



National Highways Limited

NEC4 Term Service Contract

(June 2017 with amendments January 2019 and October 2020 and January 2023)

Contract Data

Parts 1 and 2

in relation to a service for

[insert contract name here]

CONTENTS AMENDMENT SHEET

[Delete the contents of the Amendments Page prior to issue]

Issue No.	Revision No.	Amendments	Initials	Date
11	0	Jan 25	MS/SF	01/07/2025

[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.]

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 Term Service Contract](#)
- [Preparing a Term Service Contract](#)
- [Managing a Term Service 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.

[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 Term Service Contract June 2017.

Main Option	A, C or E	Option for resolving and avoiding disputes	W1 or W2
Secondary Options	X1, X2, X8, X10, X11, X12, X13, X17, X18, X19, X20, X21, X23, X24, X29 Y(UK)1, Y(UK)2, Y(UK)3 Z1 to Z...		
The service is	[...]		
The Client is			
Name	National Highways Limited		
Address for communications	Bridge House, 1 Walnut Tree Close Guildford Surry GU1 4LZ Registered number 09346363		

Address for
electronic
communications

[...]

The *Service Manager* is

Name

[...]

Address for
communications

[...]

Address for
electronic
communications

[...]

The Affected
Property is

[...]

The Scope is in

[...]

The *shared*
services which
may be carried
out outside the
Service Areas are

[...]

The *language of*
the contract is

English

The *law of the*
contract is the law
of

England, subject to the jurisdiction of the Courts of England

The *period for reply* is

2 weeks

except that

• The *period for reply* for

[...]

is

[...]

- The *period for reply* for

[...]

is

[...]

The following matters will be included in the Early Warning Register

[...]

Early warning meetings are to be held at intervals
no longer than

[...]

2 The *Contractor's* main responsibilities

The *Contractor* prepares forecasts of the total Defined Cost for the whole
of the *service* at intervals no longer than

4 weeks

3 Time

The *starting date* is

[...]

The *service period* is

[...]

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

[One month]

The period within which the *Contractor* is to submit a Task Order
programme for acceptance is

[...]

The *Client* **is/ is not*** willing to take over the *service* before the end of the Service Period
(*Delete as applicable).

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

[...]

4 Quality management

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

[...]

The threshold level is 25 Quality Management Points.

The *quality table* is

Failure	Quality Management Points (QMP)	Period of effect
Failure to appoint a suitable quality manager or to replace the quality manager when instructed by the <i>Service Manager</i> .	25	Until audit confirms that failure corrected
Failure to have a complete Quality Plan in place and operating.	25	Until audit confirms that failure corrected
The quality plan does not comply with the requirements of the contract.	10 per failure	Until audit confirms that failure corrected
Failure to identify a Nonconformity.	5 per failure	6 months
Failure to raise a Nonconformity report for an identified Nonconformity. (See note 1 below)	10 per failure	Until failure corrected
Failure to raise a Corrective Action plan after raising a Nonconformity. Report. (See note 1 below)	10 per failure	Until failure corrected
Failure to correct a Nonconformity in the time and manner set out in the Corrective Action plan. (See note 1 below)	10 per failure	Until failure corrected
Failure to implement actions contained in an audit report. (See note 1 below)	5 per action	Until audit confirms that action implemented
Failure to carry out internal audit or to carry out assurance activity	15 per audit	Until audit carried out

appropriate to the level of risk and/ or scale of the project.		
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 QMP 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

[...]

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

3

% per annum (not less than 2) above the

base

rate of the

Bank of England

in force from time to time

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

The period within which payments are made is

[...]

If the period for certifying a final assessment is not thirteen weeks

The period for certifying a final assessment is

[...]

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

share range

Contractor's share percentage

less than

[...]

%

[...]

%

from

[...]

% to

[...]

%

[...]

%

from

[...]

% to

[...]

%

[...]

%

greater than

[...]

%

[...]

%

The *Contractor's share* is assessed on (dates)

[...]

[...]

[...]

The *exchange rates* are those published in

The Financial Times

On

[...]

(date)

6 Compensation events

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

[...]%

The *conditions of contract* are (...) secondary options Y(UK1), Trust Deed, Joining Deed, (...)

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 and in accordance with the requirements in **Annex 03** of the Scope.

Note to Compiler: The compiler may need to consider inclusion of further classes of required insurance to those listed in the NEC4 TSC. The compiler will need to consider what other insurance may be needed relative to the subject matter of the National Highways requirement in question and risk transfer to the Contractor. If you are in doubt as to the appropriate insurance to apply to any contract advice should be sought from your Commercial Team in the first instance.]

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

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

[Note to Compiler: 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 third party (including National Highways as a third party) loss, damage or destruction to physical property and death/bodily injury. Take into account the insurance requirements of others (e.g. for any work over, under, or in the vicinity of the railway, Network Rail may require a limit of not less than £155,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, and with Network Rail to be as an named insured party). If you are in doubt as to the appropriate insurance level to apply to any contract advice should be sought from your Commercial Team in the first instance.]

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of an 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.
The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

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

[Note to Compilers: Consideration is required to identify physical property the subject matter of the National Highways requirement that passes into the care, custody and control of the *Contractor*. Where this is the case the compiler will need to identify the type and value of such physical property and decide if the damage risk needs to be insured by the *Contractor*. Examples of such property can include plant, materials and equipment provided by National Highways but also property such a National Highways stock, vehicles and buildings occupied by the *Contractor*. In these cases, specific insurance may be required and will need to be set out in the contract (e.g. Area M&R contracts).]

The *Client* provides these insurances from the Insurance Table

(1) Insurance against

[...]

Minimum amount of cover is

[...]

The deductibles are

[...]

The *Client* provides these additional insurances

(1) Insurance against

[...]

Minimum amount of cover is

[...]

The deductibles are

[...]

The *Contractor* provides these additional insurances

[Note to Compiler: Consideration is required to identify physical property the subject matter of the National Highways requirement that passes into the care, custody and control of the *Contractor*. Where this is the case the Compiler will need to identify the type and value of such physical property and decide if the damage risk needs to be insured by the *Contractor*. Examples of such property can include plant, materials and equipment provided by National Highways but also property such a National Highways stock, vehicles and buildings occupied by the *Contractor*. In these cases, specific insurance may be required and will need to be set out in the contract (e.g. Area M&R contracts). It may also be the case that the *Contractor* is required to provide professional services / advice. In these circumstances professional indemnity insurance may need to be added to cover the breach of professional duty risk.]

(1) Insurance against

[...]

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 his 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

Name

[...]

Address for
communications

[...]

Address for
electronic
communications

[...]

The *Adjudicator nominating body* is

The Institution of Civil Engineers

National Highways Use Only

X1: Price adjustment for inflation (used only with Options A and C)

The proportions used to calculate the Price Adjustment Factor are

0.	<input type="text" value="..."/>	linked to the index for	<input type="text" value="..."/>
0.	<input type="text" value="..."/>		<input type="text" value="..."/>
0.	<input type="text" value="..."/>		<input type="text" value="..."/>
0.	<input type="text" value="..."/>		<input type="text" value="..."/>
0.	<input type="text" value="..."/>		<input type="text" value="..."/>
0.	<input type="text" value="..."/>		<input type="text" value="..."/>
0.	<input type="text" value="..."/>	non-adjustable	<input type="text" value="..."/>
1.00	<input type="text" value=""/>		

The <i>base date</i> for indices is	<input type="text" value="Enter date"/>
-------------------------------------	---

The <i>inflation adjustment dates</i> are	<input type="text" value="..."/>
	<input type="text" value="..."/>
	<input type="text" value="..."/>
	<input type="text" value="..."/>

These indices are	<input type="text" value="Retail Price Index (RPI)"/>
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X5: Sectional Completion

The *Client* is/ is not* willing to take over the *service* before the Completion Date
(*Delete as applicable).

X8: Undertakings to the *Client* or Others

The *undertakings to Others* are
provided to

[...]

[...]

The *Subcontractor undertakings to Others* are
works

provided to

[...]

[...]

[...]

[...]

The *Subcontractor undertakings to the Client* are
works

[...]

[...]

X10: Information modelling

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

Two weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information, is, in respect of each claim

[...]

The period following the end of the Service Period or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

[...]

X12: Multiparty collaboration (not used with Option X20)

The *Promoter* is

[...]

The Schedule of Partners is in

[...]

The *Promoter's objective* is

[...]

The Partnering Information is in

[...]

X13: Performance bond

The amount of the performance bond is

[...]

X17: Low service damages

The *service level table* is

[...]

X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or 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 of an item of Equipment 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, is limited to

[...]

The *end of liability date* is

[...]

years after the end of the Service Period

X19: Termination by either Party (not used with Option X11)

The *minimum period of service* is

[...]

years after the *starting date*

The *notice period* is

[...]

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

The *incentive schedule* for Key Performance Indicators is in

[...]

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

[...]

months

X23: Extending the Service Period

The *maximum service period* is

[...]

years after the *starting date*

The *periods for extension* are

Order	<i>period for extension (months)</i>	<i>notice date</i>
First	[...]	[...]
Second	[...]	[...]
Third	[...]	[...]
Fourth	[...]	[...]

The *criteria for extension* are

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

X24: The accounting periods

The *accounting periods* are

[...]

[...]

[...]

[...]

The *accounting periods* are the dates stated in the Contract Data of the assessment of the Contractor's share.

X29: Climate Change

The <i>performance table</i> is in	[...]
If no <i>climate change plan</i> is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first climate change plan for acceptance is [...]

Y(UK)1: Project Bank Account

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

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

The *conditions of contract* are (...) secondary options Y(UK1), Trust Deed, Joining Deed, (...)

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Y(UK)2 is used and the date on which a payment is due is not fourteen weeks after the end of the *accounting period* or Service Period

The period is [...] weeks

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is [...] which payment becomes due

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 1206	subcontractors (at any stage of remoteness from the <i>Client</i>)
Subcontracting Scope section S 1200	subcontractors (at any stage of remoteness from the <i>Client</i>)
The provisions of Options Y(UK)1	Named Suppliers

Contract Data entries relating to Z Clauses

Clause Z11 Parent Company Guarantee

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

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.

Clause Z54 Extension to the Service Period

The extension period is

[... months/years]

Clause Z107 Network Rail Possessions

The Network Rail possession charge is

Type x

£ [...]

per possession

Type y

£ [...]

per possession

Contract Data entries relating to the Scope

[Only include if the alternative long form of IPR drafting is being used]

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

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

Z: Additional conditions of contract

The *additional conditions of contract* are clause Z1 to **Zxx**

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

Address for
communications

Address for
electronic
communications

The Quality Submission is
in

The *fee percentage* is

%

The *service areas* are

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The *Contractor's* main responsibilities

The Scope provided by the
Contractor for its plan is in

The *carbon cap* is

[...] % reduction from the 2020 baseline

3 Time

The plan identified in the Contract Data is

The end of the *service period*
for the whole of the *service*
is

4 Quality Management

The *quality submission* is in

5 Payment

The *price list* is

The tendered total of the
Prices is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for
communications

Address for
electronic
communications

Name (2)

Address for
communications

Address for
electronic
communications

The *design consultant* are

name	<i>design service</i>
<input type="text"/>	<input type="text"/>

Contract Data entry relating to Data Protection Legislation

The contact details of the *Contractor's* Data Protection
Officer or Data Protection nominated lead are:

X10: Information modelling

The *information execution plan* identified in the Contract Data is

Y(U#K)1: Project Bank Account

The *project bank* is

named suppliers are

Contract Data entries relating to Z Clauses

Z9 The *credit ratings* at the Contract Date and rating agencies issuing them are

party

rating agency

credit rating

Contractor

Consortium Member

Guarantor

Contract Data entries relating to the Scope

[Only include if alternative longer IPR drafting is being used]

The *Software Schedule* is in the document called "the Software Schedule"

Data for the Schedule of Cost Components (used only with Options C or E)

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

Equipment	time-related on cost charge	per time period

The rates for special Equipment are

Equipment	rate

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

category of person	rate

The rate for people providing *shared services* outside of the Service Areas are

<i>shared service</i>	category of person	rate

Data for the Short Schedule of Cost Components (used only with Option A)

The *people rates* are

category of person

unit

rate

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

--

The percentage for adjustment for
Equipment in the published list is

--

% (state plus or minus)

The rates for other Equipment are

Equipment

rate

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

category of person	rate

The rate for people providing *shared services* outside of the Service Areas are

<i>shared service</i>	category of person	rate

Z Clauses Contents	
Number	Title
Z1	Changes to Core and Secondary Option clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Contractor</i> .
Z4	Assignment and transfer
Z5	Not Used
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non – Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>service</i> from the Scope
Z18	Corruption or loss of data
Z19 – Z49	Not Used
Z50	Health and Safety Plan
Z51	[Changes to the Price]
Z52	[Transfer of Undertakings (Protection of Employment) Regulations (TUPE)]
Z53	[Pensions]
Z54	[Extension to the Service Period]
Z55	[Payment of the <i>Contractor's</i> share]
Z56	[Construction Industry Scheme]
Z57	Infrastructure Act 2015
Z58	[Revisions to Promises Statement]
Z59	[Indemnified claims]
Z60	Tax Arrangements of Public Appointees
Z61	[Enhancements]
Z62 – Z99	Not Used
Z100	Not Used
Z101	Not Used
Z102	Not Used
Z103	Not Used
Z104	Not Used
Z105	[Innovation - Title to Equipment]
Z106	Not Used
Z107	[Network Rail Possessions]

Z1 Changes to core and Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms

(??) 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.

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

(??) Associated Company is any of

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

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.

(??) 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
- for a subcontractor or subsubcontractor,
 - the conditions of participation in the competition for such subcontract or subsubcontract or
 - the performance or delivery of such subcontract or subsubcontract.

(??) 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.

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

(??) 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 **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.

(??) 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.

(??) 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.

(??) 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 Services.

(??) Climate Change Requirements are the requirements relating to climate change stated in the Scope.

(??) 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.

[(??) Community Partner is an organization (other than the *Contractor*) engaged by the *Client* to provide services in relation to the Affected Property.]

(??) 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**).

(??) 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.

(??) 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.

(??) 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 Services (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.**

(??) **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 Services,**
- **which is or will be used by the *Client* for the purposes of maintaining, operating or improving the services and**
- **including the software specified as such in the Software Schedule.**

(??) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.

(??) 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.

(??) 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.

(??) Corrective Action has the meaning given in “ISO 9000:2015” (see link in Scope **Annex 02**).

(??) 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.

(??) 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.

(??) Debarment List means the list kept under the “Procurement Act 2023” section 62 (see link in Scope **Annex 02**).

(??) 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*.

(??) 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.

(??) Discretionary Exclusion means the discretionary exclusion grounds that are set out in the “Procurement Act 2023”, schedule 7 (see link in Scope **Annex 02**).

(??) The Discrimination Acts is the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.

(??) Documentation is descriptions of the *services*, the *Contractor's services* 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 *Service 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 *services* or make use of the *services*,
- is required by the *Contractor* in order to Provide the Services and
- has been or is generated in order to Provide the Services.

(??) 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).

(??) Eligible Contract is a contract entered into by a subcontractor with the *Contractor* which relates to the *services* 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 *services*).

(??) Enforcement Action is enforcement action brought by a regulatory authority against the *Contractor*, an Associated Company or a subcontractor (at any stage of remoteness from the *Client*) under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.

(??) Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property proposed by the *Contractor* or a Community Partner which has not previously been adopted by the *Client* in the Affected Property or elsewhere (whether by way of a departure from standards or otherwise) 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 *service* or of maintaining, operating, renewing and improving the Affected Property,
- improving the quality or effectiveness of delivery of the *service* or
- 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 and services relating to the Affected Property intended to be carried out by any Community Partners.

(??) EU Reference is any European Union

- regulation,
- decision,
- tertiary legislation or
- provision of the European Economic Area agreement

(??) Excludable Supplier has the meaning set out in the “Procurement Act 2023” section 57(2) (see link in Scope **Annex 02**).

(??) Excluded Supplier has the meaning set out in the “Procurement Act 2023” section 57(1) (see link in Scope **Annex 02**).

(??) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.

(??) 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.

(??) Form of Performance Security is a form of bond specified in the Scope (or such other form as the *Client* may reasonably require).

(??) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.

(??) 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 *services* to a customer like the *Client*, such supplier seeking to comply with its contractual obligations in full and complying with any applicable laws.

(??) Guarantor is any *guarantor* unless later changed in accordance with the contract.

(?) Halifax Abuse Principle is the principle explained in the Court of Justice European Union case C-255/02 Halifax and others.

(??) 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 implementation of the action.

(??) 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.

(??) Incoming Contractor is any contractor appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in relation to the Affected Property (or part of it) in place of the *Contractor*.

(??) Indemnified Claim is a matter for which the *Contractor* is liable under the contract.

(??) 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.

(??) Information Systems can be a combination of hardware, software, infrastructure and the trained personnel organised to facilitate planning control, co – ordination and decision making in an organisation.

(??) Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.

(??) 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

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, trade marks (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.

(??) IPR Claim is 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.

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

(??) 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.

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

(??) 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.

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

(??) 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.

(??) 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.

(??) Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to provide services similar to the service [in relation to the Affected Property] during the period immediately prior to the access date.

(??) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope.

(??) Performance Requirement is the required standard for performance of each element of the services as specified in the Scope.

(??) 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.

(??) Quality Management Points are points accrued by the *Contractor* in accordance with the quality table in the Contract Data.

(??) Quality Submission is the *quality submission* unless later changed in accordance with the contract.

(??) Quality Warning Notice is a warning given in accordance with Scope S625 (Quality Management Points).

(??) Recipient is the Party which receives or obtains, directly or indirectly, Confidential Information.

(??) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.

(??) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.

(??) Relevant IPR is IPRs used to Provide the Services 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.

(??) Relevant Tax Authority is His Majesty's Revenue and Customs or, if the Contractor is established in another jurisdiction, the tax authority in that jurisdiction.

(??) 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.

(??) RIDDOR Incident is an incident occurring under any contract between

- the Contractor, an Associated Company or a subcontractor (at any stage of remoteness from the Client) and
- the Client or any other person

which results in death or serious injury to any worker or non-worker and for which the 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.

(??) The Secretary of State is the Secretary of State for Transport.

(??) 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.

(??) 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.

(??) Software is Specially Written Software, Contractor Software and Third Party Software.

(??) Software Schedule is the *software schedule* unless later changed in accordance with the contract.

(??) 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.

(??) Staff are persons employed or engaged by the *Contractor* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Services at any time.

(??) 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.

(??) 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.

(??) Supply Chain Maturity Matrix Action Plan (SCMMAP) is the document created by the *Contractor* compiling its actions to improve its safety maturity scoring.

(??) 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 this contract or to a civil penalty for fraud or evasion.

(??) **Tender Commitments are the measurable commitments contained within the Quality Submission.**

(??) The Prudential Regulation Authority is a United Kingdom financial services regulatory body responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers, major investment firms and other bodies.

(??) **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 Services,
- which is, or will be, used by the *Client* for the purposes of maintaining, operating or improving the *services* and
- including the software specified as such in the Software Schedule (including Open Source Software).

(??) **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*.**

(??) **Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of *service* or the provision of *services* similar to the *service* in relation to the Affected Property during the period immediately prior to the *access date*, other than employees who object to being transferred to the *Contractor*.**

(??) **TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.**

[Note to compiler: Insert any further defined terms alphabetically within the list above.]

Amend the following terms

11.2 (23) 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 the following third bullet:

- a Nonconformity either
 - in Providing the Services or
 - in the *services*

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

11.2 (24) Disallowed Cost

In the definition of “Disallowed Cost”

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

- 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*),

(i) 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 240.4.1 to S 240.4.4 (Consideration of Others),
 - S 1105.16 (Alcohol and substance abuse) and resulting costs and
 - S 262 (Behaviours)
- 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 by or against 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.

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.

24 Subcontracting

In clause 24.3 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.”

26 Assignment

Delete clause 26

27 Disclosure

Delete clause 27

50 Assessing the amount due

Delete clause 50.5 and replace it with

If

- no plan is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Contractor* has submitted a first plan to the *Service 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 Service Provided to Date is retained in assessments of the amount due until the *Contractor* has produced such plans.

60 Compensation events

In clause 60.1(1) delete “or” at the end of the first bullet point and insert a comma. At the end of the clause delete the full stop and insert

or

- a change to the
 - Information Systems or the introduction of a new Information System,
 - 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 (5) 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”.

82 Recovery of costs

Delete 82.1 and insert new clause

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

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

“83.2 The Contractor provides the insurances as stated in the Contract Data.”

84 Insurance policies

In clause 84.1, delete,

“for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor’s* insurer or insurance broker. The *Service 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 are signed by the *Contractor’s* insurer or insurance broker. The *Service 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 constitutes acceptance by the *Client* of the terms thereof, nor be a waiver of the *Contractor’s* liability under the contract.”

90 Termination

In clause 90.2, in the Termination Table, in the delete “R1-R15, R18 or R21” and replace with “R1-R15, R18, R21 or R22.

and

Delete A4 in the “Amount Due” column of the Termination Table.

91 Reasons for termination

Insert a new clause 91.8 after clause 91.7

“91.8 The *Client* may terminate if the *Client* suffers Reputational Damage (R22).”

93 Payment on termination

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 X10 Information modelling

X10.7(3) Delete this clause.

Option X11 Termination by the *Client*

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

Option X18 Limitation of liability

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,
- low service damages if Option X17 applies,
- delay damages in connection with Task Orders,
- *Contractor*’s share if Option C applies,
- fraud or fraudulent misrepresentation,
- infringement of the rights of Others,
- loss or damage
 - to third party property or
 - due to pollution,
- loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations,
- interest on debt,

- losses caused by the *Contractor's* illegal acts, deliberate default, deliberate abandonment, willful misconduct or reckless misconduct,
- death of or bodily injury to a person other than an employee of the *Contractor* 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 X29 Climate Change

In clause X29.4 (3)

At the end of the first bullet point, delete "or" and replace with a comma, at the end of the second bullet point, remove the full stop and replace with "and". Add a third bullet point and 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 Y(UK)1 Project Bank Account:

- Y1.1(1) delete "the Supplier joins the Trust Deed" and replace it 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" and
- 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".

In Project Bank Account clause Y1.4, after "copies of communications" insert "(including all bank statements)".

In Named Suppliers clause Y1.5

- delete clause Y1.5 and replace it with
"The *Contractor* includes in its contracts with Named Suppliers
 - the arrangements in the contract for the operation of the Project Bank Account and
 - confirmation of the trust created in respect of the Project Bank Account by the Trust Deed,
 - 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 *Service Manager*’s agreement prior to appointing any Tier Two Supplier who it considers to not be a beneficiary of the trust created by the Trust Deed on the basis that the Tier Two Supplier is not willing to be a Named Supplier and provides evidence that they are making that decision in full cognisance of the trust’s benefits.

The *Service Manager* notifies the *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 *Service 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*”.

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

In the Form of Joining Deed delete the form of Joining Deed and replace it 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” in Annex **xx**.

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 *Service Manager* to do so. The *Contractor*

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

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

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 *Dispute Resolver* or any such person except for the purposes of this Agreement. The *Dispute Resolver* complies and takes all reasonable steps to ensure that any persons advising or aiding the *Dispute Resolver* comply, with the Official Secrets Acts 1911 to 1989.”

Z6.2 If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Z6.3 The *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 *Service Manager* and takes full account of the *Client's* views about whether (and if so to what extent) the information is to be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the *Contractor* or
- with the consent of the *Service Manager*.

Z7 Termination – Procurement Act 2023

Z7.1 The *Contractor* notifies the *Service Manager* within three Business Days of

- any Mandatory Exclusion or Discretionary Exclusion (including the dates applicable to the relevant grounds for exclusion and details thereof) arising in respect of
 - the *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
- any of the bodies (including by reference to a Connected Person or an Associated Person) listed in bullet one or a surety company (or equivalent), including bodies regulated by the Prudential Regulation Authority (or equivalent), providing a bond or equivalent
 - is or is placed upon the Debarment List or
 - subject to Sanctions.

The *Contractor* provides or procures the provision of additional information requested by the *Service Manager* to enable the *Client* to determine whether the

relevant entity is an Excluded Supplier or Excludable Supplier (including by reference to a Connected Person or an Associated Person).

Z7.2 The *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 *Service Manager* immediately of receiving any notice from a subcontractor or subsubcontractor if

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

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

Z7.3 Following a notification under either clauses Z7.1 or Z7.2, the *Service Manager* notifies the *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 *Service 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 *Service Manager*) about whether a termination ground applies and the *Client's* decision to be minded to terminate.

Z7.4 The *Client* may terminate the *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 *Service Manager* within the *period for reply* to support the *Client's* determination if it is an Excluded Supplier or Excludable Supplierafter 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 *Service Manager*

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

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

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

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

- the *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 *Service Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

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

- where main Option C, D, E or F is used, the relevant subcontractor’s costs are a Disallowed Cost or
- where main Option A is used, the activities the relevant subcontractor is working on are not completed for the purposes of the Price for Service Done to Date.

Z8.7 If requested by the *Service 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 subcontractor or subsubcontractor

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

the *Service Manager* may instruct the *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

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

- where Option C, D, E or F is used, the relevant subcontractor's ongoing costs are a Disallowed Cost or
- where Option A is used, the activities or part there of the relevant subcontractor is working on are not completed for the purposes of the Price for Service 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 *Service Manager* for acceptance. A reason for not accepting the subcontractor is that

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

The *Contractor* does not appoint a proposed subcontractor until the *Service Manager* has accepted it.

Z8.10 The *Contractor* submits the proposed *conditions of contract* for each subcontract to the *Service Manager* for acceptance unless the *Service 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 *Service Manager* has accepted them. A reason for not accepting them is that they do not
- allow the *Contractor* to Provide the Services or
 - include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.
- Z8.12 If option Y(UK)1 is used, the *Contractor* provides and keeps up to date a project bank account tracker in accordance with S 2110 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 *Service Manager's* agreement in accordance with clause Y1.5A
- and allows the *Service Manager* to inspect and provide a copy of the project bank account tracker immediately upon demand and provides a copy of the project bank account tracker with each application for payment.
- Z8.13 If at any time the *Contractor* does not provide a copy of the up to date project bank account tracker, then one quarter of change in the Price for Service 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 *Service Manager* of any proposed termination of the joint venture arrangement.

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

Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 and 91.1 of the *conditions of contract* are amended by inserting after “the other Party” the words “or in the case of the *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 and
 unless 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 *Service Manager's* request, whichever is later. Parent Company Guarantees are given for

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

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

Z11.2 Where

- the *Client* has agreed an Alternative Guarantee for the *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 *Service Manager's* request, whichever is later.

Alternative Guarantees are given for

- a standalone company – from its Guarantor or
- a joint venture (whether incorporated or unincorporated) from the

Guarantor of each relevant Consortium Member (which has a Controller).

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

In all cases it is for the *Client* to decide whether it will accept an alternative form of guarantee from 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 *Service Manager's* request, whichever is later.

The Alternative Guarantees is given for

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

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

Z11.4 If

- the Controller or
- an alternative guarantor (including any bank or surety provider) proposed by the *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 *Service Manager*.

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

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

1605 (Legal Opinion).

If accepted by the *Service 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 *Service Manager* immediately if a Change of Control has occurred.

Z11.7 Except for a Listed Company, if a Change of Control occurs without the *Service Manager's* prior consent or does not allow the *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 *Service 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 *Service 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 *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Service 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 *Service Manager*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Service Manager*,
 - any other information required by the *Client* in order to determine whether, had the Controller been included in the original Financial Standing Test, such inclusion would not have resulted in the outcome of the Financial Standing Test being a failure and
 - any other information requested by the *Service Manager* in order to satisfy itself that the *Contractor* remains in a position to Provide the Service.
- Z11.13 If a Change of Control or any of the events listed in clauses Z7.1, Z11.8 to Z11.10 occurs, the *Service Manager* may require the *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 *Service Manager* or
 - a Form of Performance Security, (or an alternative form of bond or security agreed by the *Service Manager* from an alternative guarantor proposed by the *Contractor* (or the Consortium Member) and accepted by the *Service Manager*)
 - if there is no Controller,
 - if the Controller had been included in the original Financial Standing Test and the outcome of the Financial Standing Test would have been a failure and a suitable alternative guarantor is not acceptable or
 - if agreed by the *Service Manager* and the *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 *Service Manager* with the information listed in clause Z11.12 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Service Manager*) and any further information requested by the *Service Manager* concerning the alternative guarantor.
- Z11.15 A reason for not accepting an alternative guarantor (for a form of performance and financial guarantee) proposed by the *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 *Service 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 *Service Manager*,

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

Z11.17 Not used.

Z11.18 The *Service 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 eighteen (18) months of the *Service Manager's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass by the end of that period.

Z11.19 If

- the *Contractor* fails to notify the *Service Manager* that an event listed in clause Z11.8 to Z11.10 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *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 *Service Manager* or
 - a Form of Performance Security or an alternative form of bond agreed by the *Service Manager*

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

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

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

Z11.20 Not Used.

Z11.21 If accepted by the *Service Manager*, the alternative guarantor becomes the Guarantor for the *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 *Service Manager*,
- Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* or
- an Alternative Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager*

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

- the *Client* may retain
 - one quarter of the Price for Service 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 *Service 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
- any 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	<p>The <i>Client</i> 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 <i>Client</i>, the <i>Contractor</i> enters into such documents and does such acts as the <i>Client</i> requests to transfer the IPRs to the <i>Client</i>, and procures that its subcontractors (at any stage of remoteness from the <i>Client</i>) do the same. The <i>Contractor</i> provides to the <i>Client</i>, the documents which transfer these IPRs to the <i>Client</i>.</p>
Z13.2	<p>The <i>Contractor</i> waives or procures a waiver of any moral rights in any copyright works assigned to the <i>Client</i> under the contract.</p>
Z13.3	<p>The <i>Contractor</i> obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party with the right to grant further sub-licences) of other IPRs for the <i>Client</i> 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 <i>Contractor</i> or its assignees or any third party. The <i>Contractor</i> provides to the <i>Client</i> the documents which license these IPRs to the <i>Client</i>.</p> <p>The <i>Contractor's</i> or third party licensor's exclusive remedies for any breach by the <i>Client</i>, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.</p>
Z13.4	<p>The <i>Contractor</i> ensures that any subcontract (at any stage of remoteness from the <i>Client</i>) contains a right for the <i>Client</i> (enforceable in accordance with the "Contracts (Rights of Third Parties) Act 1999") (see link in Annex 02) to enforce the obligations in this clause.</p>
Z13.5	<p>The <i>Contractor</i> warrants that</p> <ul style="list-style-type: none">• the Software does not contain any Open Source Software other than that set out in the Software Schedule,• the Open Source Software is licensed upon terms which permit the use by the <i>Contractor</i>, the <i>Client</i> and the <i>Client's</i> end users for all purposes contemplated by the contract and• all components of the Software are free from material design and programming errors,<ul style="list-style-type: none">○ provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in<ul style="list-style-type: none">- the Scope,- the Quality Submission,- the Documentation and○ do not infringe any Intellectual Property Rights.
Z13.6	<p>The <i>Contractor</i> at all times, during the services and after the Service Period, indemnifies the <i>Client</i> and each other Indemnified Person against all losses incurred</p>

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 *service* and not on any tangible medium constitutes a sale of goods.

Z14 Project Bank Account

Z14.1 The *Service 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 *Service 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 *Service 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 *Service 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 only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group).

Z17 Termination and removal of part of the services

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

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

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

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or if the *Contractor* has a Quality Warning Notice, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *services*, and if all of the remaining *services* 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 *services* or any part of them.

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

- completes the performance of any part of the *services* 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 *Service Manager* may give the *Contractor* an instruction to Provide the Services (or parts of the *services*) in relation to highway assets outside the Affected Property owned by the *Client* or a third party. The instruction states

- the assets to which it relates,
- the parts of the *services* 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 Services.

Before giving an instruction under this clause, the *Service Manager* consults with the *Contractor* and confirms that giving the instruction will not prejudice the *Contractors* 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, stolen or sufficiently degraded as a result of the *Contractor* default so as to be unusable, the *Contractor* immediately reports this to the *Service Manager* and the

- *Service Manager* may instruct the *Contractor* to restore the data in accordance with the *Service 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 S212.1 in the Scope is not a compensation event.
- Z19.2 A failure to comply with paragraph S212.1 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 *services* 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 Services by notifying the *Contractor*.

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

- Z52.1 The *Contractor* provides to the *Client* within 10 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 *services* similar to the *services* 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 8 month period immediately prior to the end of the Service Period, the *Contractor* submits for the acceptance of the *Client* any proposals to

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

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

Z52.4 The *Contractor* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *services*.

Z52.5 The *Contractor* complies with, and ensures that any Subcontractor complies with any requirements relating to pensions in "His Majesty's Treasury Fair Deal for Staff Pensions: Staff Transfer from Central Government" issued in October 2013 and the associated guidance documents "Staff Transfers: Public Service Pension schemes" and the "Local Government Pension Regulations (SI 2013/2356)", including any amendments or revisions to these prior to the commencement of the contract or any staff transfer.

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 Service Period]

- Z54.1 The *Client* may notify the *Contractor* that the Service Period is to be extended by the *extension period* or such lesser period as the *Client* may specify.
- Z54.2 If the Service Period is extended by less than the *extension period*, the *Client* may further extend the Service Period 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 Service Period later than [6 months] before the expiry of the Service Period.]

Z55 [Payment of the Contractor's share]

- Z55.1 If, prior to end of the Service Period of the whole of the *services*, the Price for Service Provided to Date exceeds the total of the Prices, the *Service 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 *Service 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*.

Z56 Construction Industry Scheme

- Z56.1 In this clause (but not otherwise)
- the "Act" is the Finance Act 2004 and
 - the "Regulations" are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).
- 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 Services in compliance with, and so as not to put the *Client* in breach of
- the Licence and
 - any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Service Manager* to the *Contractor*).
- Z57.2 The *Service 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 *services*. 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 *Service Manager* proposed revisions to the Quality Submission for acceptance within the *period for reply*. 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, or
 - cannot be made in compliance with section 74 of the Procurement Act 2023.
- Z58.2 A revision to the Quality Submission accepted by the *Service Manager* is not a compensation event.
- Z58.3 The *Service Manager* may instruct the *Contractor* to amend the Quality Submission
- where it is not compliant with the Scope provided by the *Client*,
 - [to remove any 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 Service 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 appointees

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this 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 this contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- Z60.3 The *Client* may, at any time during the term of this 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 his 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 *Service Manager* a proposal for an Enhancement.
- Z61.2 Before developing a proposed Enhancement, the *Contractor* prepares and submits to the *Service 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 *Service Manager* and the *Client* jointly review the *Contractor's* outline business case. The *Service 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 accept 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 *Service Manager* that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the *Service 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 *Service 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 *Service 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 *Service Manager*.

Z61.7 The *Service Manager* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Service 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 *Service 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 *Service 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 *Service 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, 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 *Service Manager*) of the Incentive Amount.

Z61.12 The Incentive Amount (or the proportionate part assessed by the *Service Manager*) is included in the final amount due under the contract, 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 – Z104 Not Used

Z105 Innovation – Title to Equipment

Z105.1 At end of Service Period or (if earlier) when an Innovation is removed from the Affected Property, the *Service 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.

Z107 Network Rail Possessions

Z107.1 [OR] [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.

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.”]