

DATED

2019

HIGHWAYS ENGLAND COMPANY LIMITED

and

ATKINS LIMITED

FORM OF AGREEMENT BY DEED

relating to the provision of design services
in relation to the motorway and trunk road network
in Highways England East Region

DSC MODEL FORM OF AGREEMENT

CONTENTS AMENDMENT SHEET

Amend. No.	Document revision	Amendments	Initials	Date
0	0	Contract Issue	SOS	Sept 19

DATE: 17 September 2019

PARTIES:

- 1 **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ ("the *Client*"); and
- 2 **ATKINS LIMITED** a company incorporated in and in accordance with the laws of England and Wales with registered number (company number 688424) whose registered office is at Woodcote Grove, Ashley Road, Epsom, Surrey KT18 5BW ("the *Consultant*").

RECITALS:

- A The *Client* wishes to appoint a consultant to undertake the provision of design and associated services in relation to the Affected Property and for that purpose has issued invitations to tender (including the Scope) to, amongst others, the *Consultant*.
- B In response to the *Client's* invitation to tender, the *Consultant* has submitted a tender for the provision of design and associated services in relation to the Affected Property in accordance with the Scope.
- C The *Client* has examined the *Consultant's* tender and now wishes to appoint the *Consultant* to undertake the provision of design and associated services in relation to the Affected Property on the terms of this Agreement.

OPERATIVE PROVISIONS:

1 **Definitions and interpretation**

In this Agreement (including the Recitals) words and expressions have the meanings assigned to them in the Conditions referred to below.

2 **Contract Documents**

2.1 The following documents form part of this Agreement:

the core clauses of the NEC4 Professional Service Contract, the main and secondary Option clauses listed in the Contract Data and the additional

conditions of contract set out in the document entitled "East Region DSC Z clauses" ("the Conditions");

the Contract Data Parts One and Two;

the Scope;

the Task Schedule;

the Consultant's tender;

the Quality Statement including the Quality Promises;

Tender Amendments 1 – 6;

Tender Clarifications.

- 2.2 The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

3 Agreement

- 3.1 The *Consultant* will undertake the provision of design and associated services in relation to the *Affected Property* in accordance with the provisions of this Agreement.
- 3.2 The *Client* will pay to the *Consultant* the amounts due under and in accordance with the provisions of this Agreement.

Delivered as a deed on the date of this document.

OPTION 1a [execution by Highways England under seal])
)
)

Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** by affixing its common seal in the presence of:

Director

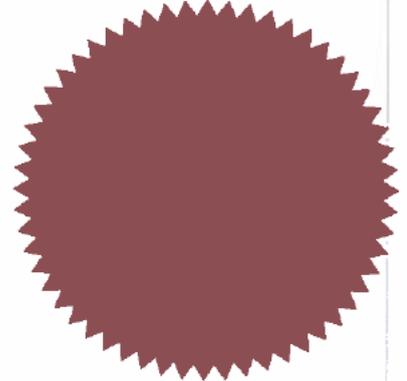


Director/Secretary

OPTION 1b [execution by Highways England under seal]

Executed as a deed by HIGHWAYS ENGLAND COMPANY LIMITED by affixing its common seal in the presence of:

[Handwritten signature]



Authorised Signatory

Authorised Signatory

Executed as a deed by ATKINS LIMITED in the presence of:

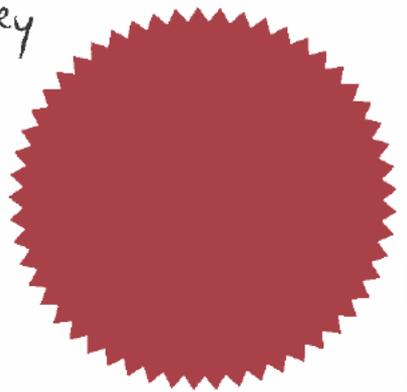
)
)

[Handwritten signature]

Director
AUTHORISED SIGNATORY

~~Executed as a deed by ATKINS LIMITED in the presence of:~~

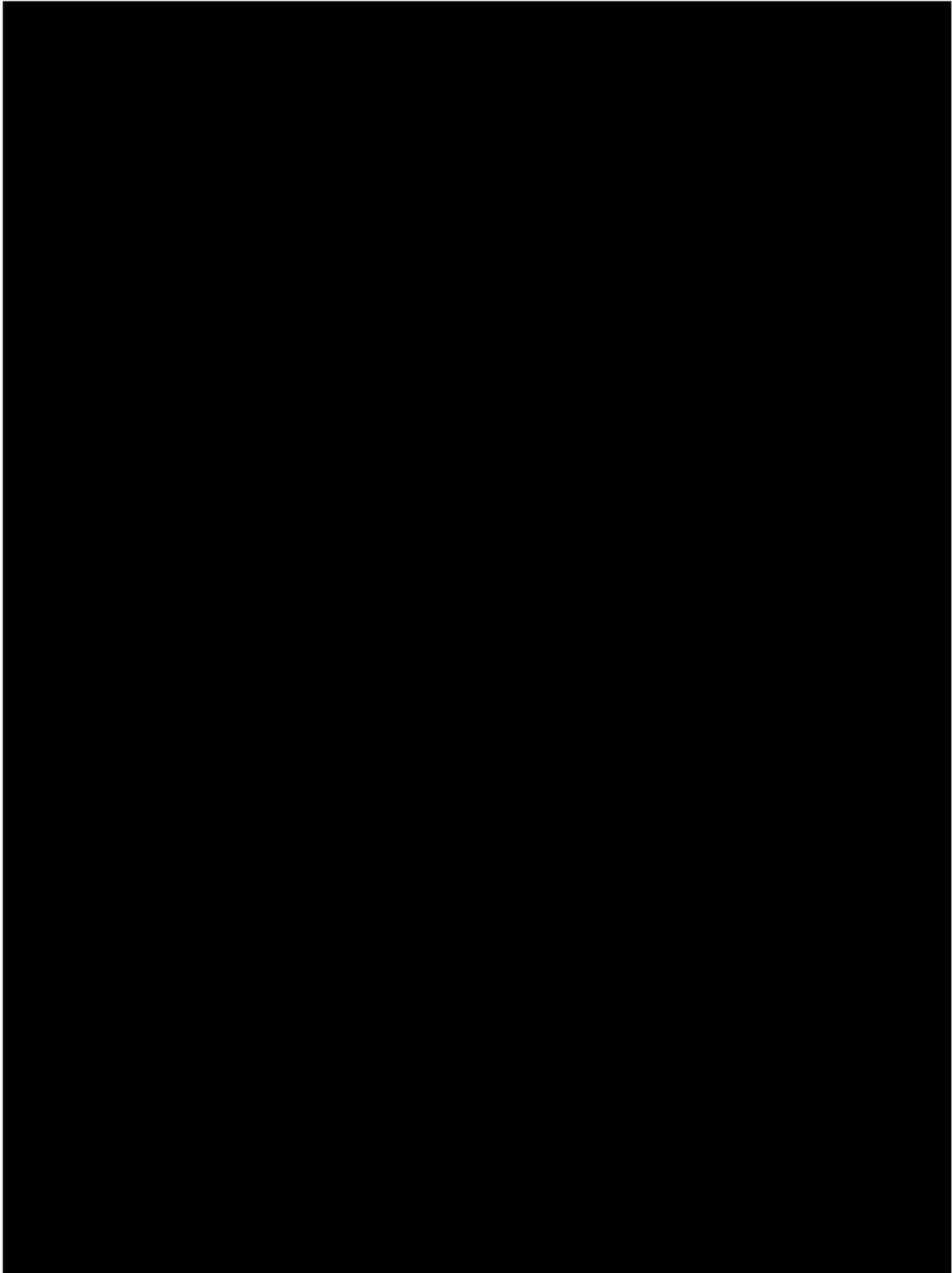
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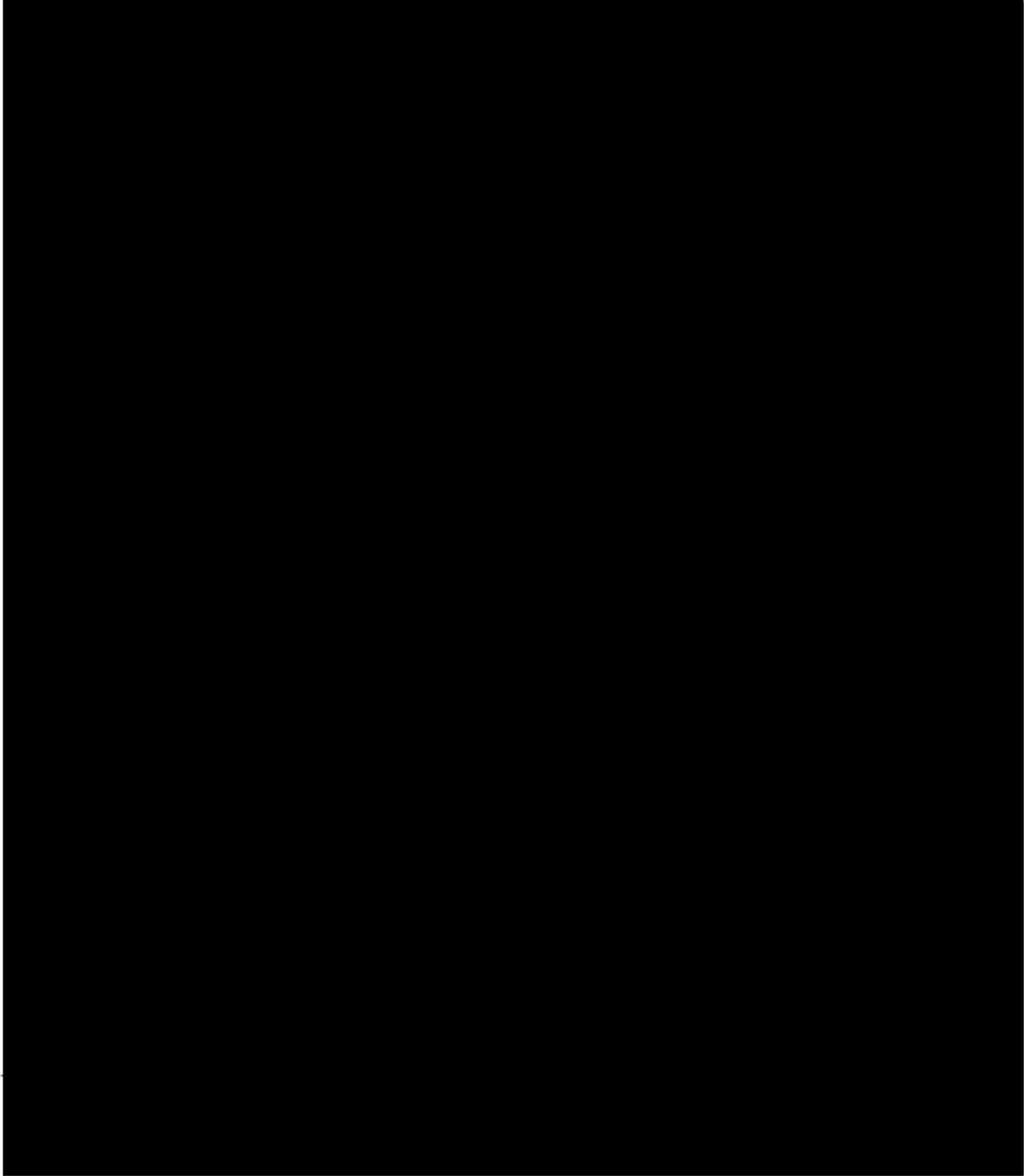


Director

~~Witness (signature, address, occupation)~~

ANNEX A
Promises Statement





Design Services Contract (DSC)

East Region Z clauses

Z CLAUSES

Clause Z1 Additional definitions and amendments to core and Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms

(24) 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.

(25) 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.

(26) 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.

(27) Community Partner is an organisation (other than the *Consultant*) engaged by the *Client* to provide works or services in relation to the maintenance, repair, renewal or improvement of the Affected Property.

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

(29) Contract Dispute is a dispute between the Parties under or in connection with the contract.

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

(31) 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.

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

(33) Discrimination Acts are the Equality Act 2010 and any predecessor statutes.

(34) 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).

(35) Employment Costs are all costs and emoluments arising under the terms and conditions of employment of the Transferring Employees or the Staff (as the case may be), including basic pay, shift allowances, bonus payments, on call payments, overtime, car costs, telephone rental, travel and subsistence payments, maternity pay, sick pay, pension contributions and income tax and national insurance contributions.

(36) 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.

(37) 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 works relating to the Affected Property intended to be carried out by any Community Partners.

(38) Extension Performance Metrics are the metrics to be used in order to determine whether the Live Period should be extended as defined in the Scope.

(39) Extension Performance Target is the level to be achieved for each of the Extension Performance Metrics in order for the Live Period to be extended as identified in the Scope.

(40) Extension Review Period is the period from the *starting date* until 12 months after the *go live date*.

(41) 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 the contract.

(42) Financial Year is (as the case may be)

- the period commencing on the *go live date* and ending on 31 March in the following year,

- a period of twelve months commencing on the expiry of the previous Financial Year or
- in the case of the Financial Year in which the Live Period expires, the period commencing on the expiry of the previous Financial Year and ending on the expiry of the Live Period.

(43) 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.

(44) Government is Her Majesty's Government of the United Kingdom.

(45) Guarantor is a person who has given a Parent Company Guarantee to the *Client*.

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

(47) 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.

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

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

(50) 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.

(51) Licence is the document entitled "Highways England: Licence" dated April 2015 listed in Annex 3 to the Scope.

(52) Live Period is the period of two years commencing on the *go live date* unless later changed in accordance with the contract.

(53) Maximum Staff Rate is the *maximum staff rate* unless later changed in accordance with the contract.

(54) Outgoing Consultant is any agent or consultant appointed by the *Client* or Others to carry out works or provide services similar to the *service* in relation to the Affected Property during the period immediately prior to the *go live date*.

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

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

(57) Personal Data is information received by the *Consultant* in relation to the contract, which relates to living individuals who can be identified

- from that information or
- from that information combined with other details in (or likely to come into) the possession of the *Client*.

(58) Promises Statement is the statement of that name set out in Annex A to the Form of Agreement detailing the commitments made by the *Consultant* as part of its tender in respect of how it is to Provide the Service.

(59) Prospective Tenderer is any person or corporate body who applies to be included on a tender list to become an Incoming Consultant.

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

(61) Related Dispute is a dispute under or in connection with a contract with Others relating to the Affected Property.

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

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

(64) 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).

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

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

(67) A Task is work within the *service* which the *Service Manager* may instruct the *Consultant* to carry out within a stated period of time.

(68) Task Completion is when the *Consultant* has done all the work which the Task Order requires it to do by the Task Completion Date, and corrected Defects which would have prevented the *Client* or Others from using the *service* and Others from doing their work.

(69) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.

(70) A Task Order is the *Service Manager's* instruction to carry out a Task.

(71) The Task Schedule is the *task schedule* unless later changed in accordance with the contract.

(72) 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 Contract Date or to a civil penalty for fraud or evasion.

(73) The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total time appropriate to that rate properly spent on work on the contract.

(74) Transferring Employees are employees of an Outgoing Consultant (or of a subcontractor of an Outgoing Consultant) employed for the carrying out of work or the provision of services similar to the *service* in relation to the Affected Property during the period immediately prior to the *go live date*, other than employees who object to being transferred to the *Consultant*.

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

(76) TUPE Information is information regarding the Staff including identity, number, age, sex, length of service, job title, grade and terms and conditions of employment, details of any disciplinary procedure taken against a member of Staff, detail of any grievance procedure taken by a member of Staff, together with any other matters affecting each of those Staff including but not limited to the information which a transferor is obliged to notify to a transferee pursuant to regulation 11(2) of TUPE.

(77) Offshore is a location outside the United Kingdom of Great Britain and Northern Ireland

23 Subcontracting

In clause 23.3, insert an additional bullet point before the third bullet point

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

25 Assignment

Delete clause 25.

26 Disclosure

Delete clause 26.

50 Assessing the amount due

In each of

clause 50.1 (line 1),

clause 50.2 (line 2),

clause 50.3 (line 2) and

clause 50.4 (line 2 and bullet points 1 and 2)

after "due at" insert "the last day of the calendar month before".

In clause 50.1, lines 2 and 3, delete "decided by ... *starting date*" and insert "stated in the Contract Data".

51 Payment

Delete the first sentence of clause 51.2, including the two bullet points.

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.

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

In the second bullet point of clause 61.2 delete "Defined Cost" and insert "the *Consultant's costs*".

In the sixth bullet point of clause 61.4 delete "Defined Cost" and insert "the *Consultant's costs*".

In each of the first and second bullet points of clause 63.1 delete "Defined Cost" and insert "Time Charge".

In clause 63.3 delete "Defined Cost" in line 1 and insert "Time Charge".

In clause 63.4

delete "Defined Cost" in line 1 and insert "Time Charge" and

after "Scope" in the first bullet point insert "or the Task".

At the end of the first paragraph of clause 63.5 insert the following additional paragraph

A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the Accepted Programme current at the dividing date.

In line 2 of clause 63.9 delete "Defined Cost" and insert "*Consultant's costs*".

After clause 63.11 insert the following clause

63.15 Assessments for changed Prices for compensation events are in the form of changes to the Task Schedule.

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

83 Insurance cover

Delete clause 83 and insert

83.1 The *Consultant* provides the insurances stated in, and to comply with the requirements set out in, Annex 4 to the Scope.

87 Limitation of liability

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

At the end of clause 87.1, 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 Scope),
- loss or damage due to pollution,
- loss arising from breach of
 - confidentiality or data protection obligations or
 - 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.

93 Payment on termination

In the second bullet point of clause 93.1 delete "Defined Cost" and insert "the Time Charge".

In the fifth line of clause 93.2 delete "The *fee percentage* applied to".

In the second bullet point of clause 93.2 delete "any excess ... less the Fee" and insert "the fee element (being an amount calculated by reference to the relevant profit percentages stated in the Task Schedule) of any excess of the first forecast of the Time Charge for the *service* over the Time Charge for work which has been completed on time based items on the Task Schedule".

Option E: Cost reimbursable contract

Delete clauses 11.2(17) and 11.2(18).

Delete the definition of the Price for Service Provided to Date in clause 11.2(21) and insert

The Price for Service Provided to Date is, for each Task, the total of

- the Time Charge for work which has been completed on time based items on the Task Schedule,
- the total of the monthly lump sum prices for each monthly lump sum item on the Task Schedule for the period since the *starting date* and
- a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item.

Delete the definition of the Prices in clause 11.2(23) and insert

The Prices are

- the Time Charge for items described as time based on the Task Schedule and
- the lump sum price in the Task Schedule for each other item.

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

In line 1 of clause 50.8 delete "of Defined Cost" and after "Consultant" insert "for staff whose *staff rate* in the Contract Data or items whose prices in the Task Schedule are stated".

Delete the second sentence of clause 50.8.

In clause 50.9

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

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

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

Option X11: Termination by the *Client*

At the end of clause X11.2 (before the full stop) insert "unless the *Client* has given the *Consultant* at least 12 months' prior notice of its intention to terminate, in which case the amounts due on termination are A1 plus the fee element (being an amount calculated by reference to the relevant profit percentages stated in the Task Schedule) of the Time Charge that would have become due to the *Consultant* under the contract during the period of 12 months after the termination (assuming the termination had not occurred) or during the remainder of the Live Period (if that remaining period is less than 12 months)".

Option Y(UK)1: Project Bank Account

After the second sentence of clause Y1.6 insert

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.

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

Delete the first two sentences of clause Y2.2 (including the three bullet points) and insert
The *Consultant* submits separate invoices on or before each *invoice date* for

- lump sum duties and
- other work under the contract.

Invoices are in the format and contain all the details specified in the Scope or required by the *Service Manager*. The *Consultant* submits such information as the *Service Manager* requires to show that the amount stated as due in each invoice has been correctly assessed.

The date on which a payment becomes due is the next *invoice date* after the date when the *Consultant* submits an invoice for the amount due (as certified by the *Service Manager*) and certifies the relevant details in accordance with the *Client's* electronic invoicing system (or the *invoice date*, if the *Consultant* submits its invoice and certifies the details on that date).

Schedule of Cost Components

Delete and insert Highways England's Design Services Contract Schedule of Cost Components referred to in the Contract Data.

Short Schedule of Cost Components

Delete.

Clause Z4 Recovery of sums due from *Consultant*

Z4.1 Where, under the contract, any sum of money is recoverable from or payable by the *Consultant*, such sum

- may be deducted by the *Service Manager* when assessing the amount due to the *Consultant* pursuant to clause 50.1 of the *conditions of contract*,
- 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 *Consultant* under the contract (subject to compliance with clause Y2.3) or any other contract with the *Client* or
- may be required, by notice from the *Service Manager*, to be paid by the *Consultant* to the *Client*, in which case the sum becomes due to the *Client* on the date of the *Service Manager's* notice and the final date for payment of such sum is 14 days after the date on which the payment becomes due.

Clause Z5 Assignment and Novation

Z5.1 The *Consultant* 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*.

Z5.2 If requested by the *Service Manager*, the *Consultant* executes a novation agreement transferring the benefit and burden of the contract to

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

The novation agreement is in the form set out in the Scope or such other form as the *Client* may reasonably require.

Clause Z6 Discrimination, Bullying and Harassment

Z6.1 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Clause Z7 Confidentiality and disclosure of information

Z7.1 The *Consultant* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person

- the terms of the contract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Service

except that the *Consultant* may disclose information

- to its legal or other professional advisers,
- to anyone employed by it or acting on its behalf as needed to enable the *Consultant* to Provide the Service,
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Service Manager* and takes full account of the *Service Manager's* views about whether (and if so to what extent) the information should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
- with the consent of the *Service Manager*.

Z7.2 The *Consultant* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary

information provided to or acquired by it for any purpose other than to Provide the Service.

Clause Z10 Subcontracting

Z10.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.

Z10.2 The *Service Manager* may, having stated its 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.

Z10.3 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 (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) 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 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.

Z10.4 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 or
- 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.

Z10.5 If requested by the *Service Manager*, the *Consultant* provides further information to support, update or clarify a submission under clause Z10.3.

Z10.6 If, following the acceptance of a submission under clause Z10.4, 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.

Clause Z12 TUPE

Z12.1 The Parties acknowledge that TUPE is likely to apply to the contract so that the Transferring Employees become the employees of the *Consultant* or a Subcontractor on the *go live date*.

Z12.2 The *Consultant* complies with and ensures that any Subcontractor complies with its obligations under TUPE, including compliance with any request by the Outgoing Consultant under regulation 13(4) of TUPE before the *go live date*.

Z12.3 The *Consultant* provides and ensures that any Subcontractor provides the TUPE Information to the *Client* or to any Prospective Tenderer or Incoming Consultant within the *period for reply* after the *Client's* request to do so and in any event at least twelve months before the Completion Date. The *Consultant* warrants that the TUPE Information is complete and accurate as at the date it is disclosed.

Z12.4 The *Client* may disclose any of the TUPE Information to any Prospective Tenderer and Incoming Consultant and ensures that prior to such disclosure the Prospective Tenderer or the Incoming Consultant undertakes not to disclose (unless required by law to do so) the TUPE Information to any other person other than a person

- who is a servant, agent or legal adviser of the Prospective Tenderer or Incoming Consultant and
- who has undertaken not to disclose that information unless required by law to do so.

Z12.5 After the TUPE Information has been provided, the *Consultant*

- informs the *Client* of any change to any part of the TUPE Information and
- co-operates with any reasonable request made by the *Client* or any Prospective Tenderer or Incoming Consultant concerning the TUPE Information

within 7 days of a change or receipt of a request.

Z12.6 So far as reasonably practicable, the *Consultant* does not and ensures that any Subcontractor does not make or promise to make any changes affecting the TUPE Information which would increase the Employment Costs of the Staff in the six months before or at any time after the Completion Date without the prior consent of the *Client* (such consent not to be unreasonably withheld) unless such change is required by law. The *Consultant* supplies to the *Client* full particulars of any proposed changes and the *Client* responds within a reasonable time.

Z12.7 The *Consultant* does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the *service* more than five per cent of the Staff in the twelve months before the Completion Date without the prior consent of the *Client* (such consent not to be unreasonably withheld).

Z12.8 Before the Completion Date, the *Consultant* informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The *Client* requests the Incoming Consultant to provide to the *Consultant* the information required under regulation 13 of TUPE.

Z12.9 The *Consultant* indemnifies and keeps indemnified the *Client* and any Incoming Consultant in respect of any claims, costs (including Employment Costs), expenses, payments and liabilities arising from

- any claim by any of the Staff or by a third party or trade union or body representing any of the Staff in relation to any act or omission which allegedly occurred before the Completion Date,
- any failure by the *Consultant* or any Subcontractor to comply with its obligations under regulations 11 and 13 of TUPE and
- any claim by any employee or former employee of the *Consultant* or any Subcontractor who is not identified in the TUPE Information that their employment or any liability in respect of their employment or its termination has or should have transferred to the Incoming Consultant or the *Client* pursuant to TUPE.

Clause Z13 Merger, take-over or change of control

- Z13.1 The *Consultant* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.
- Z13.2 If a Change of Control occurs the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2
- Z13.3 The *Consultant* notifies the *Service Manager* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* or a Consortium Member. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant* or a Consortium Member, or
 - the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.
- Z13.4 The *Consultant* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member.
- Z13.4A If a Change of Control occurs, or is likely to occur, and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z13.5 If a Change of Control occurs, the *Consultant* 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 the board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
 - any other information required by the *Client* in order to determine whether the Controller
 - meets the Financial Standing Test and

- has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not) and
- any other information requested by the Service Manager in order to satisfy itself that the Consultant remains in a position to perform its obligations under the contract.

Z13.6 If the Controller does not meet the Financial Standing Test or (if applicable) does not provide the legal opinion required in clause Z13.10, the *Consultant* may propose an alternative guarantor to the *Service Manager* for acceptance. The *Consultant* provides to the *Service Manager* the details set out in clause Z13.5 and (if applicable) the legal opinion required in clause Z13.10 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that it does not meet the Financial Standing Test or (if applicable) does not provide the legal opinion required in clause Z13.10.

Z13.7 If so required by the *Service Manager*, the *Consultant* within four weeks gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager*.

Z13.8 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within 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 *Service Manager* that it will so comply by the end of that period.

Z13.9f

- neither the Controller nor any alternative guarantor proposed by the *Consultant* meets the Financial Standing Test or provides the legal opinion required by clause Z13.10,
- the *Consultant* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
- the *Consultant* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will meet the Financial Standing Test within 18 months of the *Service Manager's* acceptance

the *Client* may treat such failure as the *Consultant* having substantially hindered the *Client* or Others.

Z13.10 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
- accepted by the *Service Manager*.

The legal opinion is addressed to the *Client* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Service Manager*.

The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

Clause Z15 Adjudication

Z15.1 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.

Z15.2 If a Contract Dispute raises issues which are substantially the same as or are connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the Contract Dispute is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Clause Z16 Interpretation

Z16.1 In the contract, except where the context shows otherwise, 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.

Z16.2 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.

Clause Z17 Revisions to Promises Statement

Z17.1 The *Consultant* may submit to the *Service Manager* proposed revisions to the Promises Statement for acceptance within the

period for reply. A reason for not accepting the proposed revision is that

- it will not enable the *Consultant* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Consultant* to achieve the level of performance specified in the Promises Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Promises Statement.

Z17.2 A revision to the Promises Statement accepted by the *Service Manager* is not a compensation event.

Clause Z18 Audit, Quality Management Points and Nonconformities

Z18.1 Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less, the *Service Manager* does not issue any further Task Orders to the *Consultant* and the *Client* may appoint Others to perform these Tasks.

Clause Z19 Parent Company Guarantee

Z19.1 If required by the *Client*, the *Consultant* gives to the *Client* a Parent Company Guarantee. If the 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 *Client's* request, whichever is later. Parent Company Guarantees are given by

- for a standalone company – the Controller,
- for an unincorporated JV ("more than one party") – the Controller of each Consortium Member or
- for an incorporated JV – the Controller 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 Controller.

Z19.2 A breach of clause Z19.1 is treated as the *Consultant* having substantially hindered the *Client* or Others.

Clause Z20 Infrastructure Act 2015

Z20.1 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*).

Z20.2 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.

Clause Z22 Intellectual Property Rights

Z22.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Consultant* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Consultant* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z22.2 The *Consultant* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party. The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client*.

Z22.3 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Clause Z24 Tax Non-Compliance

Z24.1 The *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z24.2 The *Consultant* notifies the *Service Manager* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and

- any other information requested by the *Service Manager*.

Z24.3 The *Consultant* is treated as having substantially hindered the *Client* or others if

- the warranty given by the *Consultant* under clause Z24.1 is untrue,
- the *Consultant* fails to notify the *Service Manager* of a Tax Non-Compliance or
- the *Service Manager* decides that any mitigating factors notified by the *Consultant* are unacceptable.

Clause Z27 Termination – PCRs, Regulation 73

Z27.1 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. The procedure and amount due on termination are the same as for reason R11.

Z27.2 The *Client* may terminate if

- the contract has been subject to a 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.

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.

Clause Z28 Termination and removal of part of the service

Z28.1 The following are treated as the *Consultant* having substantially hindered the *Client* or Others

- the *Consultant* substantially or repeatedly breaks a requirement of environmental legislation,

- the *Consultant* persistently or materially fails to comply with the Promises Statement or to meet any of the Performance Requirements or
- a key resource needed by the *Consultant* to Provide the Service is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Service Manager*.

Z28.2 The *Service Manager* may instruct the *Consultant* that

- part 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 *Consultant* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Consultant* 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).

Z28.3 An instruction given under clause Z28.2 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*.

Z28.4 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 so as to ensure a smooth transfer of functions.

Z28.5 The *Service Manager* may give the *Consultant* an instruction to Provide the Service (or parts of the *service*) 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 *service* which the *Consultant* is to provide in relation to them,
- the expected duration of the instruction and
- any constraints on how the *Consultant* is to Provide the Service.

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

Clause Z30 Basis of contract and compensation events

Z30.1 The *Consultant* is deemed to have satisfied itself before entering into the contract

- as to the scope and nature of the *service* and its obligations under the contract,
- as to the basis of payment for the *service* and
- that it has all the information necessary to enable it to Provide the *Service* in accordance with the contract.

Clause Z31 Enhancements

Z31.1 The *Consultant* may at any time after the *starting date* submit to the *Service Manager* a proposal for an Enhancement.

Z31.2 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 relating to the Affected Property,
- 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.

Z31.3 The *Consultant* and the *Service Manager* 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.

Z31.4 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.

Z31.5 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.

Z31.6 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.

Z31.7 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.

Z31.8 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.

Z31.9 Other than where instructed by the *Service Manager* to carry out trials, testing or a pilot project under clause Z31.5, 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 Z31.8.

- Z31.10 A change to the Scope instructed by the *Service Manager* under clause Z31.7 following the submission of a detailed business case by the *Consultant* is not a compensation event.
- Z31.11 If an Enhancement instructed by the *Service Manager* under clause Z31.7 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.
- Z31.12 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.
- Z31.13 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.
- Z31.14 Where an Enhancement is proposed jointly by the *Consultant* and one or more Community Partners, clause Z31 applies except that
- the outline and detailed business case are prepared jointly by the *Consultant* and the relevant Community Partners,
 - the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Consultant* and the relevant Community Partners,
 - the *Client* may instruct the *Consultant* 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 Z31.5 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 Community Partners in the proportions stated in the detailed business case.

Clause Z32 Project Bank Account

- Z32.1 The *Client* may notify the *Consultant* that payments under the 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.

Clause Z33 Joint ventures

Z33.1 Where two or more Consortium Members comprise the *Consultant*

- each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant's* obligations under the contract,
- a communication submitted to the address stated for the *Consultant* in the Contract Data (or to any other address notified by the *Consultant*) is treated as having been submitted to each Consortium Member,
- any payment made to a Consortium Member is treated to that extent as a discharge of the *Client's* obligation to make payment to the *Consultant*,
- each Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement,
- termination of the joint venture arrangement for any reason is treated as the *Consultant* having substantially hindered the *Client* or Others,
- clause 91.1 of the *conditions of contract* is amended by inserting after "the other Party" wherever it appears (three places) the words "(or, in the case of the *Consultant*, any Consortium Member)" and
- the definition of "Tax Non-Compliance" is amended so that any Tax Non-Compliance by a Consortium Member is treated as a Tax Non-Compliance by the *Consultant*.

Clause Z34 Financial Distress

Z34.1 The *Consultant* notifies the *Service Manager* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor

- its Credit Rating falls below the relevant *credit rating*,
- 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 it would not meet the Financial Standing Test.

Z34.2 If any of the events listed in clause Z34.1 occurs, the *Service Manager* may require the *Consultant* to give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Service Manager* who (in either case)

- meets the Financial Standing Test and
- has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z34.1 has occurred.

Z34.3 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z34.2 if the *Consultant* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within 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 *Service Manager* that it will so comply by the end of that period.

Z34.4 If

- the *Consultant* fails to notify the *Service Manager* that an event listed in clause Z34.1 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z34.2,
- the *Consultant* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
- the *Consultant* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will comply with clause Z34.2 within 18 months of the *Service Manager's* acceptance

the *Client* may treat such failure as the *Consultant* having substantially hindered the *Client* or Others.

Clause Z35 Pensions

- Z35.1 The *Consultant* 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 *go live date* or
 - arise out of the failure of the *Consultant*, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of the section headed "Pensions" in the Scope.

Clause Z45 Indexation

- Z45.1 On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor, equal to $(L-B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before the Contract Date.

If an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The price adjustment factor calculated at the Completion Date for the whole of the *service* is used for calculating adjustments after this date.

- Z45.2 After each anniversary of the Contract Date, each *maximum staff rate* is adjusted by an amount for price adjustment which is the product of the *maximum staff rate* multiplied by the price adjustment factor calculated at the last anniversary. The adjusted *maximum staff rate* is the Maximum Staff Rate.
- Z45.3 Each amount due after the anniversary includes an amount for price adjustment which is the sum of
- for the lump sum items on the Task Schedule, the change in the lump sums included in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary before the assessment and
 - the amount for price adjustment included in the previous amount due.
- Z45.4 The Time Charge for compensation events relating to lump sum items on the Task Schedule is assessed using the staff rates current at the time of assessing the compensation event adjusted to the Contract Date by dividing by $(1+PAF)$, where

PAF is the price adjustment factor calculated at the last anniversary.

Clause Z58 The *accounting periods*

Z58.1 Within thirteen weeks after the end of each *accounting period* the *Service Manager*

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

Z58.2 The *Service Manager's* assessments at the end of each *accounting period* are conclusive evidence of the final amount due for the *service* provided during the *accounting period* unless a Party

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

Clause Z59 Tasks

Z59.1 The *Service Manager* may issue a Task Order to the *Consultant*. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The instruction includes

- a detailed description of the work in the Task and
- the Task starting date and Task Completion Date.

Z59.2 The *Consultant* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Consultant* submits details of its assessment with the quotation. The *Service Manager* replies within two weeks of the submission. The reply is

- acceptance of the quotation and the issue of the Task Order,
- an instruction to submit a revised quotation,
- that the *Service Manager* will be making the assessment or
- a notification that the Task will not be instructed.

Z59.3 The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three weeks of being instructed to do so.

Z59.4 The *Service Manager* extends the time allowed for

- the *Consultant* to submit quotations for a Task or
- the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.

Z59.5 The *Service Manager* assesses the pricing for the Task if

- the *Consultant* has not submitted a quotation and details of its assessment within the time allowed or
- the *Service Manager* decides that the *Consultant* has not assessed the Task correctly in a quotation and has not instructed the *Consultant* to submit a revised quotation.

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

Z59.6 The assessment of a Task is in the form of a Task price list. Where items of work in the Task price list are covered by rates in the Task Schedule, the items are priced using those rates. The prices for items in the Task price list which are not taken from the Task Schedule are assessed in the same way as a compensation event is assessed.

Z59.7 When a Task Order is issued

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

The issue of a Task is not a compensation event.

Z59.8 The *Consultant* does not start any work included in the Task until it has received the Task Order, and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.

Z59.9 The *Service Manager* may instruct the *Consultant* to carry out a Task in an emergency before the requirements of clauses Z59.1 to Z59.5 have been fully complied with. If so

- the *Service Manager* provides any of the matters listed in clause Z59.1 which it has not provided and

- the *Consultant* submits its quotation for the Task as soon as practical after the Task Order is issued.

Z59.10 The *Consultant* provides information which shows how each item included in a Task relates to the operations on each programme which it submits for acceptance.

Z59.11 Clause X10 applies to a Task if the Task Order states or if the *Service Manager* issues an instruction to the *Consultant* to use information modelling for the Task. The *Service Manager's* instruction is a compensation event.

Clause Z60 Extension of Live Period

Z60.1 The Live Period is extended by three years if (but only if) during the Extension Review Period

- the average score for each of the Extension Performance Metrics is equal to or more than the Extension Performance Target,
- the other criteria stated in Table 16.2 in the Scope have been achieved and
- the *Service Manager* has not served any quality warning notices (as defined in Annex 16 to the Scope) on the *Consultant*.

East Region Design Services Contract (DSC)

Contract Data Part 1

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SEL	25/3/19
1	0.1	The <i>completion date</i> for the whole of the <i>service</i> has been changed from 104 weeks to 156 weeks.	SEL	01/04/19
2	1.0	Y(UK)1, Y(UK)2 & Y(UK)3 added as Secondary Options	AP	31/05/19
3	2.0	The period after the Contract Date within which the Consultant is to submit a first programme for acceptance changed from two weeks to three weeks.	SOS	19/06/19
4	2.0	Starting date, go live date and first assessment date updated	SOS	19/06/19