *Contractor* to comply with the Scope provided by the *Client* or
- where it does not enable the *Contractor* to Provide the Works or
- to address any reason the *Client* provides to the *Contractor* 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 *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).

Z59.2 The *Contractor* 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 *Contractor* in defending the Indemnified Claim.

Z59.3 The *Contractor* 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 *Contractor* 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 *Contractor*.

Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.

Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice, the *Contractor*

- 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 *Contractor* in conducting the Indemnified Claim, the *Contractor* is released from its indemnity to the *Client* in respect of it.

Z60 Tax Arrangements of Public Appointees

Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Contractor* 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 the contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 (see link in Scope **Annex 02**) and all other statutes and regulations relating to NICs in respect of that consideration.

Z60.3 The *Client* may, at any time during the term of the contract, request the *Contractor* 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 If the *Contractor* fails to provide information in response to a request under clause Z60.3

- within the period for reply or
- 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

the *Client* may

- treat such failure as a substantial failure by the *Contractor* to comply with its obligations or
- instruct the *Contractor* to replace the relevant member of Staff.

Z60.5 If the *Client* 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 *Client* may treat such non-compliance as a substantial failure by the *Contractor* to comply with its obligations.

Z60.6 The *Contractor* acknowledges that the *Client* may

- supply any information which it receives under clauses Z60.3 or Z60.5 or
- advise the non-supply of information

to the Commissioners of His Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

[Z61 Enhancements

Z61.1 The *Contractor* may at any time submit to the *Project Manager* a proposal for an Enhancement.

Z61.2 Before developing a proposed Enhancement, the *Contractor* prepares and submits to the *Project Manager* an outline business case setting out brief details of

- the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements,
- the expected long-term benefit to the *Client* if the proposed Enhancement is implemented,
- any significant risks to the successful development and implementation of the proposed Enhancement,

- any resulting change to the Prices or the *Client's* other costs and
 - any incentive payment which the *Contractor* proposes should be paid to it if the proposed Enhancement is successfully implemented.
- Z61.3 The *Project Manager* and the *Client* jointly review the *Contractor's* outline business case. The *Project Manager* assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the *Contractor* whether the *Client* is likely to agree the proposed Enhancement.
- Z61.4 The *Contractor* continually monitors the development of a proposed Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.
- Z61.5 The *Contractor may* propose to the *Project Manager* that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the *Project Manager* agrees, it may instruct the *Contractor* to undertake any or all of the following
- develop a detailed specification for the Enhancement,
 - or to carry out the trials, testing or
 - a pilot project.
- Z61.6 The *Contractor* may prepare and submit to the *Project Manager* a detailed business case for the proposed Enhancement. A detailed business case includes
- full details of the revised design, materials used, methods of construction or maintenance or operational performance requirements,
 - full details of the expected long-term benefit to the *Client* if the Enhancement is implemented and the period over which the benefit is to be assessed,
 - how any risks associated with the implementation of the Enhancement are to be allocated,
 - a cost benefit analysis,
 - any resulting change to the Prices,
 - any expected change to the *Client's* other costs and the timescale over which the change will occur and
 - the proposed Incentive Amount and a proposal as to how it is to be paid to the *Contractor* if the Enhancement is successfully implemented.
- The *Project Manager* and the *Contractor* may discuss the detailed business case and the *Contractor* updates the business case following the discussion.
- Agreement of the business case is at the sole discretion of the *Project Manager*.
- Z61.7 The *Project Manager* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Project Manager* instructs the implementation of an agreed Enhancement as a change to the Scope.
- Z61.8 If the *Contractor* decides not to pursue a proposed Enhancement, the *Client* may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the *Client* may use or adapt any material submitted by the *Contractor* as part of its proposal and outline business case.

- Z61.9 Other than where instructed by the *Project Manager* to carry out trials, testing or a pilot project under clause Z61.5, the *Contractor* is not entitled to payment for the design or development of an Enhancement (including the preparation of business cases or a detailed specification), nor for the use or adaptation by the *Client* of the *Contractor's* proposal and outline business case under clause Z61.8.
- Z61.10 A change to the Scope instructed by the *Project Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* is not a compensation event.
- Z61.11 If an Enhancement instructed by the *Project Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* delivers the benefits described in the *Contractor's* detailed business case before the *defects date*, the *Client* pays to the *Contractor* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Contractor* a proportionate part (as assessed by the *Project Manager*) of the Incentive Amount.
- Z61.12 The Incentive Amount (or the proportionate part assessed by the *Project Manager*) is included in the final amount due, except that the Parties may agree to include it in an earlier amount due if the *Client* has actually received the full benefit of the Enhancement by an earlier date.
- Z61.13 In consideration of the *Client's* agreement to pay the Incentive Amount (or a proportionate part) to the *Contractor*, the *Contractor* assigns to the *Client* the Intellectual Property Rights in the Enhancement.
- Z61.14 Where an Enhancement is proposed jointly by the *Contractor* and one or more Community Partners, clause Z61 applies except that
- the outline and detailed business case are prepared jointly by the *Contractor* and the relevant Community Partners,
 - the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Contractor* and the relevant Community Partners,
 - the *Client* may instruct the *Contractor* or any Community Partner (or a combination of them) to develop a detailed specification for and/or to carry out any trial, testing or pilot project under clause Z61.5 and
 - if the Enhancement delivers the benefits (or part of the benefits) described in the detailed business case before the *defects date*, the Incentive Amount (or the proportionate part of it) is shared among the *Contractor* and the relevant Community Partners in the proportions stated in the detailed business case.]

Z62 Not Used.

Z63 Not Used.

Z64-Z99 Not Used.

Z100 Not Used.

Z101 Not Used.

Z102 Not Used.

[Z103 Landscaping aftercare]

Z103.1 The following apply after the *defects date* in relation to the *section* comprising landscaping aftercare only

(1) Until the Completion Date, the *Supervisor* notifies the *Contractor* of each Defect as soon as they find it and the *Contractor* notifies the *Supervisor* of each Defect as soon as they find it.

(2) The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins when the Defect is notified.

(3) If the *Contractor* is not given access in order to correct a notified Defect before the end of the *defect correction period*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect.

(4) If landscaping aftercare is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule, the date when each such activity is completed is an assessment date.]

[Z104 Single point design responsibility]

Z104.1 The *Contractor* accepts sole responsibility for the design of the whole of the *works*, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Client*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of the contract as having been carried out by the *Contractor*.

Z104.2 The *Contractor* is not relieved from its liabilities or obligations under the contract and such liabilities or obligations are not restricted or qualified in any way by

- the presence of the *Client*, *Project Manager*, *Supervisor* or any representative of those on the Site or the Working Areas,
- the carrying out of tests or inspections by the *Supervisor* or by the *Contractor* (whether or not watched by the *Supervisor*) or
- any instruction, agreement, acceptance or inspection made or given by or on behalf of the *Project Manager* or *Supervisor* (or by any failure to make or give the same).]

[Z105 Innovation – Title to Equipment]

Z105.1 At Completion or (if earlier) when an Innovation is removed from the Working Areas, the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title in any Equipment used in the development of the Innovation. The *Contractor* ensures that the legal and beneficial title in the relevant Equipment transfers from the *Contractor* or a subcontractor to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.]

[Z106 Extended liability period for Plant]

Z106.1 If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant stated in the Contract Data requires the replacement of part of the Plant, the *Contractor* corrects any further Defect in the part which has been replaced during the *extended liability period*.

Z106.2 The *Contractor* carries the risk of loss or damage caused by or resulting from work in correcting a Defect after the *defects date*.]

[Z107 Network Rail Possessions

Z107.1 The *Contractor* pays the *Client* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

Or
Z107.1 The total of the Prices is reduced by the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

Z107.2 In clause 25.3 of the conditions of contract insert an additional bullet before the first bullet

- “by paying fines or charges to Others”.]

Annex A

Template Schedule of Cost Components

This schedule is part of the *conditions of contract*. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

In this schedule the *Contractor* means the *Contractor* and Associated Companies, but not its Subcontractors.

1 People

The following components of the cost of

- people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is within the Working Areas,
- people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and
- the people listed in Contract Data who are employed by the Contractor (excluding people identified in the Fee Schedule), whose normal place of working is not within the Working Areas and who are working outside of the Working Areas other than on manufacture and fabrication and design.

If the *Project Manager* agrees, additional people may be assessed as if they were listed in the Contract Data.

- 11 For people who are directly employed by the *Contractor* wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract.
- 12 For people who are directly employed by the *Contractor* payments related to work on the contract and made to people for
- (a) overtime
 - (b) working in special circumstances
 - (c) special allowances
 - (d) absence due to sickness and holidays

(e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works.

13 For people who are directly employed by the *Contractor* payments made in relation to people in accordance with their employment contract for

(a) travel, subsistence and lodging in accordance with the *Client's* Travel and Subsistence Policy (see link in Scope **Annex 02**)

(b) relocation

(c) medical examinations

(d) passports and visas

(e) travel insurance

(f) items (a) to (e) for dependents

(g) protective clothing

(h) contributions, levies or taxes imposed by law

(i) pensions and life assurance excluding payments made in relation to any pensions deficits

(j) death benefit

(k) occupational accident benefits

(l) medical aid and health insurance

(m) a vehicle

(n) safety training specific to Providing the Works.

14 For people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time they work, the amounts paid by the *Contractor*.

2 Equipment

The following components of the cost of Equipment which is used within the Working Areas

- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
 - the *Contractor's* ultimate holding company or
 - a company with the same ultimate holding company
- at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
 - purchased by the *Contractor* under a hire purchase or lease agreement or
 - hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company
- at open market rates, multiplied by the time for which the Equipment is required.
- 23 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of
- the change in value over the period for which the Equipment is required and
 - the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

- 25 Payments for the purchase price of Equipment which is consumed.

- 26 Unless included in the hire or rental rates, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

27 Payments for purchase of materials used to construct or fabricate Equipment.

28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

3 Plant and Materials

The following components of the cost of Plant and Materials.

31 Payments for

- purchasing Plant and Materials,
- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

4 Subcontractors

The following components of the cost of Subcontractors.

41 Payments to Subcontractors, excluding Associated Companies, for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Contractor*, which would result in the *Client* paying or retaining the amount twice.

5 Charges

The following components of the cost of charges paid or received by the *Contractor*.

51 Payments for the provision and use in the Working Areas of

- water,

- gas,
- electricity,
- telephone and
- internet.

52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.

53 Payments for

(a) cancellation charges arising from a compensation event

(b) buying or leasing land or buildings within the Working Areas

(c) compensation for loss of crops or buildings

(d) royalties

(e) inspection certificates

(f) charges for access to the Working Areas

(g) facilities for visits to the Working Areas by Others

(h) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.

54 Payments made and received by the *Contractor* for the removal from Site and disposal or sale of materials from excavation and demolition.

6 Manufacture and fabrication

The following components of the cost of manufacture and fabrication of Plant and Materials by the *Contractor* which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas.

7 Design

Not Used

8 Insurance

The following are deducted from cost

- the cost of events for which the contract requires the *Contractor* to insure and
- other costs paid to the *Contractor* by insurers.

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