



Highways England Company Limited

NEC4 Professional Service Contract
(June 2017 with amendments January 2019)

Contract Data
Parts 1 and 2

in relation to a *service* for

Concrete Roads Design Framework

June 2020

CONTENTS AMENDMENT SHEET

Amend No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SOS	19/06/20
1	1	Contract Data Part 1: Contract Data entries relating to Z Clauses: Removed erroneous and duplicated mention of Y(UK)1 in this section	DC	15/07/20
2	1	Contract Data Part 1: 8 Liabilities and insurance: Amended total liability figure	DC	15/07/20
3	1	Contract Data Part 1: 6 Compensation Events: Corrected reference to 'second bullet point' in the third compensation event	DC	15/07/20
4	1	Z Clause Z150.1: Definition of Partner Fee: Amended to work where a package is issued across multiple work orders (required for Recon framework, and to align drafting)	DC	16/07/20
5	2	Contract Data Part 1: 8 Liabilities and insurance: Amended amount for product/ pollution/ contamination and corrected formatting.	DC	23/07/20
6	2	Z Clause Z1: 87 Limitation of liability: Removed pollution from excluded matters and consequential formatting	DC	23/07/20

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

1 General

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

Main Option	E	Option for resolving and avoiding disputes	W2
Secondary Options	X2, X5, X10, X12, Y(UK)1, Trust Deed, Joining Deed, Y(UK)2, Y(UK)3, Z1 to Z150		
The <i>service</i> is	for design and associated services of lifecycle extension and reconstruction works on concrete roads.		
The <i>Client</i> is			
Name	Highways England Company Limited		
Address for communications	Bridge House, 1 Walnut Tree Close Guildford Surrey GU1 4LZ Registered number 09346363		
Address for electronic communications	ConcreteRoads@highwaysengland.co.uk		

The *Service Manager* is

Name

is in the Additional Work Order Information

Address for
communications

is in the Additional Work Order Information

Address for
electronic
communications

is in the Additional Work Order Information

The Scope is in

the document 'CRF Design – Work Order Scope'

The Affected
Property is

in the Additional Work Order Information

The Additional
Work Order
Information

is in the Additional Work Order Information

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

two
weeks

The *period for
retention* is

12

year(s) following Completion or earlier termination

Matters to be included in the Early Warning Register are in the Additional Work Order Information

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

one month

2 The *Consultant's* main responsibilities

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

The *key dates* and *conditions* to be met are in the Additional Work Order Information.

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than

one month

3 Time

The *starting date* is

Detailed below under Option X5

The *Client* provides access to the following persons, places and things in the Additional Work Order Information

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

one month

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

in the Additional Work Order Information

4 Quality management

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

4 weeks

The period between Completion of the whole of the *service* and the *defects date* is

52 weeks

5 Payment

The *currency of the contract* is the

Pound sterling (£)

The *assessment interval* is

one month

The *expenses* stated by the *Client* are

Item

amount

Travel and Subsistence within the UK

Payments in accordance with the *Clients* scale.

Travel and Subsistence outside of the UK

none

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.

The *exchange rates* are those published in

The Financial Times

on

The assessment date when the payment in another currency is in Price for Service Provided to Date

6 Compensation events

The additional compensation events are:

- The *Client* notifies the *Consultant* that payments under the contract will no longer be made using the Project Bank Account.
- Coronavirus Disease 2019 (COVID-19) or any mutation thereof and in either case such is classified or advised by the world health organization and/or the government of the country in which the *service* is provided to be an epidemic or pandemic, or
- any change in the law of the country in which the *services* is provided to the extent only that such impact relates to an event described in the second bullet point.
- The secretary of state issues additional directions or guidance to the *Client* under section 6 of the Infrastructure Act 2015 or changes any directions or guidance previously issued (including directions or guidance contained in the Licence).

8 Liabilities and insurance

These are no additional *Client's* liabilities

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

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are below.

Event	Minimum amount of cover	Period following completion of the whole of the service or termination
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service	A limit of indemnity stated in the Additional Work Order Information in respect of any one claim and in the annual aggregate, plus two automatic reinstatement of the limit of indemnity.	Twelve (12) years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	Limit of indemnity stated in the Additional Work Order Information in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but the amount stated in the Additional Work Order Information for any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).	None
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	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	None

The *Client* provides no insurances from the Insurance Table

The *Consultant's* total liability to the *Client* for all matters

£20 million

arising under or in connection with the contract, other than the excluded matters is limited to

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 in the Additional Work Order Information.

The *Adjudicator nominating body* is

The Institution of Civil Engineers

X2: Changes in the law

The *law of the project* is

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

X5: Sectional Completion

The *starting date, completion date, lump sum fee and target* for each section of the *service* is detailed in the Additional Work Order Information.

X10: Information modelling

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

4 weeks

X12: Multiparty collaboration (not used with Option X20)

The *Promoter* is

the *Client*

The Schedule of Partners is in

the Additional Works Order Information

The *Promoter's objective* are

the Framework Objectives in the Framework Information of the Framework Contract

The Partnering Information is in

the Additional Works Order Information

The *programme information* is in

The *programme information* in the Framework Contract

Y(UK)1: Project Bank Account

Charges made and interest paid by the *project bank*

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

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

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

21 days

after the date the payment becomes due

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

Term

beneficiary

Scope S827 Fair payment

A Subcontractor
subcontractors
subsubcontractors

Scope S825 Subcontracting

A Subcontractor
subcontractors
subsubcontractors

The provisions of Options Y(UK)1

Named Suppliers

Contract Data entries relating to Z Clauses

Z150

The Package Budget is in the Additional Work Order Information

Contract Data entry for Scope

None

Z: Additional conditions of contract

The *additional conditions of contract* are clause Z1 to Z150

PART TWO – DATA PROVIDED BY THE CONSULTANT

1 General

The *Consultant* is

Name

is in the Additional Work Order Information

Address for communications

is in the Additional Work Order Information

Address for electronic communications

is in the Additional Work Order Information

The *staff rates* are

the *staff rates* from the Framework Contract

The *fee percentage* is

detailed in the Contract Data of the Framework Contract

%

The *key persons* are in the Additional Work Order Information

Matters to be included in the Early Warning Register are in the Additional Work Order Information

2 The *Consultant's* main responsibilities

The Scope provided by the *Consultant* is in

the Additional Work Order Information.

3 Time

The programme identified in the Contract Data is

in the Additional Work Order Information.

5 Payment

There are no *expenses* stated by the *Consultant*.

The tendered total of the Prices is

in the Additional Work Order Information.

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are in the Additional Work Order Information.

Contract Data entry relating to Data Protection Legislation

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

is in the Additional Work Order Information

Y(UK)1: Project Bank Account

The *project bank* is

in the Additional Work Order Information.

named suppliers are

in the Additional Work Order Information.

Contract Data entries relating to Z Clauses

None

Z Clause Contents	
Number	Title
Z1	Changes to Core and Secondary Option clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Consultant</i> .
Z4	Assignment and transfer
Z5	Confidentiality
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	Conflict of Interest
Z20 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Not Used
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z53-56	Not Used
Z57	Infrastructure Act 2015
Z58	Revisions to Promises Statement
Z59	Indemnified claims
Z60	Tax Arrangements of appointees
Z61	Enhancements
Z62 – Z149	Not Used
Z150	X12 Multiparty Collaboration – Package Incentive Mechanism

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms:

(23) Affected Property is property of the *Client* or Others which is affected by the work of the *Consultant* or used by the *Consultant* in Providing the Service and which is identified in the Contract Data.

(24) Associated Company is

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

(25) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Consultant* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant* or a Consortium Member.

(26) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Consultant*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.

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

(28) Controller is the single person (or group of persons acting in concert) that

- has Control of the *Consultant* or a Consortium Member or
- holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member.

(29) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Consultant*, a Consortium Member or any Guarantor.

(30) The Data Protection Acts are the General Data Protection Regulation (EU 2016/679) and any other laws or regulations relating to privacy or personal data.

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

(32) 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).

(33) Enforcement Action is enforcement action brought by a regulatory authority against the *Consultant* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a

prohibition or improvement notice under any contract.

(34) 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 *Consultant* 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 *Consultant* in the course of developing the design for services relating to the Affected Property intended to be carried out by any Community Partners.

(35) EU Reference is any European Union

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

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

(37) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for this contract.

(38) Framework Contract is the framework contract under which this work order contract is let

(39) Framework Contract Date is the date of award of the Framework Contract

(40) 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.

(41) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.

(42) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(43) Health and Safety Plans are

- A completed Supply Chain Health and Safety Maturity Matrix (SCMM) for the *Consultant* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
- An implementation plan, setting out the actions to be taken by the *Consultant* or each Consortium Member over a period of 12 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

- An action plan, setting out the specific actions to be taken under this contract by the *Consultant* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Consultant* or each Consortium Member.

(44) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the *Consultant* (either alone or shared with one or more Community Partners) if an Enhancement is successfully implemented.

(45) Indemnified Claim is a matter for which the *Consultant* is liable under the contract.

(46) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the *service* or any revised systems introduced by the *Client* from time to time.

(47) 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.

(48) Licence is the document entitled “Highways England: Licence” dated April 2015 listed in Annex 2 to the Scope.

(49) Lump Sum Fee is the *lump sum fee* for a *section* unless later changed in accordance with the contract.

(50) Parent Company Guarantee is a guarantee of the *Consultant's* performance in the form set out in the Scope

(51) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.

(52) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Acts.

(53) Quality Management Points are points accrued by the *Consultant* in accordance with the quality table in the Scope.

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

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

(56) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

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

- The *Consultant* or an Associated Company and
- The *Client* or any other person

Which results in death or serious injury to any worker or non-worker and for which the *Consultant* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).

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

(59) Staff are employees employed by the *Consultant* or an Associated Company or any Subcontractor to Provide the Service at any time.

(60) Starting Date is the *starting date* unless later changed in accordance with the contract

(61) Target is the *target* unless later changed in accordance with the contract

(62) Tax Non-Compliance is where a tax return submitted by the *Consultant* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012

- Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Consultant* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- The failure of an avoidance scheme in which the *Consultant* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- Gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

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

Amend the following terms

11.2 (17) Defined Cost

Delete and replace with

Defined Cost is the sum of the products of each of the *staff rates* multiplied by the total time appropriate to that rate properly spent on work on the contract.

11.2 (18) Disallowed Cost

In the definition of “Disallowed Cost”

(i) insert an additional sub-bullet under the third main bullet point as follows

- comply with the *Client’s* Behavioural Maturity Framework described in the Scope,

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

- complying with Clause 1.22.2 in Annex 15 of the Scope and resulting costs,
- implementing any modifications or enhancements to the *Consultant’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 *Consultant’s* quality management system during any period while the number of Quality Management Points in effect is above 25 points,
- replacing a *key person* (and any associated costs)

11.2 (22) Price for Service Provided to Date

Delete and replace with

The Price for Service Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date plus

- for *sections* identified as having a Lump Sum Fee
 - prior to Completion of a *section* the Fee but the Fee does not exceed the Lump Sum Fee, or
 - after Completion of the *section*, the Lump Sum Fee, and
- for other sections, the Fee.

11.2 (23) The Prices

Delete and replace with

The Prices are the forecast of the total Defined Cost for the whole of the service plus the Lump Sum Fees plus the Fee for *sections* that do not have a Lump Sum Fee.

12 Interpretation and the law

12.2 Delete & replace clause 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 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.

23 Subcontracting

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

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

25 Assignment

Delete clause 25

26 Disclosure

Delete clause 26

30 Starting, Completion, and Key Dates

In clause 30.1 insert ‘for the *section*’ after ‘does not start work’ and ‘Starting Date’.

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,
- a change to the method of or requirements for performance measurement or
- a change which is stated elsewhere in these *conditions of contract* not to be a compensation event.

60.1 (4) Insert at the end (before the full stop)

“unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise”.

Insert “, Targets” after “Prices” in the following clauses: 61.3, 61.4, 62.2, 63.6, 63.10 & 66.2.

Insert “and Targets” after “Prices” in the following clauses: 63.1, 63.2, 63.3 & 63.4.

87 Limitation of liability

At the end of clause 87, insert the following additional excluded matters

- loss of or damage to the *Client’s* property,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Consultant* to insure but only up to the required level for each type of insurance stated in the Contract Data, loss arising from breach of
- confidentiality or data protection obligations,
- anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Consultant’s* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Option X2 Changes in the law

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

Option Y(UK)1 Project Bank Account

Y1.2 In line 1 delete “three” and insert “six”.

Clause Y1.6 is amended by inserting the following after the second sentence.
“The *Client* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.

Y1.9 Delete the final sentence and insert “The *Service Manager* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Consultant* submits it to the *project bank*. A reason for not accepting the Authorisation is that it does not match the application for payment

or it does not comply with the requirements of the contract”.

Schedule of Cost Components

Delete

Z2 Interpretation

Inherited from Z2 in the Framework Contract

Z3 Recovery of sums due from the *Consultant*.

Inherited from Z3 in the Framework Contract

Z4 Assignment and transfer

Inherited from Z4 in the Framework Contract

Z5 Confidentiality

Inherited from Z5 in the Framework Contract

Z6 Adjudication

Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:

Any information concerning the contract obtained by either the *Adjudicator* or any person advising or aiding him is confidential, and is not used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement. The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him 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*.

Z7 Termination - Public Contract Regulations 2015

Z7.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z7.2 The *Client* may terminate the contract if

- if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

- Z7.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Consultant*,
 - R19 if the modification or infringement was due to a default by the *Client* and
 - R20 if the modification or infringement was due to any other reason.

Z8 Subcontracting

- Z8.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Consultant* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z8.3 The *Client* may, having stated the reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.
- Z8.4 The *Client* may terminate if a key Subcontractor or another key resource needed for the *service* is no longer available and the *Consultant* is unable to propose an alternative resource acceptable to the *Service Manager*. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z8.5 Before
- appointing a proposed Subcontractor or
 - allowing a Subcontractor to appoint a proposed subsubcontractor
- the *Consultant* submits to the *Service Manager* for acceptance
- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
 - other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor
 - 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
- Z8.6 The *Consultant* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Service Manager* has accepted the submission. A reason for not accepting the submission is that
- it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts

Regulations 2015

- the *Service Manager* is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

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

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

- one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

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

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

Z9 Change of Control and financial distress

Inherited from Z9 in the Framework Contract

Z10 Joint ventures

Inherited from Z10 in the Framework Contract

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

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

Z11 Parent Company Guarantee

Inherited from Z11 in the Framework Contract

Z12 Discrimination, Bullying and Harassment

Inherited from Z12 in the Framework Contract

Z13 Intellectual Property Rights (IPRs)

Inherited from Z13 in the Framework Contract

Z14 Project Bank Account

Z14.1 The *Client* may at any time notify the *Consultant* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be

used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Z15 Tax Non – Compliance

Inherited from Z15 in the Framework Contract

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) by set-off or repayment.

Z17 Termination and removal of part of the service

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

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

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

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*.

Z17.3 The *Client* may terminate the *Consultant's* obligation to Provide the Service for a reason not identified in the Termination Table by notifying the *Service Manager* and the *Consultant*. If the *Client* terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and the amount due on termination is A1.

Z17.4 If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant* if instructed by the *Service Manager*

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

Z18 Corruption or loss of data

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

- the *Service Manager* may instruct the *Consultant* to restore the data in accordance with the *Service Manager's* requirements (and any cost incurred by the *Consultant* in so doing is Disallowed Cost) or

- the *Client* may itself restore the data (and the *Consultant* 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 S558 in the Scope is not a compensation event.
- Z19.2 A failure to comply with paragraph S558 in the Scope is treated as a substantial failure by the Consultant comply with its obligations.

Z20- Z49 Not Used

Z50 Health and Safety Plan

- Z50.1 The *Client* may terminate if the *Consultant* has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the Contract Date. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.
- Z50.2 The period for producing the Health and Safety Plans may be extended by not more than four weeks if the *Service Manager* and the *Consultant* agree to the extension before the Health and Safety Plans are due. The *Client* notifies the extension that has been agreed to the *Consultant*.
- Z50.3 If 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 *Consultant* has produced all the Health and Safety Plans in the form which the contract requires.

Z51 Not Used

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

Inherited from Z52 in the Framework Contract

**Z53-
Z56 Not Used**

Z57 Infrastructure Act 2015

- Z57.1 The *Consultant* Provides the Service in compliance with, and so as not to put the *Client* in breach of
- the Licence and
any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Service Manager* to the *Consultant*).
- Z57.2 The *Service Manager* notifies the *Consultant* of any notice issued by the Office

of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *service*. The *Consultant* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

Z58 Revisions to Quality Statement

Inherited from Z58 in the Framework Contract

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

Z59 Indemnified claims

Z59.1 The *Client* notifies the *Consultant* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Consultant* is liable under the contract (an Indemnified Claim).

Z59.2 The *Consultant* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Consultant* in defending the Indemnified Claim.

Z59.3 The *Consultant* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.

Z59.4 Where the *Consultant* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Consultant*.

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

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

- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
- co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.

Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Client* in respect of it.

Z60 Tax Arrangements of appointees

Inherited from Z60 in the Framework Contract

Z61 Enhancements

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

- Z61.2 Before developing a proposed Enhancement, the *Consultant* 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 *Consultant* proposes should be paid to it if the proposed Enhancement is successfully implemented.
- Z61.3 The Parties jointly review the *Consultant'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 *Consultant* whether the *Client* is likely to accept the proposed Enhancement.
- Z61.4 The *Consultant* 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 *Consultant* 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 *Consultant* to develop a detailed specification for and/or to carry out the trials, testing or pilot project.
- Z61.6 The *Consultant* 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 relating to the Affected Property,
 - 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 *Consultant* if the Enhancement is successfully implemented.
- Z61.7 The *Client* 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 *Consultant* 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 *Consultant* 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 *Consultant* is not entitled to payment for the design or development of an Enhancement (including the preparation of business cases), nor for the use or adaptation by the *Client* of the *Consultant'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 *Consultant* 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 *Consultant* delivers the benefits described in the *Consultant's* detailed business case before the *defects date*, the *Client* pays to the *Consultant* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Consultant* 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 *Consultant*, the *Consultant* assigns to the *Client* the Intellectual Property Rights in the Enhancement.
- Z61.14 Where an Enhancement is proposed jointly by the *Consultant* and one or more Partners, clause Z61 applies except that
- the outline and detailed business case are prepared jointly by the *Consultant* and the relevant Partners,
 - the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Consultant* and the relevant Partners,
 - the *Client* may instruct the *Consultant* or any 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 *Consultant* and the relevant Partners in the proportions stated in the detailed business case.

Z62–Z146 Not Used

Z150 Option X12 Multiparty Collaboration - Package Incentive Mechanism

Z150.1 Delete Clause X12.4 (1) and (2), and insert

(1) Insert new Definitions:

Package Budget is the items and amounts stated in the Contract Data unless the amounts are later changed in accordance with the contract.

Package Cost is the total paid by the *Client* to the *Consultant* and Others for the items included in the Package Budget.

Partner Fee is the total of

- the Lump Sum Fees for *sections* identified as having a Lump Sum Fee, plus
- for other *sections* the Fee,

paid under this contract and the *Consultant's* other Own Contracts for sections for items included in the Package Budget.

(2) The *Service Manager* may give an instruction changing the *programme information*. If the *Service Manager* gives an instruction changing the *programme information*, the *Service Manager* and the *Consultant* discuss different ways of dealing with changes to the Package Budget which are practicable.

(3) The *Service Manager* and the *Consultant* agree changes to the Package Budget within four weeks of the event arising which changes the Package Budget. If the *Service Manager* and the *Consultant* cannot agree the changes to the Package Budget the *Service Manager* assesses the change based on the forecast Package Cost and notifies the *Contractor* of the assessment.

(4) A Partner is paid or pays the amount stated in the Schedule of Partners. Payment of the amount is due as stated in the Schedule of Partners and is made as part of the amount due in the Partner's Own Contract.