



Highways England Company Limited

Archaeology Framework

NEC4 Framework Contract

(June 2017)

Z Clauses

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Issue	Revision	Amendment	Initials	Date
1	0	Tender release.	RE	07/07/2020

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MANDATORY CLAUSES**Clause Z1 Changes to Core Clauses****11 Identified and defined terms**

In clause 11.2(5) delete the definition of “A Work Order” and insert

- (5) A Work Order is work which is to be carried out under either
- a standalone Works Contract or
 - a bundle of Works Contracts procured together.

The following additional definitions apply to the framework contract and any Package Contract where it appears

- (6) Affected Property is property of the *Client* or Others which is affected by the work of the *Supplier* or used by the *Supplier* in performing its obligations under the framework contract or any Package Contract and which is identified in the Contract Data.
- (7) Associated Company is any of
- a Consortium Member or
 - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Supplier* or a Consortium Member.
- (8) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Supplier* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Supplier* 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 *Supplier* or a Consortium Member.
- (9) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Supplier*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (10) Contract Dispute is a dispute between the Parties under or in connection with the framework contract or any Package Contract.
- (11) Contractor Background IPR is IPR owned by the *Supplier* or a third party before the date the framework contract came into existence, or created by the *Supplier* or a third party independently of the framework contract and any Package Contract, which in each case is or will be used

- before the *end date* to perform the *Supplier's* obligations under any Package Contract,
- for the maintenance, operation and modification of the *Supplier's* obligations under any Package Contract or
- for the design of any works using any materials received from the *Supplier*.

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

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

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

(14) 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 *Supplier*, a Consortium Member or any Guarantor. A rating agency accepted by the *Client* are Moody's Investor Service Inc., Standard & Poor's Financial Services LLC. or Fitch Ratings Inc.) unless agreed otherwise by the *Client*.

(15) The Data Protection Legislation is

- the General Data Protection Regulation (EU 2016/679),
- the LED (Law Enforcement Directive (Directive (EU) 2016/680),
- the Data Protection Act 2018,
- the Privacy and Electronic Communications (EC Directive) Regulations 2003 and
- any other data protection laws and regulations applicable in England and Wales.

(16) Death is a human casualty who dies due to injuries received in a RIDDOR Incident.

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

(18) 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).

- (19) Employment Costs are all costs and emoluments arising under the terms and conditions of employment of the Staff, 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.
- (20) Enforcement Action is enforcement action brought by a regulatory authority against the *Supplier* 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.
- (21) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement.
- (22) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (23) Financial Standing Test is the financial test for the *Supplier*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the framework contract.
- (24) 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.
- (25) Guarantor is a person who has given a Parent Company Guarantee to the *Client*.
- (26) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax plc and others.
- (27) Incoming Contractor is any contractor appointed by the *Client* to provide works or services under any Package Contract or part of them (or similar services or part of them) in relation to the Affected Property (or part of it) in place of the *Supplier*.
- (28) Indemnified Claim is a matter for which the *Supplier* is liable under a Package Contract.

- (29) 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.
- (30) 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.
- (31) Licence is the document entitled “Highways England: Licence” listed in Annex 02 of the Scope.
- (32) Others are people or organisations who are not the *Client*, the *Supplier* or any employee or Subcontractor of the *Supplier*.
- (33) Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to carry out works or provide services similar to the works or services under any Package Contract in relation to the Affected Property during the period immediately prior to the date of award of the framework contract.
- (34) Package Contract is a contract for works or services to be carried out pursuant to a Time Charge Order or a Works Contract.
- (35) Package Information is the scope (as applicable) for any Package Contract.
- (36) Parent Company Guarantee is a parent company guarantee of the *Supplier's* performance in the form set out in the Framework Information.
- (37) Performance Level is the performance level stated in the Collaborative Performance Framework stated in the Scope.
- (38) Performance Requirement is the required standard for performance of each element of the *Supplier's* obligations under any Package Contract as specified in the Package Information.
- (39) Personal Data is any data relating to an identified or identifiable natural individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- (40) Procedure has the meaning given to it in ISO 9000.

- (41) Process has the meaning given to it in ISO 9000.
- (42) Prospective Tenderer is any person or corporate body who applies to be included on a tender list to become an Incoming Contractor.
- (43) Quality Management Points are points accrued by the *Supplier* in relation to a Package Contract in accordance with the table in Annex 10 of the Scope.
- (44) Quality Plan has the meaning given to it in ISO 9001:2015.
- (45) Quality Statement is the statement of that name referred to in the Contract Data detailing the *Supplier's* management and resourcing proposals for how it is to meet the *Client's* objectives for the framework contract.
- (46) Related Dispute is a dispute under or in connection with a contract between a Party and others relating to the Affected Property.
- (47) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (48) Relevant Tax Authority is Her Majesty's Revenue & Customs or, if the *Supplier* is established in another jurisdiction, the tax authority in that jurisdiction.
- (49) RIDDOR Incident is an incident occurring under any contract between
- the *Supplier* 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 *Supplier* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).
- (50) The Secretary of State is the Secretary of State for Transport.
- (51) Staff are persons employed or engaged by the *Supplier* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to provide works or services under any Package Contract at any time.
- (52) Subcontractor is a person or organisation who has a contract with the *Supplier* to provide works or services or to supply plant, materials or equipment necessary for performance of the *Supplier's* obligations under any Package Contract.
- (53) Task Order Area is the area of property and lands (and the volumes above and below it) affected by the works and services (in a Task Order), and as stated in the Task Order.

- (54) Task Section is an area of land or property (and the volumes above and below it) of the Task Order Area stated in the Task Order.
- (55) Tax Non-Compliance is where a tax return submitted by the *Supplier* 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 *Supplier* or 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 *Supplier* or Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of the framework contract or to a civil penalty for fraud or evasion.
- (56) Threshold Level is the threshold level of Quality Management Points stated in the Scope.
- (57) Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of services similar to the service in relation to the Affected Property during the period immediately prior to the access date, other than employees who object to being transferred to the *Supplier*.
- (58) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (59) 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.
- (60) Works Contract is a contract for works instructed by, or procured under, a Work Order.

20 The Parties' obligations

In clause 20.1 delete “the *Client's Representative*” and insert “a *Contracting Body*”.

21 Supplier selection

In clause 21.1 delete references to “the *Client*” and “the *Client’s Representative*” and insert “a *Contracting Body*”.

22 Time Charge Order

In clause 22.1 delete references to “the *Client’s Representative*” and insert “a *Contracting Body*”.

23 Quotation

Delete all references in clauses 23.1 and 23.3 to 23.5 to “the *Client’s Representative*” and insert “a *Contracting Body*”.

30 Completion

In the first bullet of clause 30.1 delete “the *Client’s Representative*” and insert “a *Contracting Body*”.

90 Termination

In the first bullet of clause 90.2 delete “the *Client’s Representative*” and insert “a *Contracting Body*”.

Clause Z2	Corrupt practices
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Z2.1 The *Supplier* does not

- offer or give to any person in the service of the *Client* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of the framework contract or any other contract with the *Client* or for showing favour or disfavour to any person in relation to the framework contract or any other contract with the *Client* or
- enter into the framework contract or any other contract with the *Client* if, in connection with such contract, commission has been paid or an agreement for the payment of commission has been made by it or on its behalf or to its knowledge.

Z2.2 If the *Supplier* breaches clause Z2.1, the *Client* may terminate the framework contract with immediate effect.

Clause Z5	Assignment and transfer
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Z5.1 The *Supplier* does not assign, transfer or charge the benefit of the framework contract, Package 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 *Client*, the *Supplier* executes a novation agreement in the form specified in the Scope or Framework Information (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the framework contract or any Package Contract to

- the *Client* (from another *Contracting Body*),
- an organisation established to take over the *Client's* functions or part of it,
- another public body exercising similar functions,
- a Department or Office of Her Majesty's Government or
- a local authority.

Z5.3 If the *Supplier* wishes to transfer the benefit and burden of the framework contract to a new supplier, it seeks the *Client's* agreement to do so. The *Supplier*

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

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

Clause Z6 Discrimination

Z6.1 The *Supplier* 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 or
- any allegation of bullying or harassment

resulting from any act or omission of the *Supplier* in connection with the framework contract or any Package Contract.

Clause Z12 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

Z12.1 The *Supplier* complies with and ensures that any Subcontractor complies with its obligations under TUPE, including compliance with any request by the Outgoing Contractor under regulation 13(4) of TUPE before the date of award of the framework contract.

Z12.2 The *Supplier* provides and ensures that any Subcontractor provides the TUPE Information to the *Client* or to any Prospective Tenderer

or Incoming Contractor within the *period for reply* after the *Client's* request to do so and in any event at least twelve months before the *end date*. The *Supplier* warrants that the TUPE Information is complete and accurate as at the date it is disclosed.

Z12.3 The *Client* may disclose any of the TUPE Information to any Prospective Tenderer and Incoming Contractor and ensures that prior to such disclosure the Prospective Tenderer or the Incoming Contractor 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 Contractor and
- who has undertaken not to disclose that information unless required by law to do so.

Z12.4 After the TUPE Information has been provided, the *Supplier*

- 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 Contractor concerning the TUPE Information

within seven (7) days of a change or receipt of a request.

Z12.5 So far as reasonably practicable, the *Supplier* 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 eight (8) months before or at any time after the *end date* without the prior consent of the *Client* (such consent not to be unreasonably withheld) unless such change is required by law. The *Supplier* supplies to the *Client* full particulars of any proposed changes and the *Client* responds within a reasonable time.

Z12.6 The *Supplier* does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the works or services under any Package Contract more than five per cent of the Staff in the twelve months before the *end date* without the prior consent of the *Client* (such consent not to be unreasonably withheld).

Z12.7 Before the *end date*, the *Supplier* informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The *Client* requests the Incoming Contractor to provide to the *Supplier* the information required under regulation 13 of TUPE.

Z12.8 The *Supplier* indemnifies and keeps indemnified the *Client* and any Incoming Contractor 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 *end date*,

- any failure by the *Supplier* 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 *Supplier* 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 Contractor or the *Client* pursuant to TUPE.

Clause Z13	Merger, take-over or Change of Control
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- Z13.1 The *Supplier* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.
- Z13.2 If a Change of Control occurs without the *Client's* prior consent or will not allow the *Supplier* to perform its obligations under the framework contract or any Package Contract, the *Client* may
- terminate the framework contract with immediate effect and
 - treat the Change of Control as a substantial failure by the *Supplier* to comply with their obligations under any Package Contract.
- Z13.3 The *Supplier* notifies the *Client* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier* 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 *Supplier* or a Consortium Member, or
 - the composition of the *Supplier* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the framework contract or any Package Contract by the *Supplier* or is considered substantial in accordance with Regulation 72(8) of the Public Contracts Regulations 2015.
- Z13.4 The *Supplier* notifies the *Client* immediately of any change or proposed change in the name or status of the *Supplier* or a Consortium Member.
- Z13.5 If a Change of Control occurs, the *Supplier* provides to the *Client*
- 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* and

- any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test.
- 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 *Supplier* may propose an alternative guarantor to the *Client* for acceptance. The *Supplier* provides to the *Client* 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 *Client*, the *Supplier* within four weeks gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.
- Z13.8 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not meet the Financial Standing Test if the *Supplier* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.
- Z13.9 If
- neither the Controller nor any alternative guarantor proposed by the *Supplier* meets the Financial Standing Test or provides the legal opinion required by clause Z13.10,
 - the *Supplier* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
 - the *Supplier* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will meet the Financial Standing Test within eighteen (18) months of the *Client's* acceptance
- the *Client* may
- terminate the framework contract with immediate effect and
 - treat such failure as a substantial failure by the *Supplier* to comply with their obligations under any Package Contract.
- Z13.10 If the Controller, or any alternative guarantor proposed by the *Supplier*, is not a company incorporated in and subject to the laws of

England and Wales, the *Supplier* 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 *Client*.

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 *Client*.

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 Framework Information.

Z13.11 If the *Supplier* (or, where the *Supplier* is a joint venture, any Consortium Member) is taken over by, or merges with, another supplier (or an Associated Company of another supplier) appointed by the *Client* under a category management framework contract to undertake archaeological investigation works and services in relation to the Affected Property, the *Client* may require

- a Parent Company Guarantee from the new Controller (or an alternative guarantor) in respect of the *Supplier's* liabilities under any subsisting or completed Package Contract and
- the novation of any subsisting or completed Package Contract from the *Supplier* to an Associated Company.

Z13.12 A failure by the *Supplier* to comply with a requirement under clause Z13 is treated as a substantial failure by the *Supplier* to comply with his obligations under the affected Package Contracts.

Clause Z15 Adjudication

Z15.1 The NEC4 Dispute Resolution Service Contract (June 2017 including amendments January 2019) includes the following additional condition of contract:

“Any information concerning the contract obtained by either the *Dispute Resolver* or any person advising or aiding him is confidential, and is not used or disclosed by the *Dispute Resolver* or any such person except for the purposes of the contract. The *Dispute Resolver* 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 framework contract and any Package Contract, except where the context shows otherwise

- references to a document includes any revision made to it in accordance with the contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it,
- references to a British, European or International standard include any current relevant standard that replaces it,
- references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity and
- the words “includes” or “including” are construed without limitation.

Z16.2 In the framework contract and any Package 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.

Clause Z17 Quality Management

Z17.1 The *Supplier* may submit to the *Client* proposed revisions to the Quality Statement for acceptance within two weeks. A reason for not accepting the proposed revision is that

- it will not enable the *Supplier* to meet a Performance Requirement,

- it will unacceptably increase the risk of failure to meet a Performance Requirement,
 - it will not enable the *Supplier* to achieve the level of performance specified in the Quality Statement,
 - it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement or
 - it will constitute a substantial modification of the framework contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.
- Z17.2 A revision to the Quality Statement accepted by the *Client* is not a compensation event.
- Z17.3 The *Client* may give an instruction to the *Supplier* which offers the *Supplier* a financial or other incentive to exceed the Performance Requirements or the levels of performance specified in the Quality Statement. The Parties agree the terms of any such instruction (including the associated incentive mechanism) before it is issued.

Clause Z18 Quality Management Points

- Z18.1 If at any time the *Supplier* has more than 75 Quality Management Points in force, the *Client* may terminate the framework contract with immediate effect.
- Z18.2 Following the issue of a quality warning notice to the *Supplier* under any Package Contract and until the number of Quality Management Points in effect under that Package Contract is reduced to 25 or less, the *Client* procures that
- no Time Charge Orders are issued to the *Supplier* and
 - no further Works Contracts are placed with the *Supplier*
- and the relevant *Contracting Body* may appoint Others to perform these duties.

Clause Z19 Parent Company Guarantee

- Z19.1 If required by the *Client*, the *Supplier* gives to the *Client* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the date of award of the framework contract, it is given to the *Client* within four weeks of the date of award of the framework contract or of the *Client's* request, whichever is later. Parent Company Guarantees are given for
- a standalone company – from its Controller or
 - a joint venture (whether incorporated or unincorporated) – from 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 Should other forms of guarantee be required, this will be specified by the *Client* and the *Supplier* provides such other form of guarantee.

Z19.3 If the *Supplier* breaches clause Z19.1, the *Client* may

- terminate the framework contract with immediate effect and
- treat such breach as a substantial failure by the *Supplier* to comply with its obligations under any Package Contract.

Clause Z22 Intellectual Property Rights (IPRs)

Z22.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the framework contract or any Package Contract except as stated otherwise in the **Scope**. To the extent that these IPRs do not automatically belong to the *Client*, the *Supplier* 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 *Supplier* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z22.2 The *Supplier* 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 section 2300 of the Scope. Any licence granted under this clause survives the termination or expiry of the framework contract or the relevant Package Contract and cannot be terminated by the *Supplier* or its assignees or any third party. The *Supplier* provides to the *Client* the documents which license these IPRs to the *Client*. The *Supplier's* or third-party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.

Z22.3 The *Supplier* 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 *Supplier* 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 date of award of the framework contract.

- Z24.2 The *Supplier* notifies the *Client* within one week of any Tax Non-Compliance occurring after the date of award of the framework contract and provides details of
- the steps the *Supplier* 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 *Client*.
- Z24.3 If
- the warranty given the *Supplier* under clause Z24.1 is untrue,
 - the *Supplier* fails to notify the *Client* of a Tax Non-Compliance or
 - the *Client* decides that any mitigating factors notified by the *Supplier* are unacceptable
- the *Client* may
- terminate the framework contract with immediate effect and
 - treat such breach as a substantial failure by the *Supplier* to comply with its obligations under any Package Contract.

Clause Z25 Tax Arrangements of Staff

- Z25.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the framework contract and any Package Contracts, the *Supplier* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- Z25.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the framework contract and any Package Contracts, the *Supplier* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- Z25.3 The *Client* may, at any time during the term of the framework contract and any Package Contracts, request the *Supplier* to provide information to demonstrate either how any member of Staff is complying with clauses Z25.1 and Z25.2 or why those clauses do not apply to it.
- Z25.4 If the *Supplier* fails to provide information in response to a request under clause Z25.3

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z25.1 and Z25.2 or why those clauses do not apply to it

the *Client* may

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

Z25.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z25.1 and Z25.2, the *Client* may treat such non-compliance as a substantial failure by the *Supplier* to comply with its obligations.

Z25.6 The *Supplier* acknowledges that the *Client* may

- supply any information which it receives under clauses Z25.3 or Z25.5 or
- advise the non-supply of information

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

Clause Z27 Termination – Public Contract Regulations 2015

Z27.1 The *Client* may terminate the framework contract with immediate effect if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Supplier* at the date of award of the framework contract.

Z27.2 The *Client* may terminate the framework contract with immediate effect if

- the framework 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 (2014/24/EU) has occurred.

Z27.3 The *Client* may terminate the framework contract with immediate effect if the *Supplier* fails to

- comply (or to ensure that any person employed by it or acting on its behalf complies) with the *Client's* Anti Bribery Code of Conduct and Anti-Fraud Code of Conduct,
- comply (or to ensure that any Subcontractor complies) with the *Client's* policies relating to bullying and harassment,
- notify its employees and Subcontractors of their duties under the Official Secrets Act 1989,
- notify the *Client* that a conflict of interest may exist or arise,
- process Personal Data in accordance with (or otherwise puts the *Client* in breach of) the Data Protection Legislation,
- comply with the requirements or instructions of the *Client* in relation to Personal Data (including instructions relating to processing Personal Data outside the European Economic Area) or
- take actions to reduce the number of Quality Management Points in effect to 25 or less or comply with a corrective action plan that has been accepted by the *Client*.

Z27.4 If following the award of a Work Order comprising a bundle Works Contracts

- an event listed in any of clauses Z27.1 to Z27.3 occurs (but the *Client* has not terminated the framework contract)
- a Performance Requirement in any Works Contract is not met,
- a Performance Level of 5 or more for any performance indicator is not achieved in any Works Contract in any assessment period or
- an event listed in section 7.2 Exclusion criteria of the Framework Information occurs,

the *Client* may elect not to award any further Works Contracts to the *Supplier* pursuant to the Work Order, remove a Works Contract from the Work Order, and appoint another supplier to undertake the Works Contract.

Clause Z33 Joint ventures and single point of contact
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Z33.1 Where two or more Consortium Members comprise the *Supplier*

- each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Supplier's* obligations under the framework contract and any Package Contract,

- each Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement,
- if the joint venture arrangement is terminated for any reason, the *Client* may
 - terminate the framework contract with immediate effect and
 - treat such termination as a substantial failure by the *Supplier* to comply with its obligations under any Package Contract 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 *Supplier*.

Z33.2 The *Supplier* nominates the representative named in the Contract Data for the purposes of the framework contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Supplier* acknowledges that receipt of a communication by the *Supplier's* nominated representative constitutes receipt by all the Consortium Members. The *Supplier* notifies the *Client* in advance of any change to the identity of the *Supplier's* nominated representative.

Z33.3 The *Supplier* acknowledges that any payment made by the *Client* to a Consortium Member under any Package Contract to that extent discharges the *Client's* liability to make payment to the *Supplier*.

Z33.4 Where two or more Consortium Members comprise the *Supplier*, clause 90.1 of the *conditions of contract* are amended by inserting after "the other Party" the words "or in the case of the *Supplier*, any Consortium Member".

Clause Z72 Changes to Indices

Z72.1. The *Client* may change the indices used in any price adjustment factor in accordance with the Framework Information.

OPTIONAL Z CLAUSES (for lots 2 and 3 only)

Clause Z34 Financial Distress

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

- its Credit Rating falls below the relevant *credit rating*,

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- 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 *Client* may require the *Supplier* to give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* and accepted by the *Client* 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 *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not comply with clause Z34.2 if the *Supplier* gives to the *Client* an assurance that the Controller or the alternative guarantor will so comply within eighteen (18) months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will so comply by the end of that period.

Z34.4 If

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

the *Client* may

- terminate the framework contract with immediate effect and
- treat such breach as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.