



National Highways Limited

**NEC4 Engineering and Construction Contract
(June 2017 including amendments January 2019 and October 2020)**

VOLUME 1

CONTRACT DATA PARTS 1 AND 2

**Lower Thames Crossing
Tunnels and Approaches**

15 January 2024

CONTRACT DATA FOR ECC CONTRACT

**Document Number: HE540039-LTC-STU-GEN-CON-COM-00001
Version: P11**

| Issue. No. | Revision No. | Amendments | Initials | Date |
|------------|--------------|---|----------|----------|
| 1.0 | P01 | Issued for dialogue | NH | 28/4/22 |
| 2.0 | P02 | <p>Contract Data Part 1 General</p> <ul style="list-style-type: none"> <i>period for reply</i> updated <p>section 5 Payment</p> <ul style="list-style-type: none"> the <i>Contractor's</i> share does not exceed cap amended. <i>cpi fixed incentive amount</i> reduced to £0.00. <p>section 6 Compensation events</p> <ul style="list-style-type: none"> <i>utilities schedule</i> inserted. <i>tender return date</i> added. <p>Option X1 updated Option X18 amended Z1</p> <ul style="list-style-type: none"> 11.2 <ul style="list-style-type: none"> definition (10) amended. new definitions (45A) (50A) to (50C), (55A) to (55C) added. definition (54) amended. definition (63) footnote deleted. new definition (94A) added. definition (112) amended. definition (127) amended. definition (206A) added. amendment to clause 44.4 amendment to clause 50.12. 60.1 amended <ul style="list-style-type: none"> (9) deleted. (15) amended. (20) – (28) added. amendment to clause 80.1 amendment to clause 81 – clause title inserted. 81.1 amendment deleted. Option X1 <ul style="list-style-type: none"> X1.3 amended. X1.4 amended. X1.8 amended. X1.9 amended. Option X11 <ul style="list-style-type: none"> X11.3 amended. Option Y(UK)1 amended. <p>Z8.2 amended.</p> | NH | 06/06/22 |

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| 3.0 | P03 | <p>Z8.7A and B added. Z9.7 one <i>Project Manager</i> amended to <i>Client</i>. Z55.1 4th and 5th bullet point updated. Z55.5 added. Z120.1 to Z120.3 amended. Z123.1 amended. Z123.4A and Z123.5A added. Z123.5 amended. Z123.7 amended. Z128.1 and Z128.2 amended for Client Breach. Z134.6 amended. Z134.7 to Z134.9 deleted. Z142.1 updated. Z143 2 amended. Contract Data Part 2</p> <ul style="list-style-type: none"> Amendment to “The rates for special Equipment are”. <p>Annex 1. Item 22 amended. Contract Data Part 1 section 1 General, Secondary Options updated for Z144 and Z145. section 3. Time – <i>access date</i> updated. <i>section 1</i> amended <i>key site 2</i> added. section 4. Quality Management – definition of “states 1 to 5” amended. section 5 Payments – <i>approved associated companies schedule</i> added. <i>award date index</i> added <i>award date</i> added section 6. Compensation events – <i>utilities schedule</i> updated <i>key site 2</i> added <i>tbm power date</i> added. <i>tbm power requirements</i> added. <i>non-material schedule</i> added. Weather measurement entries inserted Option X1</p> <ul style="list-style-type: none"> <i>base date</i> amended. . <p>Option Z: <i>Additional conditions of contract</i> updated for , Z144, Z145, Z146, 147, Z148. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments</p> | NH | 21/10/22 |
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| | | <p>dated January 2019 and October 2020)</p> <ul style="list-style-type: none"> table updated for Z118A, Z118B, Z144, Z145, Z146, Z147 and Z148. <p>Z1</p> <ul style="list-style-type: none"> 11.2 <ul style="list-style-type: none"> (26) schedule of cost components updated to Schedule of Cost Components. (35A) added. (54) updated. (85) updated. () to (135L) added. (191) TBM Payment amended. (191A) and (191B) added. (194) Tender DCO amended. <p>60.1</p> <ul style="list-style-type: none"> (1), (6), (7) (18), (22) and (28) amended. 60.2 and 60.3 deletion deleted. (29) to (33) added. <p>93.</p> <ul style="list-style-type: none"> Amend reference to clause 'after clause 93.2' to 'after clause 93.6'. Clause 93.8 amended. <p>Option X11</p> <ul style="list-style-type: none"> Clause 11.3 amended. <p>Option X13</p> <ul style="list-style-type: none"> clause X13.4 amended <p>Schedule of Cost Components delete the word "template"</p> <p>Z8.2 amended</p> <p>Z8.2A and Z8.2B added.</p> <p>Z17.3 amended</p> <p>Z58 amended.</p> <p>Z115.1 amended</p> <p>Z118 amended</p> <p>Z118A amended</p> <p>Z118B inserted</p> <p>Z120.2 amended</p> <p>Z135 amended</p> <p>Z144, Z145 and Z146 added.</p> <p>Annex 1.</p> <p>In titles, delete the word "template".</p> <p>Item 14 amended.</p> <p>Item 15 added.</p> <p>Section 10 amended.</p> <p>Item 105 added</p> <p>Section 11 amended.</p> <p>Item 116 added.</p> | |
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| 4.0 | P04 | <p>Annex 3 Updated. Footnote 6 amended. Footnote 10 added – later footnotes automatically updated by Word. Footnote 22-24 added.</p> <p>Contract Data Part 1 section 1 Secondary Options updated. section 2 The <i>Contractor's</i> main responsibilities</p> <ul style="list-style-type: none"> • <i>key date</i> updated. <p>section 3 time</p> <ul style="list-style-type: none"> • The <i>completion date</i> for the whole of the <i>works</i> excluding <i>section 4</i> updated. <p>section 5 Payment</p> <ul style="list-style-type: none"> • <i>overspend percentage</i> added. <p>Option X1: Price adjustment for inflation list of indices updated. Option X2 Changes in the law added. Option X5: Sectional Completion <i>completion dates</i> for sections 1, 1A and 1B updated Option X18: Limitation of liability the <i>end of liability date</i> updated. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020) table updated for Z147 to Z155. Z1</p> <ul style="list-style-type: none"> • 11.2 <ul style="list-style-type: none"> ◦ (68A), (87A) and (87B) added. ◦ (194) Tender DCO updated. • 26.3 updated. • 50.12 updated. <p>60.1</p> <ul style="list-style-type: none"> • (6) deleted. • (19) and (33) amended. <p>X1.7 updated. X13.4 updated. Option Z: <i>Additional conditions of contract</i> updated. Z118.1 updated Z Clause 147 – Z155 added. Annex 4 updated.</p> | NH | 28/11/22 |
| 5.0 | P05 | <p>Contract Data Part 1 section 1 General –</p> <ul style="list-style-type: none"> • Secondary Options updated • The <i>law of the contract</i> updated | NH | 19/12/2022 |

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| | | <p>section 5 Payment <i>cpi annual incentive amount</i> updated.</p> <p>Contract Data Part 2 section 2 The <i>Contractor's</i> main responsibility updated. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020) table updated for Z156 Z Clauses Z1</p> <ul style="list-style-type: none"> definition (168A) added, <p>Z55.2 amended. Z145 amended. Z156 added.</p> | | |
| 6.0 | P06 | <p>Contract Data Part 1 section 1 General</p> <ul style="list-style-type: none"> Secondary Options updated. <i>boundaries of the site</i> updated. <p>section 3 Time <i>access date</i> for <i>section 1b</i> amended. section 4 Quality Management – <i>defects correction periods</i> amended Option X18 amended. Option Z: <i>Additional conditions of contract</i> updated for Z157. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020) table updated for Z157. Z Clauses Z1</p> <ul style="list-style-type: none"> definition (85) amended. definition (85A) added. <p>Z153 amended. Z157 added. Annex One item 1 update – superscript 1 deleted.</p> | NH | 04/01/2023 |
| 7.0 | P07 | <p>Contract Data Part 2 section 5 Payment <i>risk quota activity schedule</i> added. Z clauses Z1</p> <ul style="list-style-type: none"> definition (188) amended. <p>Z112.7 amended. Z123.10 added. Z146.1 amended. Z152 amended.</p> | NH | P07 |

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| 8.0 | P08 | <p>Annex 3 amended.</p> <p>Contract Data Part 1 section 3 Time The <i>cross contract integration milestone date</i> updated. <i>access dates</i> updated. the <i>completion date</i> for the whole of the <i>works</i> excluding <i>section 4</i> updated. section 4 Quality Management <i>reference date</i> updated. section 5 Payments <i>risk quota</i> updated. <i>award date</i> deleted. <i>award date index</i> deleted. <i>financial year cap</i> added. section 6 Compensation Events <i>tbm power date</i> amended. section 8 Liabilities and insurance insurance table updated. Option X1 Price adjustment for inflation Indices for the Mobilisation Phase lump sums added. <i>base date</i> updated. Option X5 <i>completion dates</i> updated. Contract Data Part 2 section 2 The <i>Contractor's</i> main responsibility the <i>design deliverable schedule weeks</i> updated. the <i>mobilisation activity schedule weeks</i> updated section 6 Compensation Events mobilisation phase build up activity schedule added Data for Schedule of Cost Components New footnote 21 added for 'The rates for special Equipment are'. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020) table updated for Z146. Z clause Z1</p> <ul style="list-style-type: none"> • definition (55A) to (55C) updated. • definition (69) updated | NH | P08 |
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| 9.0 | P09 | <ul style="list-style-type: none"> • definitions (89A), (89B) and (196A) added. • amended to clause 51.1 added. • 60.1 (2) and (19) amended. • 60.1 (34) to (38) added. • 63.18 added. • X1.3A added. • amendment to X1.5 deleted. • X1.8 and X1.9 amended. <p>Z117.9 to Z117.13 added. Z118.1 amended. Z118A.1 amended. Z120.1 amended. Z123.3A added. Z140.2 amended. Z146 deleted. Z151 amended.</p> <p>Contract Data Part 1 Section 2 The <i>Contractor's</i> main responsibilities <i>key date</i> updated. section 5 Payments <i>cpi annual incentive amount</i> formatting updated. <i>cpi fixed incentive amount</i> formatting updated. <i>risk quota</i> value updated. <i>financial year cap</i> formatting updated. Contract Data entries relating to Z Clauses Z123 entry updated. Z129 entry updated. Contract Data Part 2 the <i>mobilisation activity schedule weeks</i> updated section 6 Compensation Events <i>mobilisation phase build up activity schedule</i> deleted. Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020) table updated for Z151. Z clauses Z1 definition (89A) updated. definition (89B) formatting updated. 60.1 (35) and (36) updated. 63.18 amended. Z103.2 added. Z151 amended.</p> |
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| 11 | P10 | <p>Contract Data Part 1 section 1 The <i>Supervisor</i> updated. The Scope is in and The Site Information is in updated. section 8 Liabilities and insurance updated Insurance Table (3). Z clauses Z1 11.2 (139A) added. 60.1 (19) updated. Z151 amended. Footnotes updated and deleted.</p> | NH | |
| | P11 | <p>Contract Data Part 1</p> <ul style="list-style-type: none"> • <i>Client's</i> address for electronic communications amended • <i>Project Manager's</i> address for communications amended • Scope entry amended • Site Information entry amended • <i>boundaries of the site</i> entry amended • <i>starting date</i> entry amended • <i>performance manual</i> entry amended • <i>approved associated companies schedule</i> entry amended • <i>tender return date</i> inserted • <i>non-material schedule</i> entry amended • <i>section 3 performance requirements</i> entry amended <p>Contract Data Part 2 updated</p> <ul style="list-style-type: none"> • <i>fee schedule</i> entry amended • <i>software schedule</i> entry amended • <i>credit ratings</i> inserted • location of <i>design deliverable schedules</i> and <i>mobilisation activity schedules</i> inserted • <i>quality statement</i> entry amended • <i>key persons schedule</i> entry amended • <i>leadership team</i> inserted • <i>commercial workbook</i> entry amended | | |

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|--|--|--|--|--|
| | | <ul style="list-style-type: none"> • <i>adjustment of risk</i> entry amended • <i>special allowance schedule</i> entry amended • <i>relocation schedule</i> entry amended • <i>risk quota activity schedule</i> entry amended • <i>project bank</i> inserted • rates for special Equipment inserted • indices for indexation of rates for Defined Cost of manufacture and fabrication outside the Working Areas by the <i>Contractor</i> inserted • rates for Defined Cost of legal services for Protester Action and Trespassers done outside the Working Areas inserted. <p>Z clauses</p> <p>Z1</p> <ul style="list-style-type: none"> • definition (35A) Accepted Constraints updated • definition (194) Tender DCO updated • Clause 62.2 removed • clause Z52.3 amended • clause Z103 updated <p>Schedule of Cost Components – footnote amended</p> <p>Annex 2 amended</p> <p>Annex 4 amended</p> | | |
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CONTRACT DATA

PART ONE – DATA PROVIDED BY THE *CLIENT*

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

1 General

The *conditions of contract* are the core clauses and the clauses for the main Option C, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019 and October 2020).

Main Option C
Option for resolving and avoiding disputes W2

Secondary Options X1, X2, X5, X7, X8, X10, X11, X12, X13, X15 and X18
Y(UK)1, Y(UK)2 and Y(UK)3
Z 1 to Z157

The *works* are A design and build contract that will deliver the crossing under the River Thames comprising of

- twin tunnels both at approximately 4.25 km in length,
- approximately 1km of approach roads to each of the tunnel portals,
- the diversion of existing utilities and
- archaeological investigation works.

The *works* will interface with the Roads North Works contract and Roads South Works contract.

The *Client* is National Highways Limited, a company incorporated in and in accordance with the laws of England, having as its registered number (company No. 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.

Address for communications Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.

Address for
electronic
communications

[REDACTED]

The *Project
Manager* is

Name

[REDACTED]

Address for
communications

Lower Thames Crossing, National Highways, 5th Floor
Beaufort House, 15 Botolph Street, London, EC3A 7DT

Address for
electronic
communications

[REDACTED]

The *Supervisor*
is

Name

[TBC prior to the issue of a notice to proceed to the
Construction Phase]

Address for
communications

[TBC]

Address for
electronic
communications

[TBC]

The *affected
property* is

the works and services delivered by Roads North Works,
Roads South Works and the *works*, including any land take
requirements¹ and works by Others.

The Scope is in

document entitled 'Main Works Contract - Volume 2 –
Scope', as set out in provided document entitled 'Contract
Documents Register for Tunnels and Approaches
HE540039-LTC-COM-GEN-REG-COM-00017' on the tab
entitled "Contract Documents Register", item 16.

The Site
Information is in

the location identified in provided document entitled
'Contract Documents Register for Tunnels and Approaches

¹ Note: see draft Development Consent Order (DCO), but will be dependent upon final DCO.

HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 20.

The *boundaries of the site* are shown on drawing HE540039-CJV-GCL-S3P_ZZ000000_Z-DR-CW-00092, in the location identified in provided document entitled 'Tunnels and Approaches Annex A register - Bouygues Murphy HE540039-LTC-GEN-GEN-REG-COM-00003 P13' as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 17.

The *working areas* are None

The *language of the contract* is English

The *law of the contract* is the law of England

The *period for reply* is two weeks
except

The *period for reply* for a resubmission is four weeks
or
where the *period for reply* is stated in the Scope.

The following matters will be included in the Early Warning Register
protester action,
archaeology,
utilities (capacity of supply, interface and performance),
traffic flows,
land access,
access routes to Site and
consents and discharge of Development Consent Order (DCO) requirement.

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

2

The Contractor’s main responsibilities

The *key dates* and *conditions* to be met are

| <i>condition</i> to be met | <i>key date</i> |
|---|---|
| (1) works ready for end to end and integration testing of the whole Lower Thames Crossing and including the works in <ul style="list-style-type: none">Roads North Works andRoads South Works. | four hundred and thirty-four weeks after the <i>starting date</i> . |

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

The *relevant works* and the *relevant work conditions* are

relevant work

| reference | section of the Scope | <i>relevant work condition</i> |
|----------------|----------------------|--------------------------------|
| tunnel systems | S 2900 | Completion of <i>section 1</i> |
| | | |
| | | |

3

Time

The *starting date* is 5 January 2024

| | |
|---|---|
| The <i>cross contract integration milestone date</i> is | is the later of <ul style="list-style-type: none">48 weeks after the <i>starting date</i>,44 weeks after the starting date of the Roads North Works contract and |
|---|---|

- 44 weeks after the starting date of the Roads South Works
- all as defined in the relevant contract.

The *integrated testing date* is

- the day prior to the later of
- 24 weeks prior to the '*completion date*' for section 1 of the Roads North Works contract²,
 - 19 weeks prior to the '*completion date*' for section 2³ of the Roads South Works contract and
 - 10 weeks prior to the *completion date* for section 1⁴ of the works
- all as defined in the relevant contract.

Subject to the complying with the requirements of the Scope, including section S298, the *access dates* are

| | part of the Site | date |
|---|---|---|
| 1 | section 1, including <i>key site 1</i> (the northern portal) but excluding <i>key site 2</i> (the south portal) | for the 'commencement of construction' as defined by the Development Consent Order, the later of <ul style="list-style-type: none"> • the date the requirements of clause Z118B have been achieved or • 20 weeks after the day of the issue of a notice to proceed construction to the Construction Phase |
| | <i>key site 2</i> , the south portal one | for the 'commencement of construction' as defined by the Development Consent Order, the later of <ul style="list-style-type: none"> • the date the requirements of clause Z118B have been achieved or • three weeks after the <i>access date</i> for <i>key site 1</i>. |
| | <i>key site 3</i> , the south portal two | for the 'commencement of construction' as defined by the Development Consent Order, the later of |

² Note: this is not adjusted for compensation events.

³ Note this is not adjusted for compensation events.

⁴ Note: this is not adjusted for compensation events.

| | | |
|---|------------|--|
| | | <ul style="list-style-type: none"> the date the requirements of clause Z118B have been achieved and 34 weeks after the day of the issue of a notice to proceed to the Construction Phase |
| 2 | section 1A | the later of three hundred and twenty-five weeks after the <i>starting date</i> or the day after 'Completion' of section 2A (as defined in the Roads South Works contract). |
| 3 | section 1B | the later of three hundred and thirty-four weeks after the <i>starting date</i> or the day after 'Completion' of section 1A (as defined in the Roads North Works contract) |
| 4 | section 2 | the day Completion of section 1 is achieved |
| 5 | section 3 | the day Completion of section 2 is achieved |
| 6 | section 4 | the day Completion of section 2 is achieved |
| | | |
| | | |
| | | |

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

a month

The *completion date* for the whole of the *works* excluding section 4 is

four hundred and sixty – three weeks after the *starting date*

The *completion date* for the whole of the *works* including section 4 is

two hundred and forty-nine weeks after Completion of section 3

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

one month

4 Quality Management

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

twelve

weeks

The *reference date* is

14th March 2022

The period between Completion of the whole of the *works* and the relevant *defects date*

For *sections 1, 2 and 3* but excluding assets specified under Scope section 2900, the period between Completion of the whole of the *works* excluding *section 4* and the *defects date* is

one hundred and four weeks

For assets specified under Scope section 2900, the period between Completion of the whole of the *works* (excluding *section 4*) and the *defects date* is

two hundred and eight weeks

For *section 4*, the period between Completion of the whole of the *works* and the *defects date* is

fifty - two weeks

Other than for *defects state 1* to 5 Defects, the *defect correction period* is

four weeks

The *defect correction period* for

defect state 1 Defects resulting in a bore closure or two lane closures within a bore

| | | | |
|---|----|---|---|
| • due to Software Defects (including system integration) or its hosting (including communication) | is | 4 | hours after the submission of corrective action plan (in accordance with the Scope) |
|---|----|---|---|

| | | | |
|------------------------|----|----|---|
| • due to other Defects | is | 16 | hours after the submission of corrective action plan (in accordance |
|------------------------|----|----|---|

with the
Scope).

The *defect
correction
period* for

defect state
1 Defects
resulting in a
single lane
closure
within a bore

- due to is 12
Software
Defects
(including
system
integration)
or its
hosting
(including
communica
tion)

- due to is 16
other
Defects

hours after
the
submission
of corrective
action plan
(in
accordance
with the
Scope)

hours after
the
submission
of corrective
action plan
(in
accordance
with the
Scope).

The *defect
correction
period* for

defect state
1 Defects
resulting in a
bore closure

- due to is 4
Software
Defects
(including
system
integration)
or its
hosting
(including
communica
tion)

- due to is 16
other
Defects

hours after
the
submission
of corrective
action plan
(in
accordance
with the
Scope)

hours after
the
submission
of corrective

| | | | | | |
|---|---|----|----|--|--|
| | | | | | action plan (in accordance with the Scope). |
| The <i>defect correction period</i> for | <i>defects state</i> 2 Defects resulting in a two lane closures in a bore | | | | |
| | <ul style="list-style-type: none"> • due to Software Defects (including system integration) or its hosting (including communication) | is | 4 | | hours after the submission of corrective action plan (in accordance with the Scope). |
| | <ul style="list-style-type: none"> • due to other Defects | is | 16 | | hours after the submission of corrective action plan (in accordance with the Scope) |
| The <i>defect correction period</i> for | <i>defects state</i> 2 Defects resulting in a single lane closure only in a bore | | | | |
| | <ul style="list-style-type: none"> • due to Software Defects (including system integration) or its hosting (including | is | 12 | | hours after the submission of corrective action plan (in accordance with the Scope). |

| | | | | |
|----------------------------------|--|----|----|--|
| | communication) | | | |
| | <ul style="list-style-type: none"> due to other Defects | is | 16 | hours after the submission of corrective action plan (in accordance with the Scope) |
| The defect correction period for | defects state 2 Defects resulting in a bore closure | | | |
| | <ul style="list-style-type: none"> due to Software Defects (including systems integration) or its hosting (including communication) | | 4 | hours |
| | <ul style="list-style-type: none"> due to other Defects | is | 16 | hours |
| The defect correction period for | defects state 3 Defects | is | | by close of next Off Peak period after the submission of corrective action plan (in accordance with the Scope). |
| The defect correction period for | defects state 4 Defects resulting in a lane closure | is | | by the end of the earliest Off Peak opportunity within seven days after the submission of corrective action plan (in accordance with the Scope). |
| The defect correction period for | defects state 5 Defects | is | | by the end of the next planned maintenance intervention in accordance with maintenance schedule 1 (as set out in Scope paragraph S105.14 |

after the submission of
corrective action plan (in
accordance with the Scope).

Defect state

meaning

An asset/system has a Defect. Other systems and enhanced procedures can be used as mitigation in accordance with the operational manuals.

defects state 5

Any mitigation measures are immediately implemented and constantly monitored.

A critical asset/system has a Defect. Other systems and enhanced procedures can be used as mitigation in accordance with the operational manuals.

defects state 4

Any mitigation measures are immediately implemented in accordance with the operational manuals and constantly monitored.

One or more critical asset/systems have a Defect. The Defect, could represent a hazard to road users, operational or maintenance staff or *Client's* reputational risk or the Secretary of State's charging revenue risk.

defects state 3

Mitigation measures may be available in accordance with the operational manuals, usually depending on external factors.

If mitigation measures are available in accordance with the operational manuals, these are immediately implemented and constantly monitored.

One or more critical asset/systems have a Defect. The Defect, could represent a hazard to road users, operational or maintenance staff or *Client's* reputational risk or the Secretary of State's charging revenue risk.

defects state 2

Mitigation measures in accordance with the operational manuals are not available, the affected lane(s) / tunnel(s) bore are immediately closed (cat 1).

defects state 1

One or more critical asset/systems have a Defect that means it is/they are not operating as intended. The Defect represent an immediate hazard to road users, operational or maintenance staff which cannot be mitigated (ALARP principles) by either system or accepted operational measures applied in accordance with the operational manuals to

the LTC Tunnel System (as defined in the Scope).

The affected lane(s) / tunnel(s) bore are immediately CLOSED.

5 Payment

The *currency of the contract* is the pound sterling (£)

The *assessment interval* is one month

The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3 % per annum above the Bank of England base rate in force from time to time

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

| <i>share range</i> | <i>Contractor's share percentage</i> |
|--------------------|--------------------------------------|
| less than 100% | 50 % |
| greater than 100% | 50 % |

Where the *share range* is greater than 100%, the *Contractor's share* does not exceed £75,000,000.00.

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

The *risk quota* is £192,175,828.00

The *overspend percentage* is 5 %

The *programme incentive* is £10,000,000.00

cpi annual incentive amount is £14,500,000.00

cpi fixed incentive amount is £0.00

carbon_greenhouse rate £30/tonne

The *approved associated companies schedule* is in a document named Appendix P_Associated Companies Schedule, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 28.

The *financial year cap* is

| financial year | amount |
|----------------|----------------|
| 2023-2024 | £5,730,000.00 |
| 2024-2025 | £22,890,000.00 |
| 2025-2026 | £22,890,000.00 |
| 2026-2027 | £9,530,000.00 |

6 Compensation events

The *third party agreements* are the agreements between the *Client* and an Others listed in table 1, Annex AA of the Scope

The *utilities schedule* is the document entitled 'Key Statutory Undertakers Utility Works' referenced in Scope Annex A.

tender return date is 31 May 2023

The *key sites* are

| <i>key site</i> | Description |
|--------------------|--|
| 1 north portal | the land associated with the north portal works shown on drawing HE540039-CJV-GCLS3P_ZZZZZZZZZZ-DR-CW-00062. |
| 2 south portal one | the land associated with the south portal works shown on drawing HE540039-LTC- |

| | |
|---|---|
| 3 south portal two | STU-S05-SKE-COM-00001- South Portal <i>key site</i> plan. the land associated with the south portal works shown on drawing HE540039-LTC-STU-S05-SKE-COM-00002- South Portal <i>key site</i> plan 2. |
| The <i>non-material schedule</i> is in a document named | P11_Non Material Schedule HRT, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 25 |
| <i>tbm power date</i> is | 4 th January 2028. |
| <i>tbm power requirements</i> are | <p>the works by the <i>Client</i> and Others to provide un-energised infrastructure⁵ to enable electricity outputs of</p> <ul style="list-style-type: none">• a 33 KV supply and• a 11KV supply <p>within plot CA5 (which shown on sheets 16, 17, 20, 21, 22 and 23 of the '2.6 Works Plans') at a power rating of up to 60 MVA. The power rating being made up of</p> <ul style="list-style-type: none">• 25 MVA for each Tunnel Boring Machine and• 10 MVA for the Slurry Treatment Plant. |

The place where weather is to be recorded is Heathrow (51.479, -0.449)

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 09:00 hours GMT

and these measurements

None

⁵ Note: the infrastructure to and including the meeting point. The energisation of such Others' infrastructure is to be agreed between the *Contractor* and the Others and subject to any required downstream inspection and agreement & inspection by Others and the Others' SAP (which installed such infrastructure) as organised/arranged by the *Contractor*.

The *weather measurements* are supplied by

Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB, United Kingdom.

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

which were recorded at

Heathrow (51.479, -0.449)

and which are available from

Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB, United Kingdom.

8 Liabilities and insurance

These are additional *Client's* liabilities
Not Used

The *Client* provides this insurance type (1)

- from the Insurance Table,
- starting at *access date* until Completion of *section 3* and
- thereafter on a “extended type maintenance” cover (or “guarantee type maintenance” cover) to the extent available in respect of defects liability until the date which is 104 weeks after Completion of *section 3*.

(1) Insurance against

physical loss of or damage to the *works*, including Plant and Materials, and Tunnel Boring Machines whilst on the Site for incorporation therein, but excluding all plant, tools, and equipment belonging to or the responsibility of the *Contractor* or subcontractors (at any stage of remoteness from the *Client*)

Minimum amount of cover is

replacement/reinstatement value of the relevant insured property or estimated maximum loss/first loss basis of insurance cover

The deductibles are

In respect of below ground works

- £1,500,000 each and every loss in respect of subsidence and collapse and LEG3/06 defective design, plan, specification, workmanship and materials,

- £1,000,000 each and every loss LEG2/96 for defective design, plan, specification, workmanship and materials,
- £1,000,000 each and every loss for storm, tempest, flood and water damage and
- £500,000 each and every loss for all other losses.

In respect of above ground works

- £750,000.00 each and every loss LEG3/06 defective design, plan specification, workmanship and materials,
- £375,000.00 each and every loss LEG2/96 for defective design, plan specification, workmanship and materials and
- £750,000.00 each and every loss for storm, tempest, flood, water damage, subsidence and collapse and £375,000.00 each and every loss for all other losses.

In respect of Tunnel Boring Machines

- 10% of loss subject to a minimum of £1,000,000.00 and a maximum of £3,000,000.00, each and every loss.

The *Client* provides this insurance type (2)

- from the Insurance Table,
- starting at *access date* until Completion of *section 3* and
- thereafter to the extent available in respect of defects liability until the date which is 104 weeks after Completion of *section 3*.

(2) Insurance against

legal liability for physical loss of or damage to property (except the works, Plant and Materials and plant, tools and equipment belonging to or the responsibility of the Contractor or subcontractors (at any stage of remoteness from the Client) and legal liability or bodily injury to or death of a person arising from or in connection with the works and in connection with the contract.

For clarity, such insurance does not cover bodily injury to or death of the *Contractor's* or subcontractor's (at any stage of remoteness from the *Client*) own

| | | | |
|-----|--|----|--|
| | | | respective employees which are to be covered by employer's liability insurance in accordance with Scope Annex J. |
| | Minimum amount of cover is | of | a limit of indemnity of £500,000,000.00 in respect of any one occurrence without limit to the number of occurrences in the policy period. |
| | The deductibles are | | £100,000.00 each and every third party property damage occurrence. |
| | The <i>Client</i> provides this insurance type (3) | | |
| | <ul style="list-style-type: none"> from the Insurance Table and starting at <i>access date</i> until Completion of <i>section 2</i>. | | |
| (3) | Insurance against | | legal liability to pay in respect of a pollution and/or biodiversity incident (being either pollution in existence at the Contract Date disturbed or in some way aggravated, released or made worse by the insured or pollution caused by the insured in connection with the contract) occurring during the policy period. |
| | Minimum amount of cover is | of | a limit of indemnity of £50,000,000.00 in respect of any one occurrence, and £100,000,000.00 in the aggregate during the policy period. |
| | The deductibles are | | £250,000.00 each and every occurrence. |

Resolving and avoiding disputes

Option W2

The *tribunal* is arbitration

The *arbitration procedure* is the Institution of Civil Engineers Arbitration Procedure current at the date of referral to the *tribunal*.

The place where *arbitration* is to be held is London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is the President for the time being of the Institution of Civil Engineers or its nominee

The Senior Representatives of the *Client* are
Name (1) [REDACTED]

Address for communications Bridge House, 1 Walnut Tree Close, Guildford, Surrey.
GU1 4LZ

Address for electronic communications [REDACTED]

Name (2) [REDACTED]

Address for communications Bridge House, 1 Walnut Tree Close, Guildford, Surrey.
GU1 4LZ.

Address for electronic communications [REDACTED]

The *Adjudicator* is the person chosen by the Parties from the list of adjudicators published by the Institution of Civil Engineers.

The person or organisation who will choose an *Adjudicator* if the Parties cannot agree a choice is the President for the time being of the Institution of Civil Engineers or its nominee.

The *Adjudicator nominating body* is the Institution of Civil Engineers

Option X1: Price adjustment for inflation

The *indices* and proportions used to calculate the Price Adjustment Factor for the Mobilisation Phase (for compensation events impacting *sections* 1 and 2 works moving to Mobilisation Phase activities) and the Construction Phase (but excluding *section* 4) are

| | | | | |
|---|--------|-------------------------|--|--------------|
| 1 | 17.65% | linked to the index for | civil engineering labour | BCIS 4/CE/01 |
| 2 | 7.73% | | management and administration | BCIS 4/CE/02 |
| 3 | 9.12% | | professional services | BCIS 4/CE/03 |
| 4 | 14.78% | | purchased plant including depreciation and maintenance | BCIS 4/CE/04 |
| 5 | 14.55% | | hired plant | BCIS 4/CE/05 |

| | | | |
|----|--------|--|----------------|
| 6 | 1.50% | site accommodation | BCIS 4/CE/06 |
| 7 | 2.18% | aggregates including levy | BCIS 4/CE/09 |
| 8 | 4.05% | ready mixed concrete | BCIS 4/CE/13 |
| 9 | 6.28% | precast concrete non-structural components | BCIS 4/CE/14 |
| 10 | 10.76% | precast concrete structural components (including pipes) | BCIS 4/CE/15 |
| 11 | 0.28% | asphalt for paving | BCIS 4/CE/17 |
| 12 | 7.64% | steel sections | BCIS 4/CE/20 |
| 13 | 0.07% | information and communications technology (ICT) | BCIS 4/HM/R/20 |
| 14 | 0.64% | routine, cyclic and time charge works | BCIS 4/HM/W/1 |
| 15 | 0.58% | street lighting | BCIS 4/HM/W/8 |
| 16 | 1.41% | BCIS General Civil Engineering Cost Index | BCIS CEBCI |
| 17 | 0.78% | BCIS 3/53 Site Planting | TRS &SHBS |

The *indices* and proportions used to calculate the Price Adjustment Factor for Construction Phase *section 4* only are

| | | | | |
|----|------|-------------------------|---------------------------------------|---------------|
| 18 | 100% | linked to the index for | Routine, Cyclic and Time Charge Works | BCIS 4/HM/W/1 |
|----|------|-------------------------|---------------------------------------|---------------|

The *indices* and proportions used to calculate the Price Adjustment Factor for the Mobilisation Phase Activities are

| | | | | |
|----|------|-------------------------|-----------------------|--------------|
| 19 | 100% | linked to the index for | professional services | BCIS 4/CE/03 |
|----|------|-------------------------|-----------------------|--------------|

The *base date* for indices is September 2021.

Option X5: Sectional Completion

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

| <i>section</i> | <i>description</i> | <i>completion date</i> |
|----------------|--|---|
| (1) | <ul style="list-style-type: none"> north portal, compound and access roads, mainline works and integrated testing | four hundred and forty-four weeks from the <i>starting date</i> |

| | | |
|------|---|--|
| (1A) | Roads South Works gas main diversion area as indicated on drawing number HE540039-CJV-GCL-S3P_ZZZZZZZZZZ-DR-CW-00080 – Kent Roads Tunnel Approaches Section 1A and 2A | four hundred and forty-four weeks from the <i>starting date</i> |
| (1B) | land swap and landscaping area as indicated on drawing number on drawing number HE540039-CJV-GCL-S3P_ZZZZZZZZZZ-DR-CW-00081 | four hundred and forty-four weeks from the <i>starting date</i> |
| (2) | end to end operational trialling | seven weeks after Completion of <i>section 1</i> |
| (3) | fault free running (post road opening performance testing) | twelve weeks after Completion of <i>section 2</i> subject to clause Z129 |
| (4) | landscaping aftercare | two hundred and forty-nine weeks after Completion of <i>section 3</i> |

Option X7: Delay damages

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

| <i>section</i> | <i>description</i> | <i>amount per day</i> |
|----------------|--|-----------------------|
| (1) | <ul style="list-style-type: none"> north portal, compound and access roads and mainline works and integrated testing. | £0.01 |
| (1A) | Roads South Works gas main diversion area | £0.01 |
| (1B) | north contract boundary phase 2 boundary change | £0.01 |
| (2) | end to end operational trialling | £0.01 |

| | | |
|---|--|---------|
| (3) | fault free running (post road opening performance testing) | £0.01 |
| (4) | landscaping aftercare | £500.00 |
| The delay damages for the remainder of the <i>works</i> are | | £0.01 |

Option X8: Undertakings to the *Client* or Others

The *undertakings to Others* are provided to

Thurrock Council

Kent County Council

Temporary Accommodation Third Party

The relevant third parties where required by *third party agreements*

The *Subcontractor undertaking to Others* are

| | |
|--|--|
| works works for relevant third parties (where required by <i>third party agreements</i>) | provided to the relevant third parties where required by <i>third party agreements</i> |
|--|--|

The *Subcontractor undertaking to the Client* are

- works
by Design Consultants
and
- works/supplies
by technology Plant and Materials suppliers

Option X10: Information modelling

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

twelve weeks

Option X12: Multiparty collaboration (not used with Option X20)

The *Promoter* is

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

The Schedule of Partners is in
Annex 2 to this Contract Data

The *Promoter's objective* is
the Completion of *section 1* by *section 1's completion date*. This requires the
Contractor, Roads North Works contractor and Roads South Works contractor
to work together during design, construction and commissioning to achieve
success.

The Partnering Information is in Annex 2 to this Contract Data

Option X13: Performance bond

The amount of the performance bond is £20,000,000.00

Option X15: *Contractor's design*

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

Option X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect and consequential loss is limited to⁶ £50,000,000.00 excluding any tax (or equivalent) which the law requires the *Client* to pay

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property within Working Areas is £50,000,000.00

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £270,000,000.00 excluding any tax (or equivalent) which the law requires the *Client* to pay

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than £420,000,000.00 excluding any tax (or equivalent) which the law requires the *Client* to pay

⁶ Note: as the Secretary of State is planned to be the charging authority under the draft DCO, the user charges are not in the contemplation of the Parties for losses.

excluded matters listed in
clause X18.5, is limited to

| | | | |
|--|--------|------------------------|---|
| | | | years after the later of |
| | | | <ul style="list-style-type: none"> • Completion all the <i>works</i> in the Mobilisation Phase, <i>sections</i> 1, 1A, 2 and 3, • the completion of other works within the Scope's requirements for the Mobilisation Phase, <i>sections</i> 1, 1A, 2 and 3 (but the <i>Contractor</i> is not required to do by the Completion Date) and • when the Defects related to the Mobilisation Phase, <i>sections</i> 1, 1A, 2 and 3 that are notified prior to the Completion Date for <i>section</i> 3 have been permanently corrected, see Scope S430). |
| For matters arising from the Mobilisation Phase, <i>sections</i> 1, 1A, 2 and 3, the <i>end of liability date</i> is | twelve | | |
| For matters arising from <i>section</i> 4, the <i>end of liability date</i> is | twelve | years after Completion | the whole of the <i>works</i> . |

Option Y(UK)1: Project Bank Account

| | | |
|------------------------------|----|---|
| The <i>Contractor</i> | is | to pay any charges made and to be paid any interest paid by the <i>project bank</i> . |
| The <i>account holder</i> is | | the <i>Contractor</i> . |

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

N/A

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

| | |
|---|---|
| Term The provisions of Option Y(UK)1 | <i>beneficiary</i> Named Suppliers |
| Fair Payment Scope section S1206 | subcontractors (at any stage of remoteness from the <i>Client</i>) |
| Subcontracting Scope section S1200 | subcontractors (at any stage of remoteness from the <i>Client</i>) |
| Z52.8, Z52.9 and Z53.1. | any Incoming Contractor and any Incoming Contractor Subcontractor |

Option Z: Additional conditions of contract

The *additional conditions of contract* are the following clauses Z1 to Z157

Contract Data entries relating to Z Clauses

Clause Z11 Parent Company Guarantee

| <i>Contractor or Consortium Member</i> | <i>guarantor</i> |
|--|--|
| Bouygues Travaux Publics | Bouygues Construction SA company registration number 552 045 999 R.C.S. Versailles 1 avenue Eugène Freyssinet – 78280 Guyancourt France |
| J Murphy and Sons Limited | Drilton Limited company number 02732620 Hiview House, Highgate Road, London, NW5 1TN |

Clause Z106 Extended liability period for Plant and Materials

The *extended liability period* for Plant and Materials falling within Scope section 2900 is two hundred and eight weeks following correction of a Defect or until the *defects date*, whichever is later.

works covered by specification for highways works series 2300 bridge expansion joints and sealing of gaps is 5 years

Clause Z107 Network Rail Possessions

Clause Z109 Termination and omission of work

The *failure level* is

6

Clause Z112 Finalisation of Defined Cost for Elements

The *elements* are

- *section 1*
- *section 1A*
- *section 1B*
- *section 2*

Clause Z115 DCO Enabling Works and Mobilisation Phase Pre-commencement Development Consent Order⁷

The *enabling works* are

See Annex 3

The *pre-commencement development consent order activities* are
(1)

Party

See Annex 3

See Annex 3

Clause Z123 Lump Sum Fee

The *performance manual* is in the document called

HE540039-LTC-COM-GEN-REP-COM-00003_Performance Manual_Tunnels & Approaches P03, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 10.

Clause Z124 Not Used.

Clause Z125 Not Used.

Clause Z126 Not Used.

⁷ Note: Subject to the final DCO.

Clause
Z129 **Duration of *section 3***

*section 3 performance
requirements*

is the document called Section 3
Performance Requirement Version P01, as
set out in provided document entitled
'Contract Documents Register for Tunnels
and Approaches HE540039-LTC-COM-GEN-
REG-COM-00017' on the tab entitled
"Contract Documents Register", item 14.

**PART
TWO -**

DATA PROVIDED BY THE *CONTRACTOR*

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

1 General

The *Contractor* is

Name

Bouygues Travaux Publics and J Murphy and Sons Limited

Address for communications

Becket House
1 Lambeth Bridge House
London
SE1 7EU

Address for electronic communications

[REDACTED]

The *Contractor's* nominated representative is

Name

[REDACTED]

Address for communications

Becket House
1 Lambeth Bridge House
London
SE1 7EU

Address for electronic communications

[REDACTED]

The *design consultants* are

name

[REDACTED]

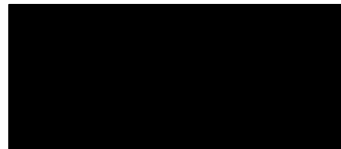
design service

- design of all the permanent works except that performed by Bouygues Travaux Publics technical department
- design of and construction methods for bore tunnel, cross-passages and precast inverts

name

works subcontractor's works

The *works subcontractors* are



- MEICA works and systems integration
- reinforcement supply

The *tunnel boring machine supplier* is



The *slurry treatment plant supplier* is



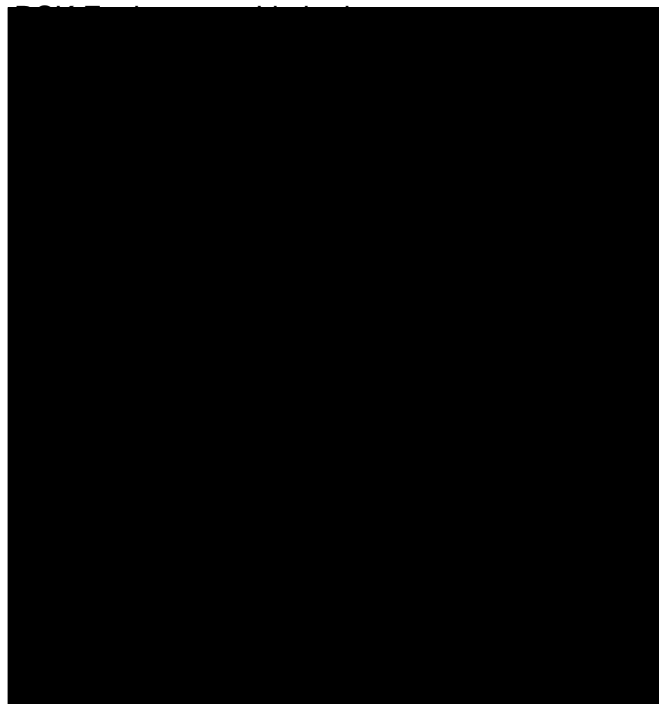
The *tunnel lining mould supplier* is



The *fee schedule* is in

the 'Commercial Workbook', in the folder called 'Commercial Workbook', as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", items 31 to 35.

The *key subcontractors* are



The *software schedule* is in

the document called Lower Thames Crossing - Software Schedule - Tender Ver. 2.1, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 26.

The *key persons* are those identified in the

key persons schedule

The following matters will be included in the Early Warning Register

none

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

| Party | rating agency | <i>credit rating</i> |
|--------------------------|---------------|----------------------|
| Bouygues Travaux Publics | | |
| J. Murphy & Sons | | |
| Bouygues Construction SA | | |
| Drilton Ltd | | |

2 The *Contractor's* main responsibility

| If the <i>Contractor</i> is to provide Scope for its design | The Scope provided by the <i>Contractor</i> for its design is in | the Quality Statement |
|--|--|---|
| the <i>design deliverable schedule week 49 and week 52</i> is in | | Design Deliverable Schedule Week 49 and Week 52 |
| the <i>design deliverable schedule week 53 and week 56</i> is in | | Design Deliverable Schedule Week 53 and Week 56 |
| the <i>design deliverable schedule week 57 and week 60</i> is in | | Design Deliverable Schedule Week 57 and Week 60 |
| the <i>design deliverable schedule week 61 and week 64</i> is in | | Design Deliverable Schedule Week 61 and Week 64 |
| the <i>design deliverable schedule week 65 and week 68</i> is in | | Design Deliverable Schedule Week 65 and Week 68 |
| the <i>design deliverable schedule week 69 and week 72</i> is in | | Design Deliverable Schedule Week 69 and Week 72 |

| | |
|--|---|
| <i>the design deliverable schedule week 73 and week 76 is in</i> | Design Deliverable Schedule Week 73 and Week 76 |
| <i>the design deliverable schedule week 77 and week 80 is in</i> | Design Deliverable Schedule Week 77 and Week 80 |
| <i>the design deliverable schedule week 81 and week 84 is in</i> | Design Deliverable Schedule Week 81 and Week 84 |
| <i>the design deliverable schedule week 85 and week 88 is in</i> | Design Deliverable Schedule Week 85 and Week 88 |
| <i>the design deliverable schedule week 89 and week 92 is in</i> | Design Deliverable Schedule Week 89 and Week 92 |
| <i>the design deliverable schedule week 93 and week 96 is in</i> | Design Deliverable Schedule Week 93 and Week 96 |
| <i>the design deliverable schedule week 97 and week 100 is in</i> | Design Deliverable Schedule Week 97 and Week 100 |
| <i>the design deliverable schedule week 101 and week 104 is in</i> | Design Deliverable Schedule Week 101 and Week 104 |
| <i>the design deliverable schedule week 105 and week 108 is in</i> | Design Deliverable Schedule Week 105 and Week 108 |
| <i>the design deliverable schedule week 109 and week 112 is in</i> | Design Deliverable Schedule Week 109 and Week 112 |
| <i>the design deliverable schedule week 113 and week 116 is in</i> | Design Deliverable Schedule Week 113 and Week 116 |
| <i>the design deliverable schedule week 117 and week 120 is in</i> | Design Deliverable Schedule Week 117 and Week 120 |
| <i>the design deliverable schedule week 121 and week 124 is in</i> | Design Deliverable Schedule Week 121 and Week 124 |
| <i>the design deliverable schedule week 125 and week 128 is in</i> | Design Deliverable Schedule Week 125 and Week 128 |
| <i>the design deliverable schedule week 129 and week 133 is in</i> | Design Deliverable Schedule Week 129 and Week 133 |

| | |
|---|---|
| the <i>design deliverable schedule week 134 and week 135</i> is in | Design Deliverable Schedule Week 134 and Week 135 |
| the <i>mobilisation activity schedule week 128 and week 131</i> is in | Mobilisation Deliverable Schedule Week 128 and Week 131 |
| the <i>mobilisation activity schedule week 132 and week 135</i> is in | Mobilisation Deliverable Schedule Week 132 and Week 135 |
| the <i>design deliverable schedule week 136 and week 139</i> is in | Design Deliverable Schedule Week 136 and Week 139 |
| the <i>design deliverable schedule week 140 and week 143</i> is in | Design Deliverable Schedule Week 140 and Week 143 |
| the <i>design deliverable schedule week 144 and week 148</i> is in | Design Deliverable Schedule Week 144 and Week 148 |

each as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", items 29 and 30.

the *carbon target* is



3 Time

Not Used.

4 Quality Management

The *quality statement* is in

the folder called 'Quality Statement and preamble', as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", items 37 to 48.

The *key persons schedule* is in a document called

BMJV_Env
1_Q4_Appendices_Key
Persons Schedule, as set out in provided document entitled 'Contract

Documents Register for
Tunnels and Approaches
HE540039-LTC-COM-GEN-
REG-COM-00017' on the
tab entitled "Contract
Documents Register", item
27.

leadership team is

- Project Director
- Deputy Project Director
- PMO Director
- Health, Safety & Wellbeing Director
- Engagement & Legacy Director
- Environment & Sustainability Director
- Technical & Digital Director
- Design JV Project Director

5 Payment

The *mobilisation phase fee percentage* is

 %

The *construction phase fee percentage* is

 %

The *mobilisation phase activity schedule* is in the

commercial workbook

The *construction phase activity schedule* is in the

commercial workbook

The *commercial workbook* is

in the folder called 'Commercial Workbook', as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", items 31 to 35.

The tendered total of the
Prices is

£1,344,687,196.52.00

The *adjustment of risk* is



The *special allowance schedule*

is in the document called 'BMJV_Env_Commercial_AppP_Relocation Schedule&Special Allowance Schedule' found in the Commercial Workbook, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 35.




The *relocation schedule*

is in the document called 'BMJV_Env_Commercial_AppP_Relocation Schedule&Special Allowance Schedule' found in the Commercial Workbook, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 35,

The *risk quota activity schedule*

is the document called "BMJV_Env 2_Commercial Submission_Participant's Risk Quota and Risk Quota Activity Schedule" found in the Commercial Workbook, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 34.

The *overhead percentages* for the cost of support people and office overhead are

| location | <i>overhead percentage</i> | |
|-----------------|---|---|
| United Kingdom |  | % |
| European Office |  | % |
| World Office |  | % |

6 Compensation Events

Resolving and Avoiding Disputes Option W2

The *Senior Representatives* of the *Contractor* are

Name

Address for
communications

Becket House
1 Lambeth Bridge House
London
SE1 7EU

Address for
electronic
communications

Name

Address for
communications

Hiview House, Highgate Road, London, NW5 1TN

Address for
electronic
communications

X10: Information modelling

Not Used.

Option Y(UK)1: Project Bank Account

The *project bank* is

named suppliers
are⁸

none

⁸ Note: the Scope S 1200 includes a provision that all subcontractors at any stage of remoteness from the *Client* are to be Named Suppliers unless agreed otherwise by the *Project Manager*.

Option Z: *additional conditions of contract*

Not Used.

Data for Schedule of Cost Components


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

| Equipment to be submitted to the <i>Project Manager</i> for agreement following development of the design of the <i>works</i> and identification of the Equipment proposed to Provide the Works | time-related on cost charge to be submitted to the <i>Project Manager</i> for agreement following development of the design of the <i>works</i> and identification of the Equipment proposed to Provide the Works and | per time period to be submitted to the <i>Project Manager</i> for agreement following development of the design of the <i>works</i> (and identification of the proposed “time period” for the Equipment proposed to Provide the Works) |
|---|--|--|
| | <ul style="list-style-type: none"> • to be costed at the <i>base date</i> and • subject to indexation using $(1 + (L - B)/B)$ when the firm value/confirmed values for the <i>indices</i> are all available for a month <ul style="list-style-type: none"> ○ where L and B are defined in X1.1 and ○ the <i>indices</i> are 4/CE/04 Purchased Plant (Including depreciation and maintenance) | |

The rates for special Equipment⁹ are

| Equipment to be submitted to the <i>Project Manager</i> for agreement following development of the design of the <i>works</i> and identification of the Equipment proposed to Provide the Works | rate to be submitted to the <i>Project Manager</i> for agreement following development of the design of the <i>works</i> and identification of the Equipment proposed to Provide the Works and |
|---|--|
| | <ul style="list-style-type: none"> • to be costed at the <i>base date</i> and • subject to indexation using $(1 + (L - B)/B)$ when the firm value/confirmed values for the <i>indices</i> are all available for a month <ul style="list-style-type: none"> ○ where L and B are defined in X1.1 and ○ the <i>indices</i> are 4/CE/04 Purchased Plant (Including depreciation and maintenance) |

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

| category of person director/deputy director | rate |
|--|---|
| |  <ul style="list-style-type: none"> • (at the <i>base date</i>) • subject to indexation using $(1 + (L - B)/B)$ |

⁹ Note: any cost data in this section for special Equipment. Defined Cost for special Equipment is to be agreed with the *Project Manager* when the method statements are development during Providing the Works.

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS Resource Cost Index Infrastructure Combined.

senior manager

- (at the *base date*)
- subject to indexation using $(1+(L - B)/B)$

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS Resource Cost Index Infrastructure Combined.

manager

- (at the *base date*)
- subject to indexation using $(1+(L - B)/B)$

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS

Resource Cost
Index
Infrastructure
Combined.

deputy manager

[REDACTED]

- (at the *base date*)
- subject to indexation using $(1+(L - B)/B)$

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS Resource Cost Index Infrastructure Combined.

senior engineer

[REDACTED]

- (at the *base date*)
- subject to indexation using $(1+(L - B)/B)$

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS Resource Cost Index Infrastructure Combined.

engineer

[REDACTED]

- (at the *base date*)

- subject to indexation using $(1+(L - B)/B)$

when the firm value/confirmed values for the *indices* are all available for a month

- (L and B being defined in clause X1.1) and
- the *indices* are FOCOS Resource Cost Index Infrastructure Combined.

all at the *base date*

The rates for Defined Cost of legal services for Protester Action and Trespassers done outside the Working Areas are

| category of person | rate £/hour |
|---|---|
| professionally qualified lead partner/ director (with at least 10 years post qualification experience in relevant field of work) | open market rate and agreed by the <i>Project Manager</i> |
| other professionally qualified senior solicitor (with 5-10 years or more post-qualification experience in relevant field of work) | open market rate and agreed by the <i>Project Manager</i> |
| professionally qualified solicitor (with 3-5 years post-qualification experience in relevant field of work) | open market rate and agreed by the <i>Project Manager</i> |
| professionally qualified junior | open market rate and agreed by |

solicitor (with up to
3 years post-
qualification
experience in
relevant field of
work)

the *Project
Manager*

trainee/paralegal

open market rate
and agreed by
the *Project
Manager*

The categories of legal people whose travelling expenses to and from the Working Areas are included as a cost of legal services for Protester Action and Trespassers done outside the Working Areas are

[REDACTED]

Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition including the amendments dated January 2019 and October 2020)

| No. | Title | |
|---------------------------|---|--|
| Z1 - Z49 Mandatory | | |
| Z1 | Changes to Core and Secondary Option Clauses | |
| Z2 | Interpretation | |
| Z3 | Recovery of sums due from <i>Contractor</i> | |
| Z4 | Assignment and transfer | |
| Z5 | Confidentiality | |
| Z6 | Adjudication | |
| Z7 | Termination – Public Contract Regulations 2015 | |
| Z8 | Subcontracting | |
| Z9 | Merger, take-over, Change of Control and financial distress | |
| Z10 | Joint ventures | |
| Z11 | Parent Company Guarantee | |
| Z12 | Discrimination, Bullying and Harassment | |
| Z13 | Intellectual Property Rights (IPRs) | |
| Z14 | Project Bank Account | |
| Z15 | Tax Non - Compliance | |
| Z16 | Value Added Tax Recovery | |
| Z17 | Removal of <i>works</i> from the Scope | |
| Z18 | Corruption or loss of data | |
| Z19 | Conflict of interest | |
| Z20 | Other amounts to be paid by the <i>Contractor</i> | |
| Z21 – Z49 – Not Used. | | |
| Z50 | Health and Safety Plan | |

| No. | Title | |
|-------------|---|----------|
| Z51 | | Not Used |
| Z52 | Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) | |
| Z53 | Pensions | |
| Z54 | | Not Used |
| Z55 | Payment of the <i>Contractor's</i> share | |
| Z56 | Construction Industry Scheme | |
| Z57 | Infrastructure Act 2015 | |
| Z58 | Revisions to Quality Statement | |
| Z59 | Indemnified claims | |
| Z60 | Tax Arrangements of <i>Contractor's</i> Staff | |
| Z61-Z99 | | Not Used |
| Z100 – Z102 | | Not Used |
| Z103 | Landscaping aftercare | |
| Z104 | Single point design responsibility | |
| Z105 | Innovation - Title to Equipment | |
| Z106 | <i>Extended liability period</i> for Plant and Materials | |
| Z107 | | Not Used |
| Z108 | Enhancements | |
| Z109 | Termination and omission of work | |
| Z110 | Legal proceedings in the name of the <i>Client</i> | |
| Z111 | | Not Used |
| Z112 | Finalisation of Defined Cost for elements | |
| Z113 | | Not Used |
| Z114 | The Affected Property | |

| No. | Title | |
|--------|--|----------|
| Z115 | DCO Enabling Works and Mobilisation Phase Pre-commencement Development Consent Order | |
| Z116 | | Not Used |
| Z117 | Mobilisation-Phase | |
| Z118 | Notice to proceed to Construction Phase | |
| Z118 A | Notice to proceed to Pre-DCO Mobilisation Construction Phase Works | |
| Z118 B | access to the Site | |
| Z119 | | Not Used |
| Z120 | Payment Bond | |
| Z121 | | Not Used |
| Z122 | Scope provided by the <i>Contractor</i> for its design | |
| Z123 | Lump Sum Fee | |
| Z124 | | Not Used |
| Z125 | | Not Used |
| Z126 | | Not Used |
| Z127 | Additional cost or delay | |
| Z128 | Remedy for any breach by the <i>Client</i> | |
| Z129 | Duration of <i>section 3</i> | |
| Z130 | Change to the Completion Date for <i>sections 1 to 4</i> | |
| Z131 | Payment for Plant and Materials outside the Working Areas | |
| Z132 | Aggregated incentive payment | |
| Z133 | | Not Used |
| Z134 | Contract Performance Incentive | |
| Z135 | Carbon Performance Incentive | |

| No. | Title | |
|------|--|----------|
| Z136 | Use of Temporary Accommodation for legacy | |
| Z137 | Repurposed Timber | |
| Z138 | Support Team | |
| Z139 | Changes to the fee percentage | |
| Z140 | <i>boundaries of the site</i> , development consent orders, Relocation Schedule and Special Allowance Schedule | |
| Z141 | Offset Registries | |
| Z142 | Key Dates | |
| Z143 | <i>Client's</i> additional incentive schemes | |
| Z144 | Scope Annex AA Table A – Non-Utility Agreements and Scope Annex AA, Table B – Non-Utility Agreements | |
| Z145 | zero tailpipe emission vehicles used for all Staff movements | |
| Z146 | | Not Used |
| Z147 | TBM, STP and Tunnel Mould supplier | |
| Z148 | TBM Power Requirements | |
| Z149 | | Not Used |
| Z150 | | Not Used |
| Z151 | Week 136 to 148 | |
| Z152 | Over Target Budget | |
| Z153 | Electricity for the Tunnel Boring Machine and Slurry Treatment Plant | |
| Z154 | <i>Client</i> and <i>Contractor</i> liabilities | |
| Z155 | Working in special circumstances and Special Allowances | |
| Z156 | <i>Client's</i> correction of Defects and interim Defect correction | |
| Z157 | Exclusive Systems | |

Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition with amendments dated January 2019 and October 2020)

Clause Z1 Changes to Core and Secondary Option Clauses

11 Identified and defined terms

11.2 Delete existing defined terms numbered (10), (21), (26) and (31) and replace them with the following

(10) The Fee is as the context requires

- the sum of the Mobilisation Phase Fee and the Construction Phase Fee,
- the Mobilisation Phase Fee,
- the Construction Phase Fee
- the Construction Phase Works Fee,
- the Construction Phase Section 3 Fee or
- the Construction Phase Section 4 Fee.

(21) The Activity Schedule is as the context requires

- the Mobilisation Phase Activity Schedule,
- the Construction Phase Activity Schedule or
- both Mobilisation Phase Activity Schedule and Construction Phase Activity Schedule.

(26) Disallowed Cost is cost which

- is Off-Payroll Working Rules Costs,
- is any payment by the *Contractor*, to any member of Staff, to the extent that such payment arises or is increased as a result of any Off-Payroll Working Rules Costs (either of the *Contractor* or any other person),
- is any Off-Payroll Working Rules Costs forming part of
 - the cost of people under section 1 of the Schedule of Cost Components whether employed by the *Contractor* or any other person including by any subcontractor (at any stage of remoteness from the *Client*),
 - Subcontractor costs under section 4 of the Schedule of Cost Components incurred by any subcontractor (at any stage of remoteness from the *Client*) or
 - the cost of Plant and Materials including design of Plant and Materials carried out by any subcontractor (at any stage of remoteness from the *Client*),
- is not justified by the *Contractor's* accounts and records (including the absence of sufficient recorded evidence of people costs),
- should not have been paid to a Subcontractor or supplier in accordance with its contract,
- was incurred only because the *Contractor* did not

- follow a Process or Procedure stated in its quality plan,
 - follow an acceptance or procurement procedure stated in the Scope,
 - give an early warning which the contract required it to give,
 - give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier or
 - comply with the behaviour maturity plan as required by the Scope,
- and the cost of
- complying with paragraphs S1103.56 of the Scope,
 - correcting Defects after Completion,
 - correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Works stated in the Scope,
 - implementing any modifications or enhancements to the *Contractor's* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client's* requirements as stated in the Scope,
 - carrying out additional audits of the *Contractor's* quality management system during any period while the number of Quality Management Points in effect is above the Threshold Level,
 - replacing a *key person* (and any associated costs),
 - taxes or registration requirements arising in the country where the *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims by or against the *Contractor*,
 - Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Scope,
 - resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested,
 - preparation for and conduct of an adjudication, or proceedings of the *tribunal* between the Parties,
 - Plant and Materials outside the Working Area other than in accordance with clause Z131.1,
 - addressing (including rectifying) an actual or potential conflict of interest arising in connection with the *works*,
 - for an event required to be insured by the *Client* the Defined Cost incurred rectifying such event,
 - Not Used,
 - a Design Consultant which has not given a *Subcontractor undertaking to the Client*,

- works and services incurred by the *Contractor* of the works and services instructed under clause Z136 where the *Contractor* has not given the relevant *undertakings to Others*,
- a replacement armoured cable sheath repair (including testing and inspection) to an unacceptable sheath repair undertaken by the *Contractor*,
- where the Telecommunications Service Provider is not able to pull cables through the sacrificial duct using normal Telecommunications Service Provider practices,
 - repairs to sacrificial ducts and
 - abortive work and mitigation actions undertaken by the *Contractor* and
- any other cost stated in the *conditions of contract* as being a Disallowed Cost.

(31) The Price for Work Done to Date is the total of
for the Mobilisation Phase

- total of the Mobilisation Phase Prices for
 - each group of Completed activities and
 - each Completed activity which is not in a group and
- for any Construction Phase Activities instructed by the *Project Manager* in Mobilisation Phase, the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date for those activities with a proportion of the Construction Phase Works Fee In The Mobilisation Phase (for the relevant Construction Phase Activities instructed) in accordance with clause Z123,

for Construction Phase *sections* 1, 1A, 1B and 2

- the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date for that *section* plus the Fee,

for Construction Phase *section* 3,

- if the Duration of Section 3 is forty-eight weeks or less and Section 3 Performance Requirements have been met for the whole of the last twelve weeks of the Duration of Section 3, the lump sum price in the Activity Schedule for section 3, otherwise nil,

for Construction Phase *section* 4

- lump sums price in the Activity Schedule for the activities completed in *section 4* in accordance with Z103.

Add the following defined terms

(35A)

Accepted Constraints are

- the permissible use of one Tunnel Boring Machine only for advancing the main tunnel bores of the Lower Thames Crossing tunnels and
- the limits of deviation shown on drawing number HE540039-LTC-GEN-S07-SKE-DCO-00001 identified in provided document entitled 'Tunnels and Approaches Annex A register - Bouygues Murphy HE540039-LTC-GEN-GEN-REG-COM-00003 P13' as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 17

subject to

- not creating any materially new or materially different environmental effects in comparison with those reported in the *Client's* environmental statement for the Lower Thames Crossing project,
- not requiring any additional land take over that permitted in the compulsory purchase order for the Lower Thames Crossing project,
- in the sole opinion of the *Client*, not creating any significant impacts on business and residents,
- not adversely impacting the *Client's* habitats regulations assessment for the Lower Thames Crossing project,
- all construction activities for the tunnels (between the northern portals and southern portals), including spoil and arisings extraction, being undertaken from the northern portals only and
- all access for the tunnels' construction activities being from the northern portals only (except the *Contractor* is permitted to egress the southern portal of the first constructed main bore to ingress the second bore from the southern portal during the second main bore drive for essential construction activities until such a time as ingress from the northern portal is possible).

(36)

Accepted Third Party Estimates means the estimates for the work and services to be undertaken by third parties which are to be managed and coordinated with the *works* by the *Contractor* in accordance with the Scope, as adjusted in accordance with the Scope.

- (37) Affected Property is the *affected property* unless later changed in accordance with the contract.
- (38) Not Used.
- (39) Aggregated Incentive Amount is the sum of the
- Programme Incentive,
 - CPI Fixed Payments,
 - CPI Annual Payments,
 - payments in accordance with the carbon incentive schemes notified in accordance with clause Z135,
 - payments in accordance with the incentive schemes notified in accordance with clause Z143 and
 - *Contractor's* share.
- (40) Not Used.
- (41) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client* or *Project Manager*.
- (42) Associated Company is any of
- a Consortium Member,
 - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Contractor* or a Consortium Member or
 - another Design Consultant but excluding
 - a subcontractor (at any stage of remoteness from the *Client*) that provides the design for
 - temporary works,
 - Equipment or
 - an item of Plant and Materials (but not the integration of such item in to the *works*)
 - only and
 - a subcontractor (at any stage of remoteness from the *Client*) that provides the design for the permanent works where design account for less than 20% of the total of the prices of such subcontract.
- (43) Availability means the percentage of lane kilometre minutes available in accordance with the *Client's* Operational Metrics Manual (OMM) (January 2019) and inclusive of both planned and unplanned closures.
- (44) Carbon Credits are carbon offsetting by offset projects
- that positively impact on a minimum of two United Nations' Sustainable Development Goals in addition to SDG13 Climate (provided in Annex A),
 - listed on one of the Offset Registries and

- compliant with the provisions of the PAS2060 Specification for the demonstration of carbon neutrality.
- (45) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor* or a Consortium Member.
- (45A) Client Breach means a breach of the following clauses of the *conditions of contract* by the *Client* 25.2, 82.2, 83.1, X10, X13.4 and Z59.1.
- (46) Closed Defined Cost is
- the *Project Manager's* assessment of Defined Cost for an Element or a preceding Contract Year issued in accordance with clause Z112.6 and the accepted as correct Defined Cost for an Element or for a preceding Contract Year in accordance with clause Z112.4
 - the *Project Manager's* assessment of Defined Cost for an Element or a preceding Contract Year issued in accordance with clause Z112.6 or
 - the accepted as correct Defined Cost for an Element or for a preceding Contract Year in accordance with clause Z112.4
- as the context requires.
- (47) Community Partner is an organisation (other than the *Contractor*) engaged by the *Client* and identified as such by the *Project Manager* to provide works or services in relation to the contract, Roads North Works or Roads South Works.
- (48) Completed means an activity in the Mobilisation Activity Schedule
- that is completed prior to a notice to proceed to Construction Phase with no uncorrected notified Defects and
 - where work is undertaken by a Design Consultant on an activity, the Design Consultant has provided a *Subcontractor undertaking to the Client*.
- (49) Not Used.
- (50) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Contractor*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company.

- (50A) Constraint Description is as set out in column titled “Constraint Description” of the *utilities schedule*.
- (50B) Constraint End Date is the date set out in the column titled “Constraint End Date” of the *utilities schedule*.
- (50C) Constraint Start Date is the date set out in the column titled “Constraint Start Date” of the *utilities schedule*.
- (51) Construction Phase has the meanings given to it in the Scope.
- (52) Construction Phase Activities are the activities listed in the Scope as being intended to be performed during the Construction Phase.
- (53) Construction Phase Activity Schedule is the *construction phase activity schedule* unless changed in accordance with the contract.
- (54) Construction Phase Fee is the sum of
- Construction Phase Works Fee (including any Construction Phase Activities instructed by the *Project Manager* to be carried out in the Mobilisation Phase), ,
 - for *section 3*, the Construction Phase Section 3 Fee and
 - for *section 4*, Construction Phase Section 4 Fee
- unless altered in accordance with the contract.
- (55) Construction Phase Fee Percentage is the *construction phase fee percentage* unless changed in accordance with the contract
- (55A) Construction Phase Section 3 Fee is the amount calculated in accordance with clause Z123 unless altered in accordance with the contract.
- (55B) Construction Phase Section 4 Fee is the amount calculated in accordance with clause Z123 unless altered in accordance with the contract.
- (55C) Construction Phase Works Fee is the amount calculated in accordance with clause Z123 unless altered in accordance with the contract.
- (56) Contract Year is (as the case may be) the period commencing on the Contract Date or each anniversary of the Contract Date and ending one calendar year later.
- (57) Contractor Employee means any person employed or engaged or formerly employed or engaged by the *Contractor* or any of its subcontractors (at any stage of remoteness from the *Client*) in Providing the Works.
- (58) Not Used.
- (59) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.

- (60) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Contractor* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member.
- (61) Coronavirus means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) including any mutation thereof recognised by the World Health Organisation and government of the United Kingdom as a mutation.
- (62) Covid - 19 means the official designation by the government of the United Kingdom of the disease which can be caused by Coronavirus.
- (63) COVID-19 Related Action is any
- action taken,
 - restriction imposed,
 - restriction removed or
 - change in any restriction imposed
- by the government of the United Kingdom of Great Britain and Northern Ireland after the Contract Date to control Coronavirus and COVID-19.
- (64) CPI Annual Incentive is an incentive scheme notified under clause Z134.
- (65) CPI Annual Payment is the aggregated payments made under CPI Annual Incentive schemes.
- (66) CPI Fixed Incentive is the incentive scheme detailed in the Performance Manual.
- (67) CPI Fixed Payment is the aggregated payments made under CPI Fixed Incentive.
- (68) Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Client* in respect of the *Contractor*, a Consortium Member or any Guarantor. Rating agencies accepted by the *Client* are Moody's Investor Service Inc., Standard & Poor's Financial Services LLC., Fitch Ratings Inc.) unless agreed otherwise by the *Client*.
- (68A) Critical Path is the sequence of activities determining the minimum time needed for Completion of the works.
- (69) Cross Contract Integration Milestone (CCIM) is achieved when
- the *Contractor* has complied with all the requirements of Scope section S3000 which require collaboration with the other Main Works Contractors, providing such OCI

- Deliverables identified in Scope section S3000 as required for this milestone along with the relevant completed multiparty collaboration form (as set out in the Scope) and
- all OCI Deliverables identified as required for this milestone in Scope section S3000 have been accepted by the *Project Manager*.
- (70) The Data Protection Legislation is
- the UK GDPR as defined in section 3(10) of the Data Protection Act 2018,
 - the Data Protection Act 2018 and
 - any other data protection laws and regulations applicable in England, including the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.
- (71) Deliverable is any
- item or feature delivered or to be delivered and
 - any materials prepared
- by the *Contractor*, including any agreement or acceptance, to Provide the Works.
- (72) Design Consultant is
- a subcontractor (at any stage of remoteness from the *Client*) that provides the design for the *works* or temporary works or
 - a *design consultant*.
- (73) Development Consent Order (DCO) means the development consent order made on or after the Contract Date and notified by the *Project Manager* including any later amendments.
- (74) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (75) 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).
- (76) Duration of Section 3 is the Initial Duration of Section 3 unless extended in accordance with the contract.
- (77) Element is an activity or group of activities in respect of which the *Project Manager* may wish to finalise the Defined Cost when the Element is completed. The Elements are the *elements*

stated in the Contract Data unless later changed in accordance with the contract.

(78) Employment Liabilities means without limitation any costs, claims, demands or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred as a result of an indemnity or warranty given or to be given by the *Client*, the *Contractor*, an Incoming Contractor or an Incoming Contractor Subcontractor).

(79) Enabling Works are the *enabling works* unless later changed in accordance with the contract.

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

(81) Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property proposed by the *Contractor* or a Community Partner which has not previously been adopted by the *Client* in the Affected Property or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the *Client*) is expected to provide a significant long-term benefit to the *Client* in terms of

- reducing the cost to the *Client* of the *works* or of maintaining, operating, renewing and improving the Affected Property,
- improving the quality or effectiveness of delivery of the *works* or
- otherwise enhancing the achievement of the *Client's* vision, outcomes and key objectives,

but excludes design solutions proposed by the *Contractor* in the course of developing the design for works relating to the Affected Property intended to be carried out by any Community Partners.

(82) Epidemic is the occurrence in a community or region of cases of

- an illness, specific health-related behaviour or other health-related events,
- affecting a large number of people and

- impacting the whole United Kingdom clearly in excess of normal expectancy and declared as such by the government of the United Kingdom.
- (83) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement.
- (84) European Office is an office located in the land mass bordered on the north by the Arctic Ocean, on the west by the Atlantic Ocean, and on the south (west to east) by the Mediterranean Sea, the Black Sea, the Kuma-Manych Depression, and the Caspian Sea. The continent's eastern boundary (north to south) runs along the Ural Mountains and then roughly southwest along the Emba (Zhem) River, terminating at the northern Caspian coast (but excluding the United Kingdom and an office in the Working Area).
- (85) Excluded Items are
- the achievement of the minimum Availability of the completed *works* for the specified periods and durations stated in the Scope paragraph S105.16, where and to the extent that a failure to achieve such minimum Availability is due to non-performance of any Software (including systems integration) or its hosting (including communication),
 - the demonstration of the minimum Availability of the completed *works* for the specified periods stated in the Scope, paragraphs S105.11 to S105.13 and S105.15
 - the achievement of the water resistance and leakage criteria stated in the Scope (section 2700) and Specification for Tunnelling Works and HE540039-CJV-STU-S06-SPE-TUN-00001, section 7 and
 - the tunnel flooding requirements set out in stated in the Scope section 327.
- (85A) Exclusive System is Software (including software as a service), infrastructure as a service, platform as a service, cloud services and associated communication infrastructure which provides an explicit requirement of the Scope for the digital by default programme to enhance the project and programme delivery capability of the Parties and is only used by Staff in the Providing the Works exclusively or used by
- the *Client* (and its team),
 - the *Project Manager* (and its team) or
 - the *Supervisor* (and its team)
- but excluding end user devices.

- (86) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (87) Exit Transferring Employees means any Contractor Employee who is assigned to Providing the Works whose employment (or Employment Liabilities in respect of whom) will transfer to the *Client*, an Incoming Contractor or an Incoming Contractor Subcontractor under TUPE at a relevant Transfer Date and whose name is set out in the Final Exit List and provided in accordance with clause Z52.6.
- (87A) Expatriate is a person who is professional or other skilled worker employed by the *Contractor* or an Associated Company taking a position outside their home country to Provide the Works
- (87B) Expatriate Allowances is an allowance paid to an Expatriate as a consequence of taking a position outside their home country/country of residence to Provide the Works as set out in Travelling and Subsistence Relocation Guide Document Number: HE540039-LTC-GEN-GEN-GDE-XXX-00001
Revision: P03 or as later revised.
- (88) Final Exit List means the updated list of the Exit Transferring Employees provided pursuant to clause Z52.8 provided that there shall be no changes to the Exit Transferring Employees other than by agreement between the *Client* and the *Contractor*.
- (89) Financial Standing Test is the financial test for the *Contractor*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the contract.
- (89A) Financial Year is (as the case may be)
- the period commencing on the *starting date* and ending on the first occurrence of 31st March or
 - a period of twelve months commencing on the expiry of the previous Financial Year.
- (89B) Financial Year Cap is the *financial year cap* unless later changed in accordance with the contract.
- (90) Form of Performance Security is a form of bond specified in the Scope (or such other form as the *Client* may reasonably require).
- (91) 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.

- (92) Guarantor is the *guarantor* unless later changed in accordance with the contract.
- (93) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (94) Health and Safety Plans are
- a completed Supply Chain Health and Safety Maturity Matrix (SCMM) for the *Contractor* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
 - an implementation plan, setting out the actions to be taken by the *Contractor* or each Consortium Member over a period of one calendar year following the date of the SCMM in order to improve the scores recorded in the SCMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
 - an action plan, setting out the specific actions to be taken under the contract by the *Contractor* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Contractor* or each Consortium Member.
- (94A) Improvement Payment is defined in the *performance manual*.
- (95) Incentive Amount is an amount payable to the *Contractor* (either alone or shared with one or more Community Partners), the value of which is identified in the agreed detailed business case, if an Enhancement is successfully implemented. The Incentive Amount does not exceed 50% of the *Client's* cost savings in respect of any one Enhancement.
- (96) Incentive Assessment Date is, in respect of each of the following types of incentives under the contract,
- *Contractor's* share,
 - CPI Fixed Payment,
 - CPI Annual Payment,
 - payments in accordance with the incentive schemes notified in accordance with clause Z135,
 - payments in accordance with the incentive schemes notified in accordance with clause Z143 and
 - Programme Incentive,
- any assessment date on or after the first assessment date when that type of incentive is first required to be assessed in accordance with the contract and the first Incentive Assessment Date may vary between each type of incentive.

- (97) Not Used.
- (98) Incoming Contractor is the agent or contractor appointed by the *Client* to provide services which are fundamentally the same as any or all of the *works*.
- (99) Incoming Contractor Subcontractor means any subcontractor (at any stage of remoteness from the *Client*) of the Incoming Contractor providing services which are fundamentally the same as any or all of the *works*.
- (100) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the Site and the *works* or any revised systems introduced by the *Client* from time to time.
- (101) Initial Duration of Section 3 is twelve weeks commencing on the *access date* for *section 3*.
- (102) Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.
- (103) Intellectual Property Rights or IPRs are
- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks (and goodwill attaching to those trade marks), rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in confidential information (as set out in the Scope),
 - applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction and
 - all other rights having equivalent or similar effect in any country or jurisdiction.
- (104) Key Persons Schedule is the *key persons schedule* unless later changed in accordance with the contract.
- (105) Not Used.
- (106) Key Subcontractor is
- each of the *key subcontractors*,
 - any subcontractor replacing any Key Subcontractor,
 - any subcontractor which in the opinion of the *Project Manager* performs a significant or critical role in the Providing the Works,
 - any subcontractor with a subcontract with a contract value in excess of 10% of

- the aggregate Defined Cost payable under the contract or
 - for a Mobilisation Phase, the aggregate lump sums payable under the contract for Mobilisation Phase,
 - any subcontractor with a subcontract where the total of the prices (as defined under the subcontract) is valued at £5,000,000.00 or higher, excluding VAT, at the subcontract's contract date (as defined under the subcontract) and
 - any subcontractor with a subcontract where the duration
 - between the subcontract's contract date (as defined under the subcontract) and its completion date (as defined under the subcontract) is 12 months or more or
 - of the type of works, services or goods provided by the subcontract (whether delivered through the proposed subcontractor or not) is 12 months or more
 - in accordance with the Accepted Programme or
 - if there is no Accepted Programme, under the *Project Manager's* assessment of the duration of the type of works or services provided by the subcontract.
- (107) Licence means the document entitled "Highways England: Licence" dated April 2015 listed in Annex A to the Scope, or any replacement.
- (108) Not Used.
- (109) Mobilisation Phase has the meanings given to it in the Scope and includes the optimised contractor involvement duties set out in Scope section S3000 and commences on the *starting date*.
- (110) Mobilisation Phase Activities are the activities listed in the Scope that are required to deliver the Mobilisation Phase.
- (111) Mobilisation Phase Activity Schedule is the *mobilisation phase activity schedule* unless changed in accordance with the contract.
- (112) Mobilisation Phase Fee is the lump sum calculated by applying the *mobilisation phase fee percentage* to the forecast Defined Cost stated in the *mobilisation phase activity schedule* of work originally intended to be carried out in the Mobilisation Phase (as stated in the Scope at the Contract Date), but excluding any forecast Defined Cost for Equipment to be used in the Construction Phase but incurred in the Mobilisation Phase), unless later changed in accordance with the contract.
- (113) Mobilisation Phase Fee Percentage is the *mobilisation phase fee percentage* unless later changed in accordance with the contract.
- (114) Not Used.
- (115) Not Used.

- (116) Not Used.
- (117) Not Used.
- (118) OCI DCO means the draft development consent order notified by the *Project Manager*
- (119) Off Peak means the period (commencing at, and including) 22.00hrs to (but not including) 06.00hrs.
- (120) Off-Payroll Working Rules are the provisions of Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 relating to the engagement of workers through intermediaries and the provisions of the Social Security Contributions (Intermediaries) Regulations 2000/727 as amended from time to time (or, in each case, any other provisions under any law having like effect).
- (121) Off-Payroll Working Rules Costs are any and all costs, expenses, claims, demands, taxes, liabilities, losses, deductions, contributions or assessments, along with any and all related or associated penalties, fines or interest, in each case, which arise, have arisen, are imposed or are incurred under or as a result of the application of the Off-Payroll Working Rules (including as a result of any person being a "relevant person" for the purposes of section 688AA of the Income Tax (Earnings and Pensions) Act 2003).
- (122) Offset Registries are
- American Carbon Registry,
 - Clean Development Mechanism,
 - Climate (Carbon Action) Reserve,
 - Gold Standard,
 - Plan Vivo,
 - Verified (Voluntary) Carbon Standard and
 - other bodies notified by the *Project Manager*
- unless notified otherwise by the *Project Manager*.
- (123) Pandemic is an Epidemic (other than Covid 19)
- occurring worldwide or over a very wide area crossing international boundaries and not just national boundaries within the United Kingdom,
 - affecting a significant percentage of the United Kingdom's population,
 - requiring the use of emergency powers by the government of the United Kingdom to control its spread and containment and
 - declared as such by the World Health Organisation and government of the United Kingdom.

- (124) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope.
- (125) Pay is all emoluments and outgoings relating to employment including to PAYE, National Insurance Contributions, remuneration and benefits.
- (126) Peak Period means the period (commencing at and including) 06.00hrs to (but not including) 22.00hrs.
- (127) Performance Repayment is the 'Monthly Performance Repayment' as defined in the *performance manual*.
- (128) Performance Requirement is the required standard for performance of each element of the *works* as specified in the Scope.
- (129) Performance Withheld Amount is defined in the *performance manual*.
- (130) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the Data Protection Legislation.
- (131) Not Used.
- (132) Not Used.
- (133) Not Used
- (134) PRAMS means a performance, reliability, availability, maintainability and safety specification.
- (135) Pre-commencement Development Consent Order Activities are the *pre-commencement development consent order activities* unless later changed in accordance with the Scope.
- (135A) Pre DCO Access Date is the earliest entry date to the relevant land for the Pre-DCO Mobilisation Phase Works and stated in the relevant Pre-DCO Mobilisation Phase Works Instruction
- (135B) Pre DCO Completion Date is a completion date for Pre-DCO Mobilisation Phase Works and is stated in the relevant Pre-DCO Mobilisation Phase Works Instruction
- (135C) Pre-DCO Mobilisation Phase is a period of time set out in a notice to proceed to Pre-DCO Mobilisation Phase to undertake the requirements of a Pre-DCO Mobilisation Phase Works Instruction
- (135D) Pre-DCO Mobilisation Phase Works means ecological surveys and other works and services that may be undertaken prior to the Development Consent Order being made by the Secretary of State and as set out in Scope S3300 and the Pre-DCO Mobilisation Construction Phase Works Instruction

- (135E) Pre-DCO Mobilisation Phase Works Instruction is an instruction issued in accordance with the Scope
- (135F) Pre DCO Works Completion Date is the last date permitted for access to the relevant land for the Pre-DCO Mobilisation Phase Works and stated in the relevant Pre-DCO Mobilisation Phase Works Instruction.
- (135G) Preliminary Works means those works and services that can be undertaken between the Development Consent Order being made (subject to any judicial review constraints) and 'commencement of construction' as defined by the Development Consent Order
- (135H) Preliminary Works Access Date is the earliest entry date to the relevant land for the Preliminary Works' Works and stated in the relevant Preliminary Works Instruction.
- (135I) Preliminary Works Completion Date is a completion date for Preliminary Works' Works and is stated in the relevant Preliminary Works Instruction.
- (135J) Preliminary Works Instruction is an instruction issued in accordance with the Scope for Preliminary Works.
- (135K) Preliminary Works' Works is the Preliminary Works set out in a Preliminary Works Instruction.
- (135L) Preliminary Works' Works Completion Date is the last date permitted for access to the relevant land for the Preliminary Works' Works and is stated in the relevant Preliminary Works Instruction.
- (136) Procedure has the meaning given to it in ISO 9000.
- (137) Process has the meaning given to it in ISO 9000.
- (138) Programme Incentive is an incentive scheme as defined in clause X12 and the Partnering Information.
- (139) Project Requirement
 - is not the Quality Statement including
 - its content,
 - any working and method statements and
 - *key persons* stated with it and
 - are requirements set out in Scope paragraphs S105.8 to S105.9.
- (139A) Potential Exit Transferring Employee is a Contractor Employee who is, at the relevant time, assigned to Providing the Works for the purposes of the application of TUPE and any person who would have been an Exit Transferring Employee had they not objected or resigned under Regulation 4(7), 4(9) or 4(11) TUPE.

- (140) Protester is any person or persons engaged in Protester Action.
- (141) Protester Action is any action taken by any person or persons protesting against the carrying out of any part of the *works* or use of the *works*, or users of the *works*, or of roads in general which directly or indirectly affects the performance of the *works* including action or threatened action which results in
- increases in the Defined Cost of performing the *works* (including increased security costs) and
 - delays in performing the *works*.
- (142) Quality Management Points are points accrued by the *Contractor* in accordance with the quality table in the Scope.
- (143) Quality Statement is the *quality statement* unless later changed in accordance with the contract.
- (144) Quarter Date means initially the Quarter Date (First) and then the 1st day of the month three months later.
- (145) Quarter Date (First) means the 1st day of the month commencing after the three months anniversary of day of the notice to proceed to Construction Phase.
- (146) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.
- (147) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (148) Relevant Authority is any
- court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, (or of the Welsh Ministers or the National Assembly for Wales) and
 - other person whose authority is or may be required for the carrying out of all or any part of the *works* or which has any authority or right in respect of any part of any of the *works* under any law.
- (149) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.
- (150) Relocation Schedule is the *relocation schedule* unless later changed in accordance with the contract.
- (151) Repurposing Destination has the meaning stated in Scope paragraph S254.23.
- (152) Retrospective Performance Repayment is defined in the *performance manual*.

- (153) RIDDOR Incident is an incident occurring under any contract between the *Contractor*, an Associated Company and subcontractor (at any stage of remoteness from the *Client*) and
- the *Client* or
 - any other person
- which results in death or serious injury to any worker or non-worker and for which the *Contractor*, an Associated Company or subcontractor (at any stage of remoteness from the *Client*) is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it) or equivalent laws outside England applicable to such a contract.
- (154) Risk Quota is the sum of the *risk quota* and the *adjustment of risk* unless later changed in accordance with the contract.
- (155) Risk Quota Activity Schedule is the *risk quota activity schedule* unless later changed in accordance with the contract.
- (156) Roads North Works means the works constructed under the contract awarded to the company (or companies) notified by the *Project Manager* after the procurement process advertised under Find a Tender number 2021/S 000-006746.
- (157) Roads North Works Section 1. 1A, 2 and 3 means the part of the works defined as section 1. 1A, 2 and 3 in the contract for the Road North Works.
- (158) Roads South Drainage Works means the drainage works (including the filtration ponds and associated pipework) shown on drawing HE540039-CJV-GCL-S3P_ZZZZZZZZZZ-DR-CW-00079 – Kent Roads Drainage Works or as later modified.
- (159) Roads South Works means the works constructed under the contract awarded to the company or companies notified by the *Project Manager* after the procurement process advertised under Find a Tender number 2021/S 000-006746.
- (160) Roads South Works Section 1, 1A, 2, 2A, 3 and 4 means the part of the works defined as section 1, 1A, 2, 2A, 3 and 4 in the contract for the Road South Works.
- (161) Not Used.
- (162) Secretary of State is the Secretary of State for Transport.
- (163) Section 3 Performance Requirements are the performance requirements set out in *section 3 performance requirements*.

- (164) Security Management Plan (SMP) is the plan outlining the *Contractor's* obligations for securing the Site and the Working Areas required by the Scope.
- (165) Not Used.
- (166) Not Used.
- (167) Share Assessment Day is the date notified to the *Contractor* by the *Project Manager* on which the *Project Manager's* next assessment of the interim *Contractor's* share in accordance with clause Z55 is undertaken which is
- not less than twelve months from
 - the day of issue of the notice to proceed to Construction Phase (for the first assessment of the interim *Contractor's* share) or
 - the last assessment of the interim *Contractor's* share and
 - not more than eighteen months from
 - the day of issue of the notice to proceed to Construction Phase for the first assessment of the interim *Contractor's* share or
 - the last assessment of the interim *Contractor's* share.
- (168) Not Used.
- (168A) Software is as defined in Scope paragraph S1810.1.
- (169) Slurry Treatment Plant means a facility to separate excavated material from a slurry, prepare and temporarily store the separated materials for disposal or reuse but excluding the Equipment to transport the slurry from and to the Tunnel Boring Machine to the facility.
- (170) Slurry Treatment Plant And Tunnel Lining Mould Material are materials
- that form part of a Slurry Treatment Plant (but not slurry) or Tunnel Lining Mould and
 - used to repair and maintain a Slurry Treatment Plant or Tunnel Lining Mould.
- (171) Special Allowance Schedule is the *special allowance schedule* unless later changed in accordance with the contract.
- (172) Staff are persons employed or engaged by the *Contractor* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Works at any time.
- (173) Not Used.
- (174) Not Used.

- (175) Not Used.
- (176) Not Used.
- (177) Not Used.
- (178) Not Used.
- (179) Not Used.
- (180) Not Used.
- (181) Not Used.
- (182) Not Used.
- (183) Not Used.
- (184) Not Used.
- (185) Not Used.
- (186) STP Payment is
- a payment due on award of a contract to a *slurry treatment plant supplier* for the supply of a Slurry Treatment Plant,
 - a payment due to a *slurry treatment plant supplier* on commencement of fabrication of a Slurry Treatment Plant and
 - a payment due to a *slurry treatment plant supplier* on successful commissioning of a Slurry Treatment Plant within the Site.
- (187) Support Team is the *Client's* suppliers notified by the *Project Manager*.
- (188) Target Budget is the sum of the
- total of the Prices on the Mobilisation Phase Activity Schedule and the Construction Phase Activity Schedule and
 - the sum of the Risk Quota and
 - if the *Project Manager* issues an instruction altering the insurance provided by the *Contractor* during *sections 1, 1A, 1B and 2* of the works, a sum equal to the amount of applying the Construction Phase Fee Percentage to the Risk Quota or
 - a sum equal to the amount of applying the *construction phase fee percentage* to the Risk Quota.
- (189) Not Used.
- (190) Tax Non-Compliance is where a tax return submitted by the *Contractor* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012
- is found on or after 1 April 2013 to be incorrect as a result of

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

(191) TBM Payment is

- a payment due on award of a contract to a *tunnel boring machine supplier* for the supply of a Tunnel Boring Machine,
- a payment due to a *tunnel boring machine supplier* on commencement of fabrication of a Tunnel Boring Machine,
- a payment due to a *tunnel boring machine supplier* on completion all of factory acceptance tests for a Tunnel Boring Machine and
- a payment due to a *tunnel boring machine supplier* on successful commissioning of a Tunnel Boring Machine in the Working Area.

(191A) TBM Power Requirements is the *tbm power requirements* unless later changed in accordance with the contract.

(191B) TBM Power Requirements Achieved Date is the date the TBM Power Requirements are completed by the *Client* and Others.

(192) Temporary Accommodation is Equipment which is temporary offices, welfare accommodation, worker accommodation, sleeping units, or other temporary buildings or structures brought within the Working Areas and used to Provide the Works.

(193) Temporary Accommodation Third Party is a third party beneficiary of works and services instructed under clause Z136.

(194) Tender DCO means the documents located in the Tunnels and Approaches Annex A Register - Bouygues Murphy HE540039-LTC-GEN-GEN-REG-COM-00003 P13 dated 13 October on the tab entitled "DCO Information Register" and the Accepted Constraints.

(195) Third Party Destination has the meaning in Scope paragraph S254.16.

(196) Threshold Level is the threshold level of 25 Quality Management Points.

- (196A) Tilbury Fields means the area of land shown on drawing HE540039-CJV-GCL-S3P_ZZZZZZZZZZ-DR-CW-00176 or as later revised on accordance with the contract.
- (197) TLM Payment is
- a payment due on award of a contract to a *tunnel lining mould supplier* for the supply of a Tunnel Lining Mould,
 - a payment due to a *tunnel lining mould supplier* on commencement of fabrication of a Tunnel Lining Mould and
 - a payment due to a *tunnel lining mould supplier* on successful commissioning of a Tunnel Lining Mould.
- (198) Transfer Date is the relevant date or dates on which a relevant transfer for the purposes of TUPE takes effect on the expiry or termination of the contract.
- (199) Trespasser is any person (other than a Protester) on, but not entitled to be on, the Site or Working Areas.
- (200) Tunnel Boring Machine means the machine for advancing the main tunnel bores of the Lower Thames Crossing tunnels (but excluding the cut and cover section).
- (201) Tunnel Boring Machine Materials are materials
- that form part of a Tunnel Boring Machine,
 - used to operate a Tunnel Boring Machine and
 - used to repair and maintain a Tunnel Boring Machine.
- (202) Tunnel Lining Mould means the moulds required to fabricate or manufacture a complete tunnel ring.
- (203) Not Used.
- (204) Not Used.
- (205) Not Used.
- (206) United Kingdom Office an office located within Great Britain and Northern Ireland (but excluding a Site Office).
- (206A) Withholding Assessment Date is defined in the *performance manual*.
- (207) Works Subcontractor is
- a subcontractor (at any stage of remoteness from the *Client*) that provides *works subcontractor's work* or
 - a *works subcontractor*.
- (208) World Office means an office location other than a United Kingdom Office, an office in the Working Area and European Office.

12 Interpretation and the law

Delete existing clause 12.2 and replace it with new clause

12.2 The contract is governed by *the law of the contract*. In the contract, unless the context otherwise requires, any reference which immediately before Exit Day is a reference to (as it has effect from time to time)

- any EU References which are to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and are read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time and
- any European Union
 - institution,
 - authority or
 - other such body

is read on and after Exit Day as a reference to the United Kingdom institution, authority or body to which its functions are transferred.

24 People

Delete existing clause and replace it with new clause 24

24.1 The *Contractor* provides each *key person* named to do the job stated in the Contract Data.

24.2 The *Contractor* does not remove or replace any *key person* unless

- a *key person* resigns, retires, is on maternity (or equivalent) or long-term sick leave or
- the *key person's* employment or contractual arrangement with the *Contractor*, Consortium Member or subcontractor (at any stage of remoteness from the *Client*) is terminated for material breach of contract by the employee or death.

The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced.

24.3 The *Contractor* may propose to the *Project Manager* that a *key person* is replaced. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to

be replaced.

24.4 If the *Project Manager* accepts a person to replace a *key person*, the Key Persons Schedule is amended by the *Project Manager*.

24.5 The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a person. The *Contractor* then arranges that, after one day, the person has no further connection with the work included in the contract.

26 Subcontracting

Insert new clause 26.1A

26.1A The *Contractor* does not place any design works or services with a subcontractor which is not the relevant *design consultant* without the acceptance of the *Project Manager*. A reason for not accepting a proposed Design Consultant is

- it will not allow the *Contractor* to Provide the Works or
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Insert new clause 26.1B

26.1B The *Contractor* does not award any part of the *works* to be performed by a Design Consultant under its subcontract to any other person without the acceptance of the *Project Manager*. A reason for not accepting a change to a Design Consultant's subcontract is

- the proposed subcontractor has not been accepted by the *Project Manager* or
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Insert new clause 26.1C

26.1C The *Contractor* does not permit a Design Consultant to further subcontract any part of the *works* to be performed by the Design Consultant under its subcontract without the *Project Manager's* agreement.

Insert new clause 26.1D

26.1D The *Contractor* does not place any *works subcontractor's work*, with a subcontractor which is not the relevant *works subcontractor* without the acceptance of the *Project Manager*. A reason for not accepting a proposed Subcontractor to provide *works subcontractor's work* is

- it will not allow the *Contractor* to Provide the Works or

- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Insert new clause 26.1E

- 26.1E The *Contractor* does not permit a Works Subcontractor to further subcontract any part of the *works* to be performed by the Works Subcontractor under its subcontract without the *Project Manager's* agreement.

Insert new clause 26.1F

- 26.1F The *Contractor* does not award any part of the *works* to be performed by a Works Subcontractor under its subcontract to any other person without the acceptance of the *Project Manager*. A reason for not accepting a proposed subcontractor to provide *works* to be performed by a Works Subcontractor is
- the proposed subcontractor has not been accepted by the *Project Manager* or
 - it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Delete existing clause 26.2 and replace it with

- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that
- the appointment will not allow the *Contractor* to Provide the Works,
 - the Subcontractor is a proposed Works Subcontractor that has not been accepted by the *Project Manager* or
 - the Subcontractor is a Design Consultant that has not been accepted by the *Project Manager*.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

- accepted the Subcontractor and, to the extent these *conditions of contract* require,
- accepted the subcontract documents.

- 26.3 Insert two additional bullet points after “A reason for not accepting the subcontract documents is that” and before the first bullet point

- “they do not include all the provisions specified in the Scope which are relevant to that subcontract,
- the terms of the proposed subcontract adversely affect the *Client's* remedies and ability to recover damages pursuant

to the *Subcontractor undertaking to the Client* provided by or to be provided by the proposed Subcontractor.”

28 Assignment

Delete clause 28.

29 Disclosure

Delete clause 29.

31 The Programme

Insert new clause 31.4

- 31.4 The *Contractor* provides information which shows how each activity on the Mobilisation Phase Activity Schedule and Construction Phase Activity Schedule relates to the operations on each programme submitted for acceptance.

35 Take Over

Delete existing clause 35.1 and replace it with

35.1 The *Client*

- is not willing to take over the *works* in *sections* 1, 1A and 1B before the Completion Date for those *sections*, unless completion or takeover of
 - section 1 of the Roads North Works and
 - sections 1 and 2 of the Roads South Works

(as those terms are defined in the relevant contracts) occurs on or before the date of Completion of *sections* 1, 1A and 1B,

- is not willing to take over the *works* in *sections* 2 before the Completion Date for that *section*, unless completion or takeover of
 - section 1 of the Roads North Works and
 - section 3 of the Roads South Works(as those terms are defined in the relevant contracts) occurs on or before the date of Completion of *section* 2 and
- is not willing to take over the *works* in *section* 4 before the Completion Date for that *section*.

Otherwise, the *Client* takes over the *works* not later than two weeks after Completion.

41 Tests and inspections

After clause 41.6, insert new clause 41.7

- 41.7 When the *Project Manager* assesses the cost incurred by the *Client* in repeating a test or inspection after a Defect is found, the *Project Manager* does not include the *Contractor's* cost of carrying out the repeat test or inspection.

44 Correcting Defects

- 44.3 In the first bullet point after “*defect correction period*” insert “(other than any such period relating to landscaping aftercare)”; in the second bullet point after “Defects” insert “(other than any Defects relating to landscaping aftercare)”.
- 44.4 In the second sentence after “case” insert “of *state 1 to state 5* the *defect correction period* begins when the Defect is notified to the *Contractor* by the *Supervisor* or *Project Manager* otherwise”

50 Assessing the amount due

Delete clause 50.7 and insert new clause 50.7

- 50.7 The *Client* does not make payment to the *Contractor* other than in the *currency of the contract*.
Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of the contract* are converted to the *currency of the contract* using the *exchange rates* in order to calculate
- the amount due,
 - the Fee,
 - Incentive Amount,
 - CPI Fixed Payment,
 - CPI Annual Payments,
 - payments in accordance with the incentive schemes notified in accordance with clause Z135,
 - payments in accordance with the incentive schemes notified in accordance with clause Z143,
 - any *Contractor's* share and
 - any Programme Incentive.

Insert new clause 50.10

50.10 The *Contractor* does not make a payment to the *Client* other than in the *currency of the contract*.

Insert new clause 50.11

50.11 During the Mobilisation Phase, if after the commencement of the fifth month (after the *starting date*)

- a revised programme is not submitted for acceptance in accordance with the contract or
- a monthly revised programme submitted for acceptance by the *Project Manager* is not accepted,

one quarter of the change in the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a further revised programme for acceptance that addresses the *Project Manager's* comments and is compliant with the contract and such a revised programme is accepted and becomes the Accepted Programme.

Insert new clause 50.12

50.12

During the Construction Phase, if after the commencement of the fifth month (after the *starting date*)

- a revised programme is not submitted for acceptance in accordance with the contract or
- a monthly revised programme submitted for acceptance by the *Project Manager* is not accepted,

ten percent of change in the Price for Work Done to Date will be retained in assessments of the amount due until the *Contractor* has submitted a further revised programme for acceptance that addresses the *Project Manager's* comments and is compliant with the contract and such a revised programme is accepted and becomes the Accepted Programme.

51 Payments

51.1 In clause 51.1, insert “but the change in the amount due (at the *base date*) in the relevant Financial Year does not exceed the relevant Financial Year Cap during the Mobilisation Phase” after “previous assessment” and before the “.”.

54 Contractor's share

In clauses 54.1 to 54.4 if the *Project Manager's* forecast of the final Price for Work Done to Date is less than the *Project Manager's* forecast of the final Target Budget then replace "total of the Prices" with "Target Budget"

The *Project Manager's* assessment of the forecast of the final Target Budget includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.

54.3 In clause 54.3

- insert
 - "first" before "preliminary" and
 - "(excluding section 4)" after both "Completion of the whole of the works" and
- delete the second sentence and replace with new sentence

"Subject to clause Z132, any share (adjusted for any earlier *Contractor's* share paid to or by the *Contractor*)

- to be paid to the *Contractor* by the *Client* is not an amount due to the *Contractor* until
 - the Completion Defined Cost pursuant to clause Z112 has been agreed or assessed by the *Project Manager* and
 - the indexing in accordance with Option X1 has been undertaken for all works in sections 1 to 3 or
- to be paid to the *Client* by the *Contractor* is included in the amount due following Completion of the whole of the works (excluding section 4)."

Insert new clause 54.3A after clause 54.3.

54.3A The *Project Manager* makes a second preliminary assessment of the *Contractor's* share at the first assessment date after

- the Completion Defined Cost pursuant to clause Z112 has been agreed or assessed and
- any compensation events notified prior to the Completion of section 3 have been implemented

using forecasts of the final Price for Work Done to Date and the final Target Budget. This share (adjusted for any earlier *Contractor's* share paid to or by the *Contractor*) is included in the amount due following such assessment date.

- 54.4 In clause 54.4, in the second sentence,
- delete “This” and
insert at the beginning of the sentence “Subject to clause Z132, this”.

55 The Activity Schedule

Clause 55.1 is incorporated in to this contract. It applies to the contract for the Mobilisation Phase and for the Construction Phase *sections* 3 and 4.

- 55.1 Insert at after first sentence
- “If the activities on the Mobilisation Phase Activity Schedule and the Construction Phase Activity Schedule for works in *section* 3 do not relate to the Scope, the *Contractor* corrects the Mobilisation Phase Activity Schedule and the Construction Phase Activity Schedule.
- 55.2 After “Activity Schedule” insert “for work in *sections* 1 to 2”.
- Insert new clauses 55.3 and 55.4
- 55.3 If the *Contractor*
- changes a planned method of working at its discretion so that the activities on the Mobilisation Phase Activity Schedule and the Construction Phase Activity Schedule do not relate to the operations on the Accepted Programme or
 - corrects the Mobilisation Phase Activity Schedule and the Construction Phase Activity Schedule so that the activities on the Mobilisation Phase Activity Schedule and Construction Phase Schedule relate to the Scope
- the *Contractor* submits a revision of the Activity Schedule to the *Project Manager* for acceptance.
- 55.4 A reason for not accepting a revision of the Activity Schedule is that
- it does not relate to the operations on the Accepted Programme,
 - any changed Prices are not reasonably distributed between the activities which are not completed or
 - the total of the Prices is changed.

6 COMPENSATION EVENTS

60 Compensation events

60.1 Delete existing clause and replace it with new clause 60.1

60.1 The following events are compensation events

(1) A change

- to a Project Requirement,
- between the OCI DCO (if notified prior to the *cross contract integration milestone date*) and the Tender DCO or
- during the Mobilisation Phase, between the made Development Consent Order (on the date it is originally made) notified by the *Project Manager* and
 - the OCI DCO (if notified) or
 - the Tender DCO if the OCI DCO is not notified but excluding
 - changes resulting from items listed on the *non-material schedule* and
 - changes the TBM Power Requirements.

If the effect of the instruction or notification is to reduce the total Defined Cost, the Prices are reduced.

(2) The *Project Manager* gives an instruction changing the Scope to

- implement a scope swap between the *Contractor* and the contractor for either
 - Roads South Works or
 - Roads North Works,
- accept proposals from the *Contractor* in accordance with Z108 that benefits the Affected Property,
- accept value engineering proposals made by the *Contractor* or the contractor for Roads South Works or Roads North Works,
- accept an Innovation or
- implement a change to
 - the Design Manual for Roads and Bridges (DMRB), or
 - the Manual for Construction for Highways Works (MCHW).

If the effect of the instruction is to reduce the total Defined Cost, the Prices are reduced.

(3) The *Project Manager* gives an instruction to remove part or all of the *works* from the Scope in accordance with clause Z17. If the effect of the instruction is to reduce the total Defined Cost, the Prices are reduced.

- (4) The *Contractor* encounters a Pandemic.
- (5) Not Used.
- (6) Not Used.
- (7) The *Contractor* encounters Trespassers trespassing or Protester Action which
 - is within the Site,
 - prevents the *Contractor* from Providing the Works in accordance with the Accepted Programme,
 - is not anticipated by the Security Management Plan,
 - requires the *Contractor* to
 - seek assistance of a Relevant Authority or
 - ask the *Client* to use its rights to remove any Protester or Trespasser from the Site
 - are not due to the actions or inactions of the *Contractor*,
 - is continuous for more than three days and
 - requires the use of the police and Relevant Authority to remove Protesters from and prevent Protester access to the Site.

Only the difference between the trespassing or Protester Action encountered and that anticipated by the Security Management Plan is taken into account in assessing a compensation event.

- (8) The *Client* does not allow access to and use of each *key site* by the later of its *access date* and the date or access shown on the Accepted Programme.
- (9) Not Used.
- (10) The *Project Manager* changes the Completion Date for *section 1*, 1A, 1B, 2, 3 and 4 except where the change is due to a default of the *Contractor* or contractor for either Roads North Works or Roads South Works
 - to align
 - completion dates for
 - section 2 for Roads North Works and
 - section 3 for Roads South Works
 - as defined in the relevant contract and
 - the Completion Date for *sections 1*, 1A, 1B and 2 of the contract or
 - to align
 - completion as shown in the accepted programmes for
 - section 2 for Roads North Works and
 - section 3 for Roads South Works

as defined in the relevant contract and

- Completion for *section sections* 1, 1A, 1B and 2 of the contract shown in the Accepted Programme,

subject to clause 60.4

- (11) The *Project Manager* notifies the *Contractor* of a correction to an assumption which the *Project Manager* stated about a compensation event. If the effect of the correction is to reduce the total Defined Cost the Prices are reduced.
- (12) Not Used.
- (13) Not Used.
- (14) Not Used.
- (15) The *Project Manager* instructs repair works to assets existing prior to the Contract Date which is additional to the repairs required for the *works*.
- (16) Not Used.
- (17) Not Used.
- (18) During the Mobilisation Phase, the *Project Manager* instructs a Construction Phase Activity (or part of any Construction Phase Activity) is to become a Mobilisation Phase Activity during the Mobilisation Phase.
- (19) The *Project Manager* does not issue a notice to proceed to the Construction Phase no later than fourteen days after the later of
 - thirty-four months of the *starting date*,
 - the date for issue of the notice to proceed on the Accepted Programme,
 - the *Client's* agreement to the *Project Manager's* assessment of the forecast final Price for Work Done to Date at Completion of the whole of the *works* where it exceeds the Target Budget (including the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented) or
 - when the *Contractor* has
 - completed all the Deliverables for the Mobilisation Phase. If the *Project Manager* has given an instruction to stop or not start a Mobilisation Phase Activity which directly prevents the *Contractor* completing

- the Activities on the Critical Path shown on the Accepted Programme on the date of such an instruction or
 - such Activity by the day for issue of a notice to proceed to the Construction Phase
- then for the purposes of this bullet point then the relevant Activities are deemed to have been completed,
- obtained approvals and consents from Others as stated in the Scope,
 - completed and discharged its relevant Pre-commencement Development Consent Order Activities,
 - delivered its processes and procedures for Providing the Works so that they are developed and integrated with *Client's* own processes,
 - embedded its *leadership team* into an integrated structure with the *Client*, *Project Manager*, *Supervisor* and Support Team.

The *Project Manager's* assessment of the forecast final Price for Work Done to Date at Completion for the whole of the *works* and compensation events considers the *Contractor's*

- forecast of the Defined Cost prepared in consultation with the *Project Manager* and
- estimates including supporting evidence issued to the *Project Manager* to support compensation events or forecast to Completion of the whole of the *works*, including its methodology audit trail in backing up the estimate element allowances.

- (20) Unless at the request of the *Contractor*, utility works described in the Constraint Description on the utilities schedule undertaken by Statutory Undertakers which occur before Constraint Start Date or after the Constraint End Date.

If the effect of the utility works occurring before or after the Constraint Start Date or after the Constraint End Date is to reduce the total Defined Cost, the Prices are reduced.

- (21) The *Project Manager* issues an instruction to amend a Constraint Description, Constraint Start Date or Constraint End Date.

If the effect of the instruction is to reduce the total Defined Cost, the Prices are reduced.

(22) The *Project Manager* gives an instruction changing a *third party agreement* listed in

- table 1 - Non-Utility Agreements obtained by the Client and
- table 2 - Non-Utility Agreements the Client may obtain.

For agreements and draft agreements listed in

- table 1 - Non-Utility Agreements obtained by the Client and
- table 2 - Non-Utility Agreements the Client may obtain

at the Contract Date in Scope Annex AA, either

- for the first change to the agreements listed in the table 2 (to become a *third party agreement*), only the difference between the agreements and draft agreements listed in
 - table 1 – Non-Utility Agreements obtained by the *Client* and
 - table 2 – Non-Utility Agreements the *Client* may obtain

in Scope Annex AA the change instructed by the *Project Manager* is taken into account in assessing a compensation event or

- for any change to the agreement listed in table 1, it is only the difference between the instruction changing a third party agreement listed in table 1 and the relevant agreement in table 1 at the date of the instruction that is taken into account in assessing a compensation event.

For agreements not listed in

- table 1 - Non-Utility Agreements obtained by the *Client* and
- table 2 - Non-Utility Agreements the *Client* may obtain

at the Contract Date, either

- for change instructed by the *Project Manager* to make an agreement a *third party agreement*, the change instructed by the *Project Manager* is taken into account in assessing a compensation event or
- for any subsequent change to an agreement listed in table 1, it is only the difference between the instruction changing a *third party agreement* listed in table 1 and the relevant agreement in table 1 at

the date of the instruction that is taken into account in assessing a compensation event.

If the effect of the instruction is to reduce the total Defined Cost, the Prices are reduced.

- (23) A Client Breach occurs which is not one of the other compensation events in the contract.
- (24) An event which is a *Client's* liability stated in these conditions of contract.
- (25) Not Used.
- (26) Not Used.
- (27) The *Project Manager* gives an instruction changing the Scope provided by the *Client* which is provided after the Scope provided by the *Contractor* for its design that generates a conflict in the Scope previously provided by the *Contractor* for its design and accepted by the *Project Manager* (prior to the date of the instruction under clause 14.3) except
- when made at the *Contractor's* request,
 - to accept a Defect in the *works* or
 - to maintain health, wellbeing or safe working.
- (28) Except instructions under clause Z58.3, the *Project Manager* gives an instruction changing the Scope provided by the *Contractor* for its design except a change
- made at the *Contractor's* request,
 - to accept a Defect in the *works* or
 - to maintain health, wellbeing or safe working.
- (29) The *Project Manager* provides a *third party agreement* listed in table 1 - Agreements obtained by the *Client* - Agreements Placed that was not made available by the *Client* prior to the *tender return date*.

Only the difference between the agreements listed in

- table 1 - Agreements obtained by the *Client* - Agreements Placed and
- table 2 - Agreements the *Client* may obtain - Agreements Required which are under negotiation and being progressed

in Scope Annex AA and that which an experienced contractor would have been reasonable to have allowed is taken into account in assessing a compensation event.

If the effect of providing the agreement is to reduce the total Defined Cost, the Prices are reduced.

- (30) Subject to the listed *Client's* observations in the *non-material schedule*, a change submission to the DCO generated by the *Contractor* for an item which listed in the *non-material schedule* is declined/rejected by the Secretary of State.

If the effect of Secretary of State's denial/rejection is to reduce the total Defined Cost, the Prices are reduced.

- (31) A *weather measurement* is recorded
- within a calendar month,
 - before the Completion Date for the whole of the works and
 - at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in fifty years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in fifty years is taken into account in assessing a compensation event.

- (32) The *Client* and Others do not complete the TBM Power Requirements by the *tbm power date*.

Only the difference between TBM Power Requirements Achieved Date and the later of

- such date preceding that date the *Contractor* actually requires such TBM Power Requirements to be achieved or
- the *tbm power date*

is taken into account in assessing this compensation event.

If the effect of the *Client* and Others not completing the TBM Power Requirements by the *tbm power date* is to reduce the total Defined Cost, the Prices are reduced

- (33) The *Contractor* encounters physical conditions which are
- man-made obstructions but excluding
 - man-made obstructions due to the actions or inactions of the *Contractor*, Roads North Works or Roads South Works contractors,
 - utility apparatus and

- objects of value or of historical or other interest,
- voids but excluding voids due to the actions or inactions of the *Contractor*, Roads North Works or Roads South Works contractors or dissolution features or
- man-made contamination but excluding man-made contamination due to the actions or inactions of the *Contractor*, Roads North Works or Roads South Works contractors

which in each case

- adversely impact the *Contractor's* progress resulting in a delay of more than 40 days to the Critical Path,
- are within the Site,
- are not due or related to weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only

- the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed and
- for each such event the delay in excess of 40 days to the Critical Path

are taken into account in assessing a compensation event.

(34) Not Used.

(35) The *Project Manager* instructs a Mobilisation Phase Activity (or part of any Mobilisation Phase Activity) to become a Construction Phase Activity.

If the effect of the instruction is to reduce the total Defined Cost, the Prices are reduced.

(36) The *Project Manager*

- gives an instruction to stop or not to start any work forming a Mobilisation Phase Activity (or part thereof) and
- does not give an instruction to restart or start such work forming a Mobilisation Phase Activity (or part thereof) to prevent a delay (in the *Project Manager's* assessment) to the Critical Path on the Accepted Programme.

- (37) Not Used.
- (38) If capacity for disposal of spoil arising/excavated materials from
- the *works* and
 - Roads North Works
- in connection with landscaping work in/on the Tilbury Fields is less than 1,800,000m³.

Insert new clause 60.4

- 60.4 For the purpose of any compensation event under clause 60.1(10)
- a change to a Completion Date may be to an earlier date in accordance with clause Z130 or to a later date,
 - a default by the *Contractor* includes a failure by the *Contractor* to achieve Completion of any *section* by the relevant Completion Date,
 - a default by the contractor for either Roads North Works or Roads South Works includes a failure by that contractor to achieve completion of any section by the relevant completion date, as such terms are defined in the relevant contract,
 - a change to an earlier Completion Date under clause Z130 which is due to a default of the *Contractor* or the default of the contractor for either Roads North Works or Roads South Works is not a compensation event under clause 60.1(10) and
 - if the effect of the change is to reduce the total Defined Cost, the Prices are reduced.

61 Notifying compensation events

- 61.3 In clause 61.3
- at the end of the first paragraph before “if” add “within eight weeks of becoming aware that the event has happened” and
 - at the end of the second paragraph delete “, issuing a certificate or changing an earlier decision”.

63 Assessing compensation events

- 63.4 In the last line after “reduced” insert “(subject to clause 60.1(2)).”

Inset new clause 63.18

- 63.18 If the *Project Manager* gives an instruction changing a Mobilisation Phase Activity (or part of any Mobilisation Phase Activity) to become a Construction Phase Activity during the Construction Phase, the change to the Prices in the Construction Phase Activity Schedule does not exceed the reduction in the Prices in the Mobilisation Phase Activity Schedule.

70 The *Client’s* title to Plant and Materials

- 70.1 After “*Supervisor*” insert “or *Contractor*”.

71 Marking Equipment, Plant and Materials outside of the Working Areas

- 71.1 After “*Supervisor*” insert “or *Contractor*”.

73 Objects and Materials within the Site

- 73.1 Insert at the end of first sentence (before the full stop)
“and Working Areas”.

80 *Client’s* liabilities

- 80.1 In clause 80.1 delete existing bullets 2, 3 and 5.
Insert new bullet 3 in revised list
- loss or damage to the *works*, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor’s* employees except where it is due to the actions, inactions, omission or default of the *Contractor* to comply with the contract including Protester Action or Trespassers’ trespassing or
 - radioactive contamination.

81 *Contractor’s* liabilities

Insert new clause 81.2

- 81.2 The *Contractor* is liable for any additional costs and compensation payable by the *Client* greater than the Accepted Third Party Estimates.

82 Recovery of Costs

- 82.1 Delete clause 82.1 and insert

Any

- cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable and
- costs, losses, liabilities, fines, penalties and expenses (including legal expenses) which might be suffered or incurred by the *Client* in connection with taxes or registration requirements arising in the country where the *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims against the *Contractor*

is paid by the *Contractor*.

Insert new clause 82.4

- 82.4 The *Contractor* is liable for the additional costs incurred by the *Client*
- for the additional works and reworking undertaken by the Telecommunications Service Provider (as defined in paragraph S075 in the Scope) if the Telecommunications Service Provider is not able to pull cables through sacrificial ducts using its normal practices,
 - for testing and inspection by the Telecommunications Service Provider of replacement sheath repairs to armoured cables to replace a sheath repairs undertaken *Contractor* which are not acceptable to the Telecommunications Service Provider,
 - for sheath repairs undertaken by the Telecommunications Service Provider to armoured cables to replace a sheath repairs undertaken *Contractor* which are not acceptable to the Telecommunications Service Provider and
 - for additional works and services undertaken by the *Client* (including its contractors) to mitigate Defects during section 3.

83 Insurance cover

Delete clause 83.2 and insert new clause 83.2

- 83.2 The *Contractor* provides the insurances stated in, and to comply with the requirements set out in, Annex J to the Scope.

Delete clause 83.3 and insert new clause 83.3

- 83.3 The insurances provided by the *Client* are in the joint names of the Parties.

86 Insurance by the *Client*

Delete clause 86 and insert new clause 86.1

- 86.1 The *Project Manager* submits evidence for insurance provided by the *Client* to the *Contractor* within fourteen days of the commencement of the relevant insurance and within fourteen days after any renewal dates.

93 Payment on termination

- 93.6 In clause 93.6 after “is” delete “added to the amount due to the *Contractor* on termination if there has been a saving or”.

After clause 93.6, insert new clauses 93.7 and 93.8.

- 93.7 If there is a termination, the *Contractor* is not eligible to receive any further Programme Incentive and if the termination is
- due to the *Contractor's* default, then the *Contractor* pays the *Client* an amount equivalent to any Programme Incentive received by the *Contractor* on or before the date of termination and is included in the amount due to the *Contractor* on termination or
 - not due to *Contractor's* default, then the *Contractor* retains any Programme Incentive already paid at the date of termination.
- 93.8 If there is a termination
- due to the *Contractor's* default, then the *Contractor* pays the *Client* an amount equivalent to
 - total Programme Incentives,
 - total CPI Annual Payments,
 - total CPI Fixed Payments,
 - total Incentive Amounts,
 - total payments in accordance with clause Z135,
 - total payments in accordance with clause Z143 and
 - the total *Contractor's* sharepaid to the *Contractor* on or before the date of termination and is included in the amount due to the *Contractor* on termination or

- due to the *Client's* default or under option X11, then the *Contractor*
 - retains any
 - Programme Incentive,
 - *Contractor's* share
 - CPI Annual Payments,
 - CPI Fixed Payments,
 - Incentive Amounts in accordance with clause Z108
 - payments in accordance with clause Z135 and
 - payments in accordance with clause Z143already paid at the date of termination and
 - agrees it is not entitled to any further
 - Programme Incentive,
 - CPI Fixed Payments,
 - CPI Annual Payments,
 - payments in accordance Z108,
 - payments in accordance with the carbon incentive schemes notified in accordance with clause Z135,
 - payments in accordance with any Programme Incentive,
 - payments in accordance with the incentive schemes notified in accordance with clause Z143 and
 - *Contractor's* sharedue to be paid to the *Contractor*.

Option X1 Price adjustment for inflation

X1.1 Insert "confirmed" before "index" in (a).

Delete (b) and insert

(b) The Latest Index (L) is the confirmed index published for the month of the assessment date for the amount due.

X1.3 Clause X1.3 applies to the contract.

Delete clause X1.3 and replace with

This clause applies to the lump sums for *section 4* only.

When the firm value/confirmed values for the *indices* are all available for a month, (the "Index Month"),

- the amount due (for the current assessment date) includes an amount for price adjustment which is the sum of
 - the change in the Price for Work Done to Date (but excluding Price for Work Done to Date for works in Mobilisation Phase and Construction Phase *sections 1* to *3*) for Index Month since the preceding (related to the Index Month) month's assessment of the amount due multiplied by the PAF and
 - the amount for price adjustment included in the previous amount due (to the current assessment date).

The change in the price adjustment at each assessment date for the works in *section 4* is added to the total of the Prices and

- the Construction Phase Section 4 Fee is adjusted by the change in the Construction Phase Section 4 Fee payable for Index Month since the preceding (related to the Index Month) month's assessment of the amount due multiplied by the PAF. The change in the fee adjustment at each assessment date for the works in *section 4* is added to the Construction Phase Section 4 Fee.

Inset new clause X1.3A

X1.3A For the Mobilisation Phase Activities and when the firm value/confirmed values for the *indices* are all available for a month (the "Index Month"), then for that Index Month

- the amount due includes an amount for price adjustment which is the sum of
 - the change in the Price for Work Done to Date for Mobilisation Phase Activities since the last assessment of the amount due for Mobilisation Phase Activities multiplied by the PAF and
 - the amount for price adjustment for Mobilisation Phase Activities included in the previous amount due and
- the Target Budget is increased by the change in the Price for Work Done to Date for Mobilisation Phase Activities since the last assessment of the amount due for Mobilisation Phase Activities multiplied by the PAF.

Delete clause X1.4 and replace with

X1.4 After a notice to proceed to Construction Phase, when the firm value/confirmed values for the *indices* are all available for a month (the "Index Month"), then for related amount due for that Index Month, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date for works in *sections 1 to 3* (excluding Mobilisation Phase works and *section 4*), for the Index Month since the preceding (related to the Index Month) month's assessment of the amount due for works in *sections 1 to 3* but not *section 4* multiplied by $(PAF/(1+PAF))$.

Insert new clause X1.6

X1.6 If a compensation event occurs prior to the issue of a notice to proceed to the Construction Phase and applies to works that are

- Construction Phase Activities and

- not Construction Phase Activities (or part of any Construction Phase Activity) undertaken in the Mobilisation Phase

then the *Project Manager*, states the assumptions for L to be applied to the compensation event.

Insert new clause X1.7

X1.7 If a compensation event occurs prior to the issue of a notice to proceed to Construction Phase and applies to works that are

- Construction Phase Activities and
- Construction Phase Activities (or part of any Construction Phase Activity) undertaken in the Mobilisation Phase following an instruction under clause Z117.6

then clause X1 does not apply.

Insert new clause X1.8

X1.8 When the firm value/confirmed values for the *indices* are all available for a Quarter Date (the “Index Quarter Date”), up to the earlier of the Completion Date for *section 2* or Completion of *section 2*, an amount for fee adjustment which is the sum of

- the change in the Construction Phase Works Fee paid to the *Contractor* at the Index Quarter Date and the previous Quarter Date multiplied by the PAF

is added to the Construction Phase Works Fee.

Insert new clause X1.9

X1.9 At the earlier of the Completion Date for *section 2* or Completion of *section 2* (the “Completion Month”), if there is less than three months between the last Quarter Date and Completion Month and when

- the firm value/confirmed values for the *indices* are all available for the Completion Month,

an amount for fee adjustment which is the sum of

- the change in the Construction Phase Works Fee paid to the *Contractor* at the Completion Month and the previous Quarter Date multiplied by the PAF

is added to the Construction Phase Works Fee.

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Option X2 Changes in the law

X2.1 In the first line, insert
“Except for

- the Development Consent Order or
- a change in the law of the country where the Site is located occurs that results in
 - a change in the forecast Defined Costs to complete the whole of the *works* and
 - a change in cost used to calculate an *index* or change in cost contemplated by an *index*

a” before “A change” and delete “A”.

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

Option X10 Information modelling

X10.7(1) Delete this sub-clause.

X10.7(3) Delete this sub-clause.

Option X11 Termination by the *Client*

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

Insert new clause X11.3

X11.3 The *Contractor*

- agrees that the *Client* may itself, or may appoint another contractor in place of the *Contractor* to provide works and services similar to the removed *works* (or part of it) and
- agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the Construction Phase’s *works* or any part of them.

Option X12 Multiparty collaboration

X12.3(6) Delete the last sentence.

X12.3(7) Delete the last sentence.

Delete sub-clause X12.4(1) and replace it with

X12.4(1) At such times stated in the Partnering Information, a Partner is paid such proportions of the *programme incentive* due in accordance with the Partnering Information.

X12.4(2) Delete this sub-clause.

Option Performance bond
X13

X13.1 Delete final sentence and replace with
“Where the *Contractor* is an unincorporated joint venture, one or more Consortium Members may give the *Client* one or more bonds, provided by a bank or insurer which the *Project Manager* has accepted, for an aggregated amount equal to the amount stated in the Contract Data and in the form set out in the Scope. Where more than one bond is given the value of each bond is no less than £5,000,000.00.

A reason for not accepting a bank or insurer is that it

- does not have a credit rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor’s Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody’s Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Project Manager*,

- does not have a commercial position which is strong enough to carry the bond,
- is not issued by a bank or insurer registered as a company in England and is not subject to the *law of the contract* and a legal opinion in accordance with clause X13.7 is not received,
- the bond is not subject to the *law of the contract* or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

The bond is given seventy-eight weeks prior to the earlier of planned Completion of *section 2* shown on the Accepted Programme or the *section 2* Completion Date.”

Insert new clause X13.2

X13.2 If the bond is not given by the time required in clause X13.1 an amount is withheld from each amount due. Until the earlier of

- the date the bond is given,
- Completion of *section 2* of the *works*,
- the date on which the *Client* takes over the whole of the *works* and
- the withheld amount equals the amount stated in Contract Data for the performance bond,

the amount withheld is one twelfth (1/12th) of the change in the Price for Work Done to Date at each subsequent assessment date.

Insert new clause X13.3

- X13.3 The amount withheld remains at this amount until the earlier of
- the date when the Defects Certificate is due to be issued. No amount is withheld in the assessments made after the Defects Certificate is due to be issued or
 - the date the *Contractor* gives the *Client* the performance bond in accordance with the contract. Any amount withheld is included in the amount due at the next assessment date.

Insert new clause X13.4

- X13.4 The *Client* may make a call on the bond if
- the *Contractor* does not make any payment due from it to the *Client* under the contract,
 - the *Contractor* does not correct a notified Defect within its *defect correction period* adjusted for
 - access provided by the *Client* to correct the Defect and
 - any accepted corrective action plan for implementing a temporary Defect correction and the permanent Defect correction (under Scope S430). If the *Project Manager* does not accept the corrective action plan for a reason set out in the contract on the second submission of the corrective action plan, the *defect correction period* is not adjusted,
 - the credit rating of the issuer of the bond falls below the level set out in clause X13.1 unless, within a week of the credit rating of the issuer of the bond falling below the level set out in clause X13.1, the *Contractor* provides a replacement performance bond (in the form set out in the Scope) from a bank or insurer accepted by the *Project Manager* in accordance with clause X13.1 or
 - there is an event entitling the *Client* to terminate the *Contractor's* obligation to Provide the Works, irrespective of whether notice or termination has been given.

Insert new clause X13.5

- X13.5 If the *Contractor* does not provide the bond as required by this clause X13, the amount withheld by the *Client* in accordance with this clause X13 is reduced to
- £10,000,000.00 on Completion of *section 3* and is included in the amount due at the next assessment date and
 - £5,000,000.00 on the later of

- the *defects date* for the assets not specified by the Scope section S2900 or
- when all the Defects for assets not specified by the Scope section S2900 are corrected

and is included in the amount due at the next assessment date.

Insert new clause X13.6

X13.6 If the *Contractor* does not

- provide the bond as required by this clause X13 and
- pay an amount to the *Client* required by the contract

then the *Client* may recover the amount due to be paid to the *Client* from the amount withheld under clause X13.2 or any other sums due to the *Contractor* under the contract.

Insert new clause X13.7

X13.7 If the bank or insurer proposed by the *Contractor* is not a company incorporated in and subject to the *law of the contract*, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- independent of the bank or insurer, the *Contractor*, Consortium Members Guarantors and alternative guarantors,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Project Manager*.

The legal opinion is addressed to the *Client* 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* (via the *Project Manager*).

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

Option Contractor's design

X15

X15.1 Delete X15.1 and insert

X15.1 Except for the Excluded Items, the *Contractor* is not liable for a Defect in the *works* due to its design so far as it proves that it used reasonable skill and care that would be expected of a qualified, experienced and competent member of its profession providing professional services in connection with works and services of equivalent type size and complexity to the *works*.

X15.5 Delete clauses X15.5 and X15.6.
and
X15.6

**Option Limitation of liability
X18**

- X18.3 Delete existing clause X18.3 and replace it with
- X18.3 For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property
- within the Site and Working Areas is limited to the amount stated in the Contract Data and
 - outside the Working Areas is unlimited.
- X18.5 Delete the existing bullet points and replace it with
- loss of or damage to the *Client's* property,
 - delay damages if Option X7 applies,
 - low performance damages if Option X17 applies,
 - *Contractor's* share if Option C or D applies,
 - fraud or fraudulent misrepresentation,
 - infringement of the rights of Others,
 - loss or damage
 - to third party property or
 - due to pollution,
 - loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations,
 - interest on debt,
 - losses caused by the *Contractor's* illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct,
 - death of or bodily injury to a person other than an employee of the *Contractor* and
 - other events for which the contract requires the *Contractor* or *Client* to insure (but excluded only up to the required level for each type of insurance stated in the Scope or Contract Data).

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

- Y1.1(1) In clause Y1.1(1), delete the words “the Supplier joins the Trust Deed” and replace with: “a Supplier becomes a Named Supplier.”
- Y1.1(2) In clause Y1.1(2), after “who have signed the Joining Deed” insert

- “and, other than those agreed by the *Project Manager* to be excluded in accordance with clause Y1.5A, Tier Two Suppliers and Tier Three Suppliers”.
- Y1.1(6) In clause Y1.1(6), after “A Supplier is a person or organisation” insert
- “(at any stage of remoteness from the *Client*) other than the Tier Two Suppliers and Tier Three Suppliers”.
- Y1.1(6) In clause Y1.1(6), insert new second bullet point
- “• a subcontractor (at any stage of remoteness to the *Client*),”
- Y1.1(6A) Insert a new clause Y1.1(6A) as follows
- “Tier Two Suppliers are all subcontractors who have been accepted in accordance with clause Z8 and have entered into an Eligible Contract with the *Contractor*.”
- Y1.1(6B) Insert a new clause Y1.1(6B) as follows
- “Tier Three Suppliers are each subsubcontractor who has been accepted in accordance with clause Z8 and has entered into an Eligible Contract with a Tier Two Supplier.”
- Y1.1(6C) Insert a new clause Y1.1(6C) as follows
- “An Eligible Contract is a contract entered into by a subcontractor with the *Contractor* or by a subsubcontractor with a Tier Two Supplier (as applicable) which in each case relates to the *works* irrespective of whether such contract is entered into prior to, on or after the Contract Date (and including, without prejudice to the generality of the foregoing, any contract which provides for call-off services or works or supply of Plant and Materials which are used in relation to the *works*).”
- Y1.1(7) In clause Y1.1(7),
- delete “an agreement” and replace with “a deed” and
 - After “contains provisions for administering the Project Bank Account” insert
- “and which creates a trust in respect of the Project Bank Account under which the *Contractor* and Named Suppliers are beneficiaries.”
- Project Bank Account Y1.4 In clause Y1.4 after “copies of communications” insert “(including all bank statements in relation to the Project Bank Account)”.
- Named suppliers Y1.5A Insert a new clause Y1.5A as follows
- “The *Contractor* submits for agreement of the *Project Manager* prior to the appointment of any Tier Two Supplier and any Tier

Three Supplier (as applicable) where it considers that such Tier Two Supplier or Tier Three Supplier (as applicable) should not be a beneficiary of the trust created by the Trust Deed and the basis for the proposal. The *Contractor* acknowledges and agrees that the decision as to whether a Tier Two Supplier or Tier Three Supplier (as applicable) should not be a beneficiary of such trust is at the absolute discretion of the *Client*.

The *Project Manager* either

- notifies the *Contractor* that such Tier Two Supplier or Tier Three Supplier (as applicable) will not be a beneficiary to the trust or
- notifies the *Contractor* that the Tier Two Supplier or Tier Three Supplier (as applicable) is to be a beneficiary to the trust.

The *Contractor* ensures such Tier Two Supplier or Tier Three Supplier (as applicable) is not appointed without such Tier Two Supplier or Tier Three Supplier (as applicable) being a beneficiary of the trust created by the Trust Deed, unless notified otherwise by the *Project Manager* in accordance with this clause Y1.5A.”

Named
suppliers
Y1.5B

Insert a new clause Y5.1B as follows

“*named suppliers* are beneficiaries of the Project Bank Account without signing a Joining Deed. Tier Two Suppliers and Tier Three Suppliers who are appointed by the *Contractor* or a Tier Two Supplier (as applicable), become beneficiaries of the trust over the Project Bank Account constituted by the Trust Deed upon the later of

- the date the account holder establishes the Project Bank Account with the *project bank* or
- the date of appointment, unless the *Project Manager* agrees otherwise.”

Named
suppliers
Y1.5

In clause Y1.5, after “contract for the operation of the Project Bank Account and” insert “the trust created in respect of the Project Bank Account by the”.

Trust
deed
Y1.17

In clause Y1.17 insert “and” between “The *Client*,” and “the *Contractor*”.

In clause Y1.17, delete “and *named suppliers*”.

Form of
Trust
Deed

Delete the form of Trust Deed and replace with the form provided in Scope [Annex A](#).

Form of
Joining
Deed

Delete the form of Joining Deed and replace with the form provided in Scope [Annex A](#).

Schedule of Cost Components

Delete and replace with the document entitled “Schedule of Cost Components” in Annex One.

Clause Z2 Interpretation

- Z2.1 In the contract, except where the context shows otherwise
- references to a document include any revision made to it in accordance with the contract,
 - references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it,
 - references to a British, European or International standard include any current relevant standard that replaces it,
 - references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity, and
 - the words “includes” or “including” are construed without limitation.

Clause Z3 Recovery of sums due from *Contractor*

- Z3.1 Where under the contract a sum of money is recoverable from or payable by the *Contractor*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Contractor* under the contract or any other contract with the *Client*.

Clause Z4 Assignment and transfer

- Z4.1 The *Contractor* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Project Manager*.
- Z4.2 If requested by the *Project Manager*, the *Contractor* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the contract to
- a replacement organisation established to take over the *Client's* functions or part of it,
 - another public body exercising similar functions,
 - a Department or Office of Her Majesty's government or
 - a local authority.
- Z4.3 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's*

agreement through the *Project Manager* to do so. The *Contractor*

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

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

Clause Z5 Confidentiality

Z5.1 The *Contractor* 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 *Contractor* in the course of Providing the Works

except that the *Contractor* 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 *Contractor* to Provide the Works,
- 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 *Contractor* consults the *Client* and takes full account of the *Client'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 *Contractor* or
- with the consent of the *Client*.

Z5.2 The *Contractor* 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 Works.

Clause Z6 Adjudication

Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017 including January 2019 amendments,) includes the following *additional condition of contract*

“Any information concerning the contract obtained by either the *Dispute Resolver* or any person advising or aiding the *Dispute Resolver* is confidential and is not used or disclosed by the *Dispute Resolver* or any such person except for the purposes of this Agreement. The *Dispute Resolver* complies and takes all reasonable steps to ensure that any persons advising or aiding the *Dispute Resolver* comply, with the Official Secrets Acts 1911 to 1989.”

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

Clause Z7 Termination – Public Contract Regulations 2015

- Z7.1 The *Client* may terminate the *Contractor's* obligation to Provide the Works if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date.
- Z7.2 The *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect 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.
- Z7.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Contractor*,
 - 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 Z8 Subcontracting

- Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 Except for an Associated Company listed on the *approved associated companies schedule* (but only for undertaking the works and services listed for such an Associated Company in the schedule), if the *Contractor* subcontracts work to an

Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.

Z8.2A For such agreed Associated Companies and those listed on the *approved associated companies schedule*, if

- the *Contractor's* records do not demonstrate such agreed Associated Companies' subcontracts are operated and managed at arm's length as a genuine arm's length commercial arrangement,
- the *Contractor's* (or where relevant the Consortium Member) director (as defined by the Companies Act 2006 or equivalent) responsible for finance does not certify on completion of the relevant subcontract final account that there has been no (and will not be any) refunds or reverse payments or similar from the Associated Company to the *Contractor* or other Associated Company and procures the same certified statement from the Associated Company,
- the works and services undertaken are not those works and services
 - agreed by the *Project Manager* to be provided by the Associated Company or
 - listed on the *approved associated companies schedule* or
- the *Contractor* has not procured such agreed Associated Companies' director (as defined by the Companies Act 2006 or equivalent) responsible for finance certification that on completion of the final account of the relevant subcontract that there has been no (and will not be any) refunds or reverse payments or similar from the Associated Company to the *Contractor* or other Associated Company,

then the *Project Manager* may treat the cost or part of the costs of the relevant subcontract as Disallowed Costs

Z8.2B Where a subcontractor is an Associated Company and

- it is agreed that work subcontracted to it is assessed as if the work had been subcontracted and
- the *Contractor* has placed the subcontract prior to the *Project Manager's* agreement in accordance with Scope S1205.7,

then cost incurred of the relevant subcontract is treated as Disallowed Costs up to and including the day the *Project Manager* agrees that such subcontract represents value for money.

Z8.3 The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor. The *Contractor* then

arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.

Z8.4 Not Used.

Z8.5 Before

- appointing a proposed subcontractor or
- allowing a subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Project Manager* for acceptance

- either
 - a 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.

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

- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Project Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

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

Z8.7A If option Y(UK)1 is used, the *Contractor* provides and keeps up to date a project bank register identifying

- all subcontractors and subsubcontractors,
- which subcontractors and subsubcontractors are beneficiaries of any Project Bank Account and

- if a subcontractor or subsubcontractor is not a beneficiary of the trust over the Project Bank Account constituted by the Trust Deed (as defined in clause Y1.1(7)), the reason why and the date of such agreement of the Project Manager in accordance with clause Y1.5A that it is not such a beneficiary

and

- allows the *Project Manager* to inspect and provide a copy of the project bank register immediately upon demand and
- provide a copy of the project bank register with each application for payment.

Z8.7B If at any time the *Contractor* does not provide a copy of the up to date project bank register, then one quarter of change in the Price for Work Done to Date may be retained in assessments of the amount due until the *Contractor* provides a copy of the up to date project bank register.

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

- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

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

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

Clause Z9 Merger, takeover, Change of Control and financial distress

Z9.1 The *Contractor* notifies the *Project Manager* immediately if a Change in Control has occurred.

Z9.2 If a Change of Control occurs without the *Project Manager's* prior consent or will not allow the *Contractor* to Provide the Works, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

Z9.3 The *Contractor* notifies the *Project Manager* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor* (or a Consortium Member) or
- the composition of the *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

Z9.4 The *Contractor* notifies the *Project Manager* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.

Z9.5 The *Contractor* notifies the *Project Manager* immediately if

- any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor
 - its Credit Rating falls below the relevant *credit rating*,
 - there is a further fall in its Credit Rating below the relevant *credit rating*,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an extent that had it been part of the original¹⁰ assessment of Financial Standing Test the outcome of the Financial Standing Test would have been a failure or
- any Parent Company Guarantee, Form of Performance Security or any Alternative Guarantee becomes invalid or unenforceable for any reason.

Z9.6 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Project Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Works with

¹⁰ Note: original assessment of Financial Standing are those undertaken as part of the SQ stage and as described in the SQ guidance.

immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

Z9.7 If a Change of Control occurs, the *Contractor* provides to the *Project Manager*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Project Manager*,
- any other information required by the *Client* in order to determine whether, had the Controller, been included in the original Financial Standing Test, such inclusion would not have resulted the outcome of the Financial Standing Test being a failure and
- any other information requested by the *Project Manager* in order to satisfy itself that the *Contractor* remains in a position to Provide the Works.

Z9.8 If a Change of Control or any of the events listed in clauses Z9.3 to Z9.5 occurs, the *Project Manager* may require the *Contractor* to give to the *Client*

- a Parent Company Guarantee from the relevant Controller or (if the Controller had been part of the original Financial Standing Test and the outcome of the Financial Standing Test would have been a failure) an alternative guarantor proposed by the *Contractor* and accepted by the *Project Manager* or
- a Form of Performance Security, (or an alternative form of bond or security agreed by the *Project Manager* from an alternative guarantor proposed by the *Contractor* and accepted by the *Project Manager*)
 - if there is no Controller,
 - if the Controller had been included in the original Financial Standing Test and the outcome of the Financial Standing Test would have been a failure and a suitable alternative guarantor is not acceptable or
 - if agreed by the *Project Manager* and the *Contractor* or relevant Consortium Member.

The *Contractor* provides the *Project Manager* with the information listed in clause Z9.7 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Project Manager*) and any further information requested by the *Project Manager* concerning the alternative guarantor.

- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that
- had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure,
 - it does not provide the legal opinion required in clause Z9.14 or
 - it does not have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.5 has occurred.
- Z9.10 A reason for not accepting an alternative guarantor (for a Form of Performance Security or an alternative a form of bond agreed by the *Project Manager*) proposed by the *Contractor* is that it
- does not have a Credit Rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)unless agreed otherwise by the *Project Manager*,
 - does not have a commercial position which is strong enough to carry the bond,
 - is not issued by an office of the proposed alternative guarantor located in England or the Form of Performance Security (or an alternative a form of bond agreed by the *Project Manager*) is not subject to the *law of the contract* or
 - does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.
- Z9.11 If so required by the *Project Manager*, the *Contractor* within four weeks after the *Project Manager* notifies the requirement gives to the *Client*
- a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
 - a Form of Performance Security, or an alternative form of bond agreed by the *Project Manager*
- for the *Contractor* or relevant Consortium Member the notification refers to.
- Z9.12 The *Project Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who if it had been included in the original Financial Standing Test the outcome of the Financial

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

Z9.13 If

- the *Contractor* fails to notify the *Project Manager* that an event listed in clause Z9.5 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Contractor*, if it had been included in the original Financial Standing Test, the outcome of the Financial Standing Test would have been a pass within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.14,
- the *Contractor* does not give to the *Client* a
 - Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
 - a Form of Performance Security or an alternative form of bond agreed by the *Project Manager* within four weeks of a request from the *Project Manager* to do so or
- the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project Manager* if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass within eighteen (18) months of the *Project Manager's* acceptance

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

Z9.14 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Project Manager*

The legal opinion is addressed to the *Client* on a full reliance basis and the liability of the 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 Scope.

Z9.15 If accepted by the *Project Manager*, the alternative guarantor becomes the Guarantor for the *Contractor* or the relevant Consortium Member and the credit ratings become the *credit rating* for the Guarantor.

Z9.16 A failure to comply with this clause Z9 is treated as a substantial failure by the *Contractor* to comply with its obligations.

Clause Joint ventures Z10

Z10.1 This clause applies if the *Contractor* is an unincorporated joint venture.

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under the contract.

Z10.3 The *Contractor* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.

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

Z10.5 A Consortium Member gives not less than four weeks' notice to the *Project Manager* of any proposed termination of the joint venture arrangement.

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

Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 and 91.1 of the *conditions of contract* are amended by inserting after “the other Party” wherever it appears the words “or, in the case of the *Contractor*, any Consortium Member”.

Clause Parent Company Guarantee Z11

Z11.1 Unless the *Client* has agreed otherwise, where a *Contractor* or Consortium Member has a Controller, the *Contractor* gives to the *Client* a Parent Company Guarantee. The Parent Company Guarantee is given by the Contract Date.

Parent Company Guarantees are given for

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

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

Z11.2 Where

- the *Client* has agreed an Alternative Guarantee for the *Contractor* or a Consortium Member and
- a *Contractor* or Consortium Member has a Controller,

the *Contractor* gives to the *Client* the Alternative Guarantees. The Alternative Guarantees are given by the Contract Date.

Alternative Guarantees are given for

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

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

Z11.3 Where

- a *Contractor* or Consortium Member has no Controller and
- the *Client* has agreed one or more alternative form of guarantee,

the *Contractor* gives to the *Client* the alternative forms of guarantee. The alternative forms of guarantee are given by the

Contract Date.

The alternative forms of guarantee are given for

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

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

Z11.4 A failure to comply with this clause Z11 is treated as a substantial failure by the *Contractor* to comply with its obligations.

Clause Discrimination, Bullying and Harassment Z12

Z12.1 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

- an investigation or proceedings under the Discrimination Acts or
- an allegation of bullying or harassment

resulting from any act or omission of the *Contractor* in connection with the contract.

Clause Intellectual Property Rights (IPRs) Z13

Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Contractor* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client* and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z13.2 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, with the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Contractor* or its assignees or any third party. The

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

The *Contractor's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.

Z13.3 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Z13.4 The *Contractor* warrants to the *Client* that

- the Software does not contain any Open Source Software other than OSS,
- the OSS is licensed upon terms which permit the use of such Open Source Software by the *Contractor*, the *Client*, other *Client's* contractors (and their subcontractors) and the *Client's* end users for all purposes contemplated by the contract and
- all components of the Software
 - are free from material design and programming errors,
 - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Statement,
 - the Documentation and
 - do not infringe any Intellectual Property Rights.

Z13.5 The *Contractor* at all times, during the *works* and after Completion, indemnifies the *Client* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

Z13.6 Not Used.

Clause Project Bank Account **Z14**

Z14.1 The *Client* may at any time notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative

method to ensure that the Named Suppliers receive payments in accordance with its contracts.

Clause Tax Non - Compliance
Z15

- Z15.1 The *Contractor* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Contractor* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.
- Z15.2 The *Contractor* notifies the *Project Manager* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,
 - any mitigating factors that it considers relevant and
 - any other information requested by the *Project Manager*.
- Z15.3 The *Contractor* is treated as having substantially failed to comply with its obligations if
- the warranty given by the *Contractor* under clause Z15.1 is untrue,
 - the *Contractor* fails to notify the *Project Manager* of a Tax Non-Compliance or
 - the *Client* decides that any mitigating factors notified by the *Contractor* are unacceptable.

Clause Value Added Tax Recovery
Z16

- Z16.1 An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment.
- Z16.2 Reference in this clause Z16 to "applying the reverse charge" (or similar) refers to an arrangement where the recipient of a supply for the purposes of value added tax (VAT), or a member of any tax group of which the recipient of a supply is a member, is responsible for identifying whether it is accountable to Her Majesty's Revenue and Customs for the VAT that is chargeable in respect of the supply.
- Z16.3 In relation to each payment made to the *Contractor* for any supply under the contract

- following issue of the *Project Manager's* certificate under clause 51.1, the *Contractor* within two days issues an appropriate VAT invoice for the supply, confirming whether the reverse charge applies to that supply and
- unless the reverse charge applies, the *Client* pays to the *Contractor* the amount of any VAT properly chargeable in relation to the supply.

Z16.4 The *Contractor* includes within each application for payment a request for the *Project Manager* to provide the *Client's* confirmation as to whether the reverse charge applies to the supply that is the subject of the application. The *Project Manager* provides such *Client's* confirmation on or before the issue of the relevant *Project Manager's* certificate relating to the supply.

Z16.5 If the paying party for the final assessment under clause 53 is the *Client*, the *Contractor*, not later than the due date in accordance with clause 53.1, requests the *Project Manager* for the *Client's* confirmation as to whether the reverse charge applies to the supply that is the subject of the final assessment. The *Project Manager* provides such *Client* confirmation on or before the issue of the payment certificate for the final payment.

Clause Removal of works from the Scope

Z17

Z17.1 The *Project Manager* may at any time issue an instruction that

- part or all of the remaining *works* is to be permanently removed from the Scope or
- for reasons of health, safety or wellbeing, part of the *works* is to be temporarily removed from the Scope

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

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event and the Prices are reduced, 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 *works*.

If all or part of the remaining *works* is to be permanently removed, the *Contractor* agrees that it is not entitled to any loss of profit or any other form of compensation including if the

Client appoints another contractor to complete the *works* or any part of them.

Z17.3 If all of the remaining *works* is to be permanently removed from the Scope prior to Completion of *section 2*

- the *Project Manager* does not assess the *Contractor's* share, the *Contractor* is not paid its share of the savings and does not pay its share of the excess and
 - the *Contractor* pays the *Client* an amount equal to the total of any interim *Contractor's* share paid to the *Contractor* (which has not been recovered through clause Z55) or
 - the *Client* pays the *Contractor* an amount equal to the total of any interim *Contractor's* share paid to the *Client* (which has not been recovered by the *Contractor* through clause Z55),
- the *Project Manager* does not assess any further Programme Incentive and the *Contractor* pays the *Client* an amount equal to the total of any Programme Incentive paid to the *Contractor*,
- the *Project Manager* does not assess any further CPI Annual Payment and the *Contractor* pays the *Client* an amount equal to the total of any CPI Annual Payment paid to the *Contractor*,
- the *Project Manager* does not assess any further CPI Fixed Payment and the *Contractor* does not pay the *Client* an amount equal to the total of any CPI Fixed Payment paid to the *Contractor*,
- the *Project Manager* does not assess any further Incentive Amount under clause Z108 and the *Contractor* pays the *Client* an amount equal to the total of any Incentive Amount under clause Z108 paid to the *Contractor*,
- the *Project Manager* does not assess any further carbon/greenhouse gas emission incentive under clause Z135 and additional incentive schemes under clause Z143 and the *Contractor* does not pay the *Client* an amount equal to the total incentive paid to the *Contractor* under clauses Z135 and Z143,
- the *Contractor* repays any *Contractor's* share paid by the *Client* (which has not already been repaid to the *Client*),
- the *Client* repays any *Contractor's* share paid by the *Contractor* (which has not already been repaid by the *Client*) and
- the *Contractor* is not entitled to
 - any further Fee over that calculated in accordance with clause Z123 as if the instruction had not been issued and

- if the instruction to remove Scope is given for one of the reasons R1-R15, R18 or R22, any further
 - Programme Incentive,
 - CPI Annual Payment,
 - CPI Fixed Payment,
 - Incentive Amount,
 - incentive under clause Z135 and
 - additional incentive schemes under clause Z143.

Z17.4 If all of the remaining *works* is to be permanently removed from the Scope and the instruction is issued after Completion of *section 2* and the instruction is not given for one of the reasons R1-R15, R18 or R22

- the *Project Manager* assesses the *Contractor's* share as if Completion of *section 3* was achieved,
- the *Contractor* is not entitled any further
 - Fee over that calculated in accordance with clause Z123,
 - CPI Annual Payment over that calculated in accordance with clause Z134 ,
 - CPI Fixed Payment over that calculated in accordance with clause Z134 and due to be paid prior to the Completion of *section 3*,
 - Incentive Amount over that calculated in accordance with clause Z108 and due to be paid prior to the Completion of *section 3*,
 - incentive under clause Z135 over that calculated in accordance with clause Z135 and
 - and additional incentive schemes under clause Z143 over that calculated in accordance with clause Z143 as if the instruction had not been issued and
- any Programme Incentive due to the *Contractor* in accordance with clause X12 is included in the amount due at the next assessment

otherwise

- the *Contractor* is not paid
 - any further Programme Incentive,
 - any further CPI Annual Payment
 - any further CPI Fixed Payment,
 - any further Incentive Amount,
 - any further incentive under clause Z135 and additional incentive schemes under clause Z143 and
 - any *Contractor's* share.

Z17.5 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Project Manager*

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

Clause Corruption or loss of data
Z18

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

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

Clause Conflict of interest
Z19

Z19.1 Any steps taken in accordance with paragraph S 213.1 in the Scope is not a compensation event.

Clause Other amounts to be paid by the Contractor
Z20

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

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

Clauses Not Used.
Z21 to
Z49

Clause Z50 Health and Safety Plan

- Z50.1 The *Client* may terminate if the *Contractor* has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the *starting date*. This is treated as a termination because of a substantial failure of the *Contractor* to comply with its obligations.
- Z50.2 The period for producing the Health and Safety Plans may be extended by not more than four weeks if the *Project Manager* and the *Contractor* agree to the extension before the Health and Safety Plans are due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.
- Z50.3 If the *Client* does not terminate, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has produced all the Health and Safety Plans in the form which the contract requires.

Clause Z51 Not Used.

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

- Z52.1 The inclusion of this clause Z52 does not indicate or confirm that the *Client* considers or anticipates that TUPE will apply at the termination or expiry of the contract.
- Z52.2 The *Contractor* represents, warrants and undertakes to the *Client* that no Contractor Employee is assigned to the *works* to the extent that his or her employment or any Employment Liabilities in respect of his or her employment will or is likely to transfer to the *Client* or an Incoming Contractor under TUPE in respect of the termination or expiry of the contract.
- Z52.3 The *Contractor* provides to the *Client* within 10 days of the *Client's* request such information in relation to Contractor Employees as the *Client* may require including
- an anonymised list of all current Contractor Employees and for each such employee the job description, length of service, age, immigration status, remuneration and the proportion of their working time spent on the provision of the *works*, indicating whether any such employee is a Potential Exit Transferring Employee,
 - an organisational chart setting out how the Contractor

Employees fit within the *Contractor* or the *Contractor* subcontractor organisation as a whole, indicating teams, team leaders, reporting lines and management for the Potential Exit Transferring Employee,

- details of any other terms and conditions of employment of such Potential Exit Transferring Employee,
- details of the current (and, if different, the contractual) place or location of work of the Potential Exit Transferring Employee and
- details of any other agreement or arrangement (including with any trade union or any other representative body) which may affect the employment of any Potential Exit Transferring Employee.

The *Contractor* promptly notifies the *Client* of any later change to information provided by it.

Z52.4 The *Contractor* acknowledges that the *Client* may disclose information provided by the *Contractor* to

- any Incoming Contractor and
- any person tendering to become an Incoming Contractor.

The *Client* obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).

Z52.5 During the eight months period immediately prior to the Completion Date, the *Contractor* submits for the acceptance of the *Client* any proposals to

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

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

Z52.6 The *Contractor* does not do anything which may adversely affect the orderly transfer of responsibility for provision of works and services similar to the *works*.

- Z52.7 The *Contractor* complies with and ensures that any subcontractor (at any stage of remoteness from the *Client*) complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's government.
- Z52.8 No later than 30 days prior to a relevant Transfer Date, the *Contractor* provides to the *Client*, any Incoming Contractor and Incoming Contractor Subcontractor, as relevant, the information set out in clause Z52.3 in relation to each Potential Exit Transferring Employee such information to include the Final Exit List and such additional information as is required by Regulation 11 of TUPE.
- Z52.9 The *Contractor* is responsible for, and indemnifies the *Client*, the Incoming Contractor and any Incoming Contractor Subcontractor, in respect of all Pay and other Employment Liabilities
- in relation to the Contractor Employees and payable in respect of any period before any relevant Transfer Date,
 - as a result of any failure by the *Contractor* or any direct or indirect subcontractor to comply with regulations 13 and 14 of TUPE except where the failure arises from the failure of the *Client*, Incoming Contractor or any Incoming Contractor Subcontractor to comply with its obligation under regulations 13 and 14 of TUPE and
 - the employment and termination of employment whether before or after the Transfer Date of any persons employed or engaged by the *Contractor* or any subcontractors (at any stage of remoteness from the *Client*) (other than any employee who immediately before the Transfer Date is an Exit Transferring Employee and whose name is included on the Final Exit List provided in accordance with the provisions of clause Z52.8) whose employment or claims or liabilities arising out of their employment or its termination transfers to the *Client* or an Incoming Contractor following the Transfer Date pursuant to or by virtue of TUPE or who claim that their employment or those claims or liabilities transfer.

Clause Z53 Pensions

- Z53.1 The *Contractor* indemnifies the *Client*, any Incoming Contractor and any Incoming Contractor Subcontractor and

holds it harmless at all times from any Employment Liabilities suffered or incurred by it arising from claims by Exit Transferring Employees or by trade unions, elected Exit Transferring Employee representatives or staff associations in respect of all or any Exit Transferring Employees which

- relate to pension rights benefits or liabilities arising in respect of periods of employment on or before the Transfer Date including any pension rights, benefits or liabilities which are alleged to transfer to the Incoming Contractor, any Incoming Contractor Subcontractor or the *Client* following any such Transfer Date or
- arise out of the failure of the *Contractor*, any of its indirect or direct subcontractors or any subsequent transferee of the Exit Transferring Employees to comply with the relevant provisions of the section headed “Pensions” in the Scope prior to the Transfer Date.

Clause Z54 Not Used.

Clause Z55 Payment of the *Contractor's* share

Z55.1 Following issue of a notice to proceed to Construction Phase, on the first Share Assessment Day the *Project Manager* makes an interim assessment of the *Contractor's* share using the *Project Manager's* forecast of

- the final Price for Work Done to Date and
- the final Target Budget.

The Target Budget includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the day of assessment of the interim *Contractor's* share.

If

- during the twelve months preceding each Share Assessment Day, the actual amount due at each assessment date is within 5% of the *Contractor's* monthly forecast of the amount due (provided in accordance with the Scope) at the relevant assessment date,
- the annual change in the Price for Work Done to Date since the preceding Share Assessment Day is within 2% of the *Contractor's* annual forecast of the change

in Price for Work Done to Date provided in accordance with this clause Z55 and

- the *Project Manager's* forecast of the final Target Budget is greater than the *Project Manager's* forecast of the final Price for Work Done to Date for the whole of the works,

then the *Contractor* is paid 50% of the interim *Contractor's* share which is the same as the proportion of work assessed by the *Project Manager* to have been completed in Construction Phase sections 1, 1A, 1B, 2 and 3 using the *Client's* earned value measurement (EVM) mechanism described in the Scope.

Any interim *Contractor's* share is included in the amount due at the next assessment date.

Z55.1A The *Contractor* provides to the *Project Manager* an annual forecast of the change in Price for Work Done to Date to the next Share Assessment Day no later than twelve months before the notified next Share Assessment Day.

If the *Contractor* does not provide the forecast twelve months before the next Share Assessment Day, then any future interim assessment of the *Contractor's* share is not paid.

Z55.2 On each Share Assessment Day, the *Project Manager* makes an interim assessment of the *Contractor's* share using the *Project Manager's* forecast of

- the final Price for Work Done to Date and
- the final Target Budget.

The Target Budget includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the day of assessment of the *Contractor's* share.

If

- during the twelve months preceding each Share Assessment Day, the actual amount due at each assessment date is within 5% of the *Contractor's* monthly forecast of the amount due (provided in accordance with the Scope) at the relevant assessment date,
- the annual change in the Price for Work Done to Date since the preceding Share Assessment Day is within 2% of the *Contractor's* annual forecast of the change in Price for Work Done to Date provided in accordance with this clause Z55 and

- the *Project Manager's* forecast of the final Target Budget is greater than the *Project Manager's* forecast of the final Price for Work Done to Date for the whole of the *works*,

then the *Contractor* is paid 50% of the interim *Contractor's* share which is the same as the proportion of work assessed by the *Project Manager* to have been completed in Construction Phase sections 1, 1A, 1B, 2 and 3 using the *Client's* earned value measurement (EVM) mechanism described in the Scope but adjusted for any previous

- *Contractor's* share paid to the *Contractor* and
- *Contractor's* share paid to the *Client* (which has not already been repaid by the *Client*)

unless the *Contractor* has not provided

- the *Contractor's* annual forecast of the change in Price for Work Done to Date provided in accordance with clause Z55 and
- the *Contractor's* monthly forecast of the amount due in accordance with the Scope.

Any interim *Contractor's* share is included in the amount due at the next assessment date.

Z55.3 If, prior to Completion of the whole of the *works*, the Price for Work Done to Date exceeds the Target Budget (the Target Budget includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented), then

- no further assessments are undertaken in accordance with Z55.1 and Z55.2,
- the *Project Manager* makes an assessment of the *Contractor's* share of the difference between the Target Budget and the Price for Work Done to Date at each assessment date. The Target Budget includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date and
- the *Contractor* repays any earlier interim *Contractor's* share paid to the *Contractor* (which has not already been repaid to the *Client*).

This *Contractor's* share is included in the amount due to the *Contractor*.

Z55.4 In clause 54.3, in two places, after “*works*” insert “other than *section 4*”.

Z55.5 The *Contractor* provides to the *Project Manager* an annual forecast of the change in Price for Work Done to Date to the next Share Assessment Day no later than twelve months before the notified next Share Assessment Day.

Clause Z56 Construction Industry Scheme

Z56.1 In this clause (but not otherwise)

- the Act is the Finance Act 2004 and
- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z56.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z56.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z56.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration

- the *Contractor* submits an application for payment which separately identifies the cost of labour and
- the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clauses Z57 Infrastructure Act 2015

Z57.1 The *Contractor* Provides the Works in compliance with, and so as not to put the *Client* in breach of

- the Licence and
- any other directions and guidance issued by the Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Project Manager* to the *Contractor*).

Z57.2 The *Project Manager* notifies the *Contractor* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *works*. The *Contractor* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

Clause Z58 Revisions to Quality Statement

Z58.1 The *Contractor* may submit to the *Project Manager* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that

- it will not enable the *Contractor* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Contractor* to comply with the Scope provided by the *Client*,
- it does not allow the *Contractor* to comply with the *conditions of contract*,
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015,
- it will not enable the *Contractor* to achieve the level of performance specified in the Quality Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement.

Z58.2 A revision to the Quality Statement accepted by the *Project Manager* is not a compensation event unless the revision is in response to an instruction given to remove a proposal listed on the *non-material schedule* to resolve an ambiguity or inconsistency with the Development Consent Order.

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

- to remove construction methodology,
- where it does not demonstrate how it enables the *Contractor* to comply with the Scope provided by the *Client* or
- where it does not enable the *Contractor* to Provide the Works.

This instruction is not a compensation event unless the revision is in response to an instruction given to remove a proposal listed on the *non-material schedule* to resolve an

ambiguity or inconsistency with the Development Consent Order.

- Z58.4 A revision to the Quality Statement agreed by the *Client* in accordance with the Scope is not a compensation event unless the revision is in response to an instruction given to remove a proposal listed on the *non-material schedule* to resolve an ambiguity or inconsistency with the Development Consent Order.

Clause Z59 Indemnified claims

- Z59.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a claim made by a third party against the *Client* in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).
- Z59.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.
- Z59.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.
- Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that the *Client* is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Contractor*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
 - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Contractor* in conducting the Indemnified Claim,

the *Contractor* is released from its indemnity to the *Client* in respect of it.

Clause Z60 Tax Arrangements of the *Contractor's* Staff

Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z60.3 The *Client* may, at any time during the term of the contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.

Z60.4 If the *Contractor* fails to provide information in response to a request under clause Z60.3

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it

the *Client* may

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

Z60.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Contractor* to comply with its obligations.

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

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

to the Commissioners of Her Majesty's Revenue & Customs and Revenue Scotland for the purpose of the

collection and management of revenue for which they are responsible.

Clauses Z61 to Z99 Not Used.

Clause Z100 Not Used.

Clause Z101 Not Used.

Clause Z102 Not Used.

Clause Z103 Landscaping Aftercare

Z103.1 The following *additional conditions of contract* apply in relation to the *section 4* comprising landscaping aftercare only

- (1) Until the Completion Date, the *Supervisor* notifies the *Contractor* of each Defect as soon as it is found and the *Contractor* notifies the *Supervisor* of each Defect as soon as it is found.
- (2) The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins when the Defect is notified.
- (3) If the *Contractor* is not given access in order to correct a notified Defect before the end of the *defect correction period*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect.
- (4) If landscaping aftercare is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule, the date when each such activity is completed is an assessment date.

Z103.2 As part of the environmental management plan 3 submission (see Scope), the *Contractor* submits to the *Project Manager* for acceptance

- the proposed subactivities for the landscaping aftercare for inclusion into the Activity Schedule and the proposed work to be undertaken for such subactivities,
- the subactivities proposed Prices, being a proportion of the associated forecast Defined Cost and associated Fee within activity number 10.1.16 entitled 'Landscaping Aftercare' in the Activity Schedule. The sum of the forecast Prices for such subactivities equals the value of activity number 10.1.16 entitled 'Landscaping Aftercare'.

A reason for not accepting the sub activities' Prices is

- the sum of the forecast subactivities' Prices does not equal the value of activity number 10.1.16 entitled 'Landscaping Aftercare' or
- a forecast Price for a subactivity is not proportionate to the subactivity's work.

The Activity Schedule is updated with the accepted subactivities and associated Prices.

Clause Z104 Single point design responsibility

- Z104.1 The *Contractor* accepts sole responsibility for the design of the whole of the *works* except for the Roads South Drainage Works, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Client*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of the contract as having been carried out by the *Contractor*.
- Z104.2 The *Contractor* is not relieved from its liabilities or obligations under the contract and such liabilities or obligations are not restricted or qualified in any way by
- the presence of the *Client*, *Project Manager*, *Supervisor* or any representative of those on the Site or the Working Areas,
 - the carrying out of tests or inspections by the *Supervisor* or by the *Contractor* (whether or not watched by the *Supervisor*) or
 - any instruction, agreement, acceptance or inspection made or given by or on behalf of the *Project Manager* or *Supervisor* (or by any failure to make or give the same).

Clause Z105 Innovation – Title to Equipment

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

Clause Z106 Extended liability period for Plant and Materials

- Z106.1 If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant and Materials stated in the Contract Data requires the replacement of part of the Plant and Materials, the *Contractor* corrects any further Defect in the part which has been replaced during the *extended liability period*.
- Z106.2 The *Contractor* carries the risk of loss or damage caused by or resulting from work in correcting a Defect after the *defects date*.

Clause Z107 Not Used.

Clause Z108 Enhancements

- Z108.1 The *Contractor* may at any time submit to the *Project Manager* a proposal for an Enhancement.
- Z108.2 Before developing a proposed Enhancement, the *Contractor* prepares and submits to the *Project Manager* an outline business case setting out brief details of
- the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements,
 - the expected long-term benefit to the *Client* if the proposed Enhancement is implemented,
 - any significant risks to the successful development and implementation of the proposed Enhancement,
 - any resulting change to the Prices or the *Client's* other costs and
 - any incentive payment which the *Contractor* proposes should be paid to it if the proposed Enhancement is successfully implemented.
- Z108.3 The *Project Manager* and the *Contractor* jointly review the outline business case. The *Project Manager* assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the *Contractor* whether the *Project Manager* is likely to agree the proposed Enhancement.
- Z108.4 The *Contractor* continually monitors the development of a proposed Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.
- Z108.5 The *Contractor* may propose to the *Project Manager* that trials, testing or a pilot project be carried out to assist with

the development of a proposed Enhancement. If the *Project Manager* agrees, it may instruct the *Contractor* to undertake any or all of the following

- to develop a detailed specification for the Enhancement,
- to carry out a trial, testing or
- a pilot project.

Z108.6 The *Contractor* may prepare and submit to the *Project Manager* for agreement a detailed business case for the proposed Enhancement. A detailed business case includes

- full details of the revised design, materials used, methods of construction or maintenance or operational performance requirements,
- full details of the expected long-term benefit to the *Client* if the Enhancement is implemented and the period over which the benefit is to be assessed,
- how any risks associated with the implementation of the Enhancement are to be allocated,
- a cost benefit analysis,
- any resulting change to the Prices,
- any expected change to the *Client's* other costs and the timescale over which the change will occur and
- the proposed Incentive Amount and a proposal as to how it is to be paid to the *Contractor* if the Enhancement is successfully implemented.

The *Project Manager* and the *Contractor* may discuss the detailed business case and the *Contractor* updates the business case following the discussion.

Agreement of the business case is at the sole discretion of the *Project Manager*.

Z108.7 The *Project Manager* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Project Manager* instructs the implementation of an agreed Enhancement as a change to the Scope.

Z108.8 If the *Contractor* decides not to pursue a proposed Enhancement, the *Client* may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the *Client* may use or adapt any material submitted by the *Contractor* as part of its proposal, outline business case and detailed business case.

Z108.9 Other than where instructed by the *Project Manager* to carry out trials, testing or a pilot project under clause Z108.5, the *Contractor* 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 *Contractor's* proposal and outline business case under clause Z108.8.

Z108.10 Not Used.

Z108.11 If an Enhancement instructed by the *Project Manager* under clause Z108.7 following the submission of a detailed business case by the *Contractor* delivers the benefits described in the *Contractor's* detailed business case before the *defects date*, the *Client* pays to the *Contractor* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Contractor* a proportionate part (as assessed by the *Project Manager*) of the Incentive Amount.

Z108.12 The Incentive Amount (or the proportionate part assessed by the *Project Manager*) is included in the final amount due, except that the Parties may agree to include it in an earlier amount due if the *Client* has actually received the full benefit of the Enhancement by an earlier date.

Clause Z109 Termination

Z109.1 The following is added at the end of clause 90.4 of the *conditions of contract*

“unless instructed otherwise by the *Project Manager*”.

Z109.2 Delete item A4 in clauses 90.2 the Termination Table and 93.2 of the *conditions of contract*.

Z109.3 The following are treated as a substantial failure by the *Contractor* to comply with its obligations

- the *Contractor's* performance as measured in accordance with the current edition of the *Client's* Collaborative Performance Framework (or any replacement for it) is below the *failure level*,
- the *Contractor's* performance as measured in relation to the balance score card or
- a key resource needed by the *Contractor* to Provide the Works is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Project Manager*.

Clause Z110 Legal Proceedings in the name of the *Client*

Z110.1 The *Contractor* indemnifies and keeps indemnified the *Client* in respect of any claims or losses suffered which may arise out of or in the course of or in connection with the

taking of any measures authorised by the *Client* in accordance with the contract, including

- the taking of any legal proceedings,
- enforcement of any court order,
- enforcement of any applicable law without a court order,
- the doing of anything whatsoever taken, enforced or done or purported to be taken, enforced or done

in the name of or on behalf of the *Client*.

Z110.2 If the *Client* revokes (in whole or in part including as to any specific proceedings) any *Client* authority granted in accordance with the contract (as referred to in Scope section S215), the *Contractor* is released from its indemnity under clause Z110.1 save to the extent of any accrued or contingent liability thereunder which has arisen before the date of the revocation of authority pursuant to this clause Z110.2 and to the extent of any liability which arises as a result of

- a breach by the *Contractor* of its obligations under the contract before or after the date of revocation of authority or
- the manner in which the *Contractor* exercised the authority granted (whether or not in breach of such obligations) where such liability ought to have been avoided by the *Contractor*.

Z110.3 The *Client* is not responsible for

- the presence on or around, or entry onto or around, the Site and Working Areas of any Protester or Trespasser,
- any other interference with or affecting the Site and Working Areas or the vicinity of it caused by any Protester or Trespasser,
- any other interference with the *works* by or caused by any Protester or Trespasser or
- any act, omission or default of a Protester or Trespasser.

Z110.4 As between the *Client* and the *Contractor*, the *Contractor* bears, without recourse to the *Client*, any loss suffered by either Party and any other person which is caused by any Protester or Trespasser, including any damage to property, personal injury, death or loss of income to the extent caused or contributed by a failure of the *Contractor* to comply with the Security Management Plan (SMP). Nothing in this clause Z110.4 affects

- any right of the *Client* to make or recover any claim against any Protester or Trespasser for any damage suffered by the *Client* or Others or
- any right of the *Contractor* to make or recover any claim against any Protester or Trespasser for any damage suffered by the *Contractor*.

Clause Z111 **Not Used.**

Clause Z112 **Finalisation of Defined Cost for Elements**

- Z112.1 Following completion of either an Element or following an anniversary of the Contract Date, the *Project Manager*
- for the first anniversary of the Contract Date after the first anniversary date for the issue of a notice to proceed to Construction Phase, notifies the *Contractor* if the Defined Cost for the preceding Contract Year is to be finalised or not or
 - for other anniversaries of the Contract Date, may notify the *Contractor* that it wishes to finalise the Defined Cost for the Element or the preceding Contract Year.
- Z112.2 Following Completion of all the work required for *section 1* to *section 4*, the *Contractor* finalises the Completion Defined Cost not included in a Closed Defined Cost.
- Z112.3 Within
- four weeks of the *Project Manager's* notification, the *Contractor* submits to the *Project Manager* for acceptance its assessment of the Defined Cost for the Element and makes available for inspection the records necessary to demonstrate that it has been correctly assessed and
 - six weeks of the *Project Manager's* notification, the *Contractor* submits to the *Project Manager* for acceptance its assessment of the Defined Cost for the preceding Contract Year and makes available for inspection the records necessary to demonstrate that it has been correctly assessed.
- The *Project Manager* reviews the material made available, and within eight weeks
- accepts the Defined Cost for the Element or for the preceding Contract Year as correct,
 - notifies the *Contractor* that further material is needed or

- notifies the *Contractor* of errors in its assessment.
- Z112.4 Within six weeks of Completion of
- all the work required for *section 1* to *section 2* or
 - a notice to the *Contractor* that the *Project Manager* wishes to finalise the Defined Cost for the Element or the preceding Contract Year,
- the *Contractor* submits to the *Project Manager* for acceptance its assessment of the finalised Completion Defined Cost not included in a Closed Defined Cost and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Project Manager* reviews the material made available, and within thirteen weeks
- accepts the Completion Defined Cost not included in Closed Defined Cost as correct,
 - notifies the *Contractor* that further material is needed or
 - notifies the *Contractor* of errors in its assessment.
- Z112.5 If the *Project Manager* does not notify a decision on
- the Defined Cost for an Element
 - the Defined Cost for a preceding Contract Year or
 - the Completion Defined Cost not included in a Closed Defined Cost
- within the time stated, the *Contractor's* assessment is treated as correct.
- Z112.6 If the *Contractor* fails to
- submit its assessment of the Defined Cost for an Element and make the necessary records available for inspection,
 - submit its assessment of the Defined Cost for a preceding Contract Year and make the necessary records available for inspection,
 - submit its assessment of the Completion Defined Cost not included in a Closed Defined Cost,
 - provide any further material requested within four weeks of the notification or
 - advise the correction of the errors in its assessment within four weeks of the notification
- within the time stated, the *Project Manager* may assess
- the Defined Cost for the Element
 - the Defined Cost for the preceding Contract Year or
 - the Completion Defined Cost not included in a Closed Defined Cost

and notify the *Contractor* of the assessment.

Z112.7 The work in the Mobilisation Phase is an Element. The *Project Manager* and the *Contractor* may agree changes to the Elements or additional Elements when agreeing the total of the Prices for the Construction Phase.

Z112.7A The *Project Manager* may notify the *Contractor* of additional Elements.

Z112.8 The *Contractor* ensures each subcontract (at any stage of remoteness from the *Client*)

- contains equivalent provisions of this clause Z112, unless agreed otherwise with *Project Manager* and
- contains a provision for such subcontracted works and services completed since the last assessment date to be invoiced (with its issue) to the *Contractor* no later than seven days after the current assessment date.

A failure to comply with this clause Z112.8 is treated as a substantial failure by the *Contractor* to comply with its obligations.

Clause Z113 Not Used.

Clause Z114 The Affected Property

Z114.1 The *Project Manager* may change the Affected Property.

Z114.2 Any change to the Affected Property is not a compensation event.

Clause Z115 DCO's Enabling Works and Mobilisation Phase's Pre-commencement Development Consent Order

Z115.1 The *Project Manager* may alter

- the DCO's Enabling Works and
- Mobilisation Phase's Pre-commencement Development Consent Order Activities

to reflect identified works and activities that needs to be delivered before the *Contractor* is given access to the Site to enable the 'commencement of construction' as defined by the Development Consent Order.

Z115.2 The Party delivering a Pre-commencement Development Consent Order Activity is stated in the Contract Data.

Z115.3 Any revision to the DCO's Enabling Works or Mobilisation Phase's Pre-commencement Development Consent Order Activities by the *Project Manager* is not a compensation event.

Clause Z116 Not Used.

Clause Z117 Mobilisation Phase

- Z117.1 Not Used.
- Z117.2 The *Contractor* provides detailed forecasts of the total Defined Cost and lump sum Prices of the work to be done in the Mobilisation Phase for acceptance by the *Project Manager*. Forecasts are prepared at the intervals stated in Contract Data from the *starting date* until the issue of a notice to proceed to the Construction Phase.
- Z117.3 Within one week of the *Contractor* submitting a Mobilisation Phase forecast for acceptance, the *Project Manager* either accepts the forecast or notifies the *Contractor* of the reasons for not accepting it. A reason for not accepting the forecast is that
- it does not comply with the Scope or
 - it includes work which is not necessary for the Mobilisation Phase.
- Z117.4 The *Contractor* makes a revised submission taking account of the *Project Manager's* reasons.
- Z117.5 The Defined Cost of any work that is not included in the accepted detailed forecasts of the total Defined Cost and lump sum Prices of the work to be done in the Mobilisation Phase Activities is treated as a Disallowed Cost.
- Z117.6(1) The *Project Manager* may instruct the *Contractor* to perform Construction Phase Activities (or proportion of an activity) during the Mobilisation Phase. This instruction is not a compensation event.
- Z117.6(2) If the *Project Manager* instructs Construction Phase Activities During The Mobilisation Phase then the relevant Fee for such activities (or proportion of an activity) is the lump sum calculated by applying the Construction Phase Fee Percentage to the forecast Defined Cost for each of the relevant activities (or proportion of an activity) in the Construction Phase Activity Schedule to be undertaken during the Mobilisation Phase and is done when the relevant instruction is issued in accordance with clause Z117.2, the "Construction Phase Works Fee In The Mobilisation Phase".

- Z117.6(3) The Prices in respect of the Mobilisation Phase are not adjusted for any Construction Phase Activities instructed to be carried out in the Mobilisation Phase.
- Z117.6(4) Not Used.
- Z117.6(5) Not Used.
- Z117.7 The *Project Manager* may instruct a Construction Phase Activity (or part of any Construction Phase Activity) to become a Mobilisation Phase Activity during the Mobilisation Phase.
- Z117.8 If the *Project Manager* instructs a Construction Phase Activity (or part of any Construction Phase Activity) to become a Mobilisation Phase Activity, then
- the relevant Prices in the Construction Phase Activity Schedule are reduced by
 - the change in the Defined Cost (at the *base date* level assessed in accordance with clause 63 or clause 64 and Option X1), less the risk allowance included in the change to the Prices, for the Mobilisation Phase resulting from such instruction and
 - the resulting Fee,
 - the Risk Quota and relevant allocations of Risk Quota in the Risk Quota Activity Schedule are reduced by the risk allowance (at the *base date* level) included in the change to the Prices for the Mobilisation Phase resulting from such instruction and
 - the Construction Phase Works Fee is reduced by the amount calculated by applying the Construction Phase Fee Percentage to the risk allowance (at the *base date* level) included in the change to the Prices for the Mobilisation Phase resulting from such instruction.
- Z117.9 The *Project Manager* may instruct a Mobilisation Phase Activity (or part of any Mobilisation Phase Activity) to become a Construction Phase Activity.
- Z117.10 The *Project Manager* may subdivide any activity in the Mobilisation Phase Activity Schedule. The *Project Manager*
- assesses the Prices of such subactivity as if it is a compensation event,
 - ensures that the total of such subactivities' Prices is equal to the activity's Price that is subdivided and
 - discusses its assessment with the *Contractor*.

The *Project Manager* confirms the revised activities and subactivities and the Prices in the Mobilisation Phase Activity Schedule.

Z117.11 The *Project Manager* consults with the *Contractor* on any impact of any instruction

- proposed to be given under clause 34 or
- given under clause 34

to stop or not start work on a Mobilisation Phase Activity (or part thereof). The *Contractor* provides its assessment

- on the impact on the Critical Path for the Accepted Programme,
- when the *Project Manager* would need to give an instruction to restart or start work on such an activity (or part thereof) to prevent an impact on the Critical Path of the Accepted Programme.

If the *Project Manager* gives an instruction to stop or not start work on a Mobilisation Phase Activity (or part thereof), then each month along with the programme submitted for acceptance in accordance with clause 32 the *Contractor's* assessment of when the *Project Manager* would need to give an instruction to restart or start work on such an activity (or part thereof) to prevent an impact on the Critical Path of the Accepted Programme and programme submitted for acceptance.

Z117.12 The *Project Manager* may notify the *Contractor* of an increase in a Financial Year Cap (at the *base date*).

Z117.13 If a compensation event occurs during the Mobilisation Phase that

- impacts the Mobilisation Phase Activities and
- increases the total of the Prices on the Mobilisation Phase Activity Schedule

the change to the relevant Financial Year Cap (at the *base date*) is the increase in the total of the Prices on the Mobilisation Phase Activity Schedule.

Clause Z118 Notice to proceed to Construction Phase

Z118.1 The *Project Manager* issues a notice to proceed to Construction Phase when

- the *Contractor* has
 - unless agreed otherwise with the *Client*, completed all the Mobilisation Phase's Deliverables (including approvals and consents from Others as stated in the

- Scope),
 - delivered its organisational structure and processes for Providing the Works so that they are fully developed and integrated with the *Client's* own organisational structure and processes,
 - fully embedded its *leadership team* into the integrated structure,
- unless agreed otherwise with the *Client*
 - the *Project Manager's* assessment of the sum of
 - the forecast Price for Work Done to Date at Completion for the whole of the *works* and
 - the forecast cost of any payments to be made by the *Client* for the provision and use in the Working Area of electricity for the operation of the Tunnel Boring Machine and Slurry Treatment Plantis less than sum of the Target Budget and the *Project Manager's* forecast cost for the provision and use in the Working Area of electricity for the operation of the Tunnel Boring Machine and Slurry Treatment Plant and
 - the Development Consent Order is no longer subject to actual or periods of time high court or appeal court proceedings and
- the *Client* has confirmed the *works* are to proceed.

Z118.2 If the *Client* decides the *works* is not to proceed at any time prior to the issue of a notice to proceed to the Construction Phase, the *Client* informs and confirms to the *Project Manager* the *works* are not to proceed within seven days of the decision and then the *Project Manager* notifies the *Contractor* within a further seven days the *works* are not to proceed and that a notice to proceed to Construction Phase is not to be issued.

Z118.3 If a notice to proceed to Construction Phase is not issued for any reason (including if the *Client* decides the *works* is not to proceed at any time prior to the issue of a notice to proceed to Construction Phase), the *Project Manager* issues an instruction that the remaining work required is removed from the Scope. This instruction is not a compensation event.

Following this instruction

- the *Project Manager* does not assess the *Contractor's* share, the *Contractor* is not paid its share of the savings and does not pay its share of the excess and
- the *Contractor* is not entitled to

- any Construction Phase Fee (except Construction Phase Works Fee In The Mobilisation Phase assessed in accordance with clause Z123),
- any further Mobilisation Phase lump sums that are not Completed and
- any further
 - CPI Fixed Payments,
 - CPI Annual Payments,
 - payments in accordance with the incentive schemes in accordance with clause Z108,
 - payments in accordance with the carbon incentive schemes in accordance with clause Z135,
 - payments in accordance with the incentive schemes notified in accordance clause Z143 and
 - any further Programme Incentive.

Z118.4 If the *Project Manager* does not issue a notice to proceed to Construction Phase the *Client* may appoint another contractor to complete the *works*.

Z118.5 If a notice to proceed to Construction Phase is not issued for any reason, the *Contractor* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the *works* or any part of them.

Clause Z118A Notice to proceed to Pre-DCO Mobilisation Construction Phase Works.

Z118A.1 The *Project Manager* may issue a notice to proceed to Pre-DCO Mobilisation Phase when the *Contractor* has obtained approvals and consents from Others as stated in the Scope for Pre-DCO Mobilisation Phase

Clause Z118B access to the Site

Z118B.1 The *Client* provides access to the Site to enable the 'commencement of construction' as defined by the Development Consent Order when

- the *Contractor* has completed and discharged its Pre-commencement Development Consent Order Activities and
- unless agreed otherwise with the *Client*, the *Client* has completed the Enabling Works and its Pre-commencement Development Consent Order Activities.

Clause Z119 **Not Used.**

Clause Z120 **Payment bond**

Z120.1 The *Contractor* gives a payment bond to the *Client* for an amount equal to any payment to

- a *tunnel boring machine supplier*,
 - a *slurry treatment plant supplier* and
 - a *tunnel lining mould supplier*
- unless the *Project Manager* states that
- a payment bond is not required for a payment to
 - a *tunnel boring machine supplier*
 - a *slurry treatment plant supplier* or
 - a *tunnel lining mould supplier* or
 - no further payment bonds are required.

The bond is in the form set out in the Scope (or such other form as the *Client* may reasonably require). Any amount to be paid by the *Client* in respect of payment to a *tunnel boring machine supplier*, a *slurry treatment plant supplier* or a *tunnel lining mould supplier* is included at the next assessment date after either

- the *Client* receives the payment bond or
- the *Project Manager* has stated that a payment bond is not required for the amount of a payment to
 - a *tunnel boring machine supplier*
 - a *slurry treatment plant supplier* or
 - a *tunnel lining mould supplier*.

Z120.2 A payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting a proposed bank or insurer is that

- it does not have a credit rating at least equal to
 - long term credit rating of A or short term issues
 - credit rating of A2 (Standard & Poor's Financial Services LLC.), long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)unless agreed otherwise by the *Project Manager*
- it does not have a sufficiently strong commercial position to carry the bond
- it is not registered as a company in England,
- a legal opinion in accordance with clause Z120.6 is not received or
- the bond is not subject to the *law of the contract* or does not have appropriate financial regulation or have a

- standing of good repute in the United Kingdom financial market.
- Z120.3 If
- the credit rating of the issuer of a payment bond falls below
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.),
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.) or
 - the advanced payment bond becomes invalid or unenforceable for any reason
- the *Contractor* replaces the payment bond with a new payment bond issued by a bank or insurer accepted by the *Project Manager* in the form set out in the Scope (or such other form as the *Client* may reasonably require) within four weeks, unless the *Project Manager* states that a replacement payment bond is not required.
- Z120.4 A failure to comply with this clause Z120 is treated as a substantial failure by the *Contractor* to comply with its obligations and no further payments are made to the *Contractor* until a replacement payment bond for any relevant payment bond is provided.
- Z120.5 Any payment of Defined Cost under items 101 to 104 and 111 to 115 of the Schedule of Cost Components is an advanced payment and is considered as repaid only on the Completion of *section 1*. No amount of this advanced payment is considered repaid, at any time prior to Completion of *section 1*.

Clause Z121 Not Used.

Clause Z122 Scope provided by the *Contractor* for its design

- Z122.1 Any additional Scope provided by the *Contractor* becomes Scope provided by the *Contractor* for its design.

Clause Z123 Lump Sum Fee

- Z123.1 For
- *sections 1, 1A, 1B and 2*, the Construction Phase Works Fee is the lump sum amount calculated by applying the *construction phase fee percentage* to

- the Defined Cost (at the *base date* level) for each of the relevant activities in the *construction phase activity schedule* (excluding activities in sections 3 and 4) and
 - the Risk Quota (at the *base date* level) for each of the relevant activities in the Risk Quota Activity Schedule,
 - section 3, the Construction Phase Section 3 Fee is the lump sum amount calculated by applying the Construction Phase Fee Percentage to the Defined Cost for each of the relevant activities in the Construction Phase Activity Schedule (and the lump sum Prices include the Fee) and
 - section 4, the Construction Phase Section 4 Fee is the lump sum amount calculated by applying the *construction phase fee percentage* to the Defined Cost for each of the relevant activities in the *construction phase activity schedule* (and the lump sum Prices include the Fee).
- Z123.2(1) If the *Project Manager* instructs any Construction Phase Activity (or proportion of an activity) to be undertaken during Mobilisation Phase then the relevant Fee for such activities is the lump sum calculated by applying the Construction Phase Fee Percentage to
- the Defined Cost (at the *base date* level) for each of the relevant activities in the Construction Phase Activity Schedule to be undertaken during Mobilisation Phase and
 - the Risk Quota for each of the relevant activities in the Risk Quota Activity Schedule
- and is done when the relevant Prices for such Construction Phase are agreed or assessed, the “Construction Phase Works Fee In The Mobilisation Phase”.
- Z123.2(2) After the instruction is issued, the Price for Work Done to Date at each assessment date includes a proportion of the lump sum Construction Phase Works Fee In The Mobilisation Phase which is the same as the proportion of work assessed by the *Project Manager* for such activities to have been completed in Mobilisation Phase using the *Client’s* earned value measurement (EVM) mechanism described in the Scope.
- Z123.2(3) After the instruction is issued, if a compensation event in clause 60.1 of the *conditions of contract* occurs that affects such activities, the Construction Phase Works Fee In The Mobilisation Phase is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost (at the *base date* level) for the relevant Construction Phase

Activities, assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the Construction Phase Works Fee In The Mobilisation Phase.

Z123.3 After a notice to proceed to Construction Phase is issued, if a compensation event in clause 60.1 of the *conditions of contract* occurs during *sections 1, 1A, 1B or 2*, the Construction Phase Works Fee is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost (at the *base date* level) for the Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64 and Option X1. The product of this calculation is added to or deducted from the Construction Phase Works Fee.

Z123.3A If during the Mobilisation Phase, the *Project Manager* gives an instruction changing a Mobilisation Phase Activity (or part of a Mobilisation Phase Activity) to become a Construction Phase Activity, the Construction Phase Works Fee is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost (at the *base date* level) for the Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64 and Option X1. The product of this calculation is added to the Construction Phase Works Fee.

Z123.4 After a notice to proceed to Construction Phase is issued and up to Completion of *sections 1, 1A, 1B and 2*, the Price for Work Done to Date at each assessment date

- includes a proportion of the lump sum Construction Phase Works Fee (less any Construction Phase Works Fee In The Mobilisation Phase) which is the same as the proportion of work assessed by the *Project Manager* to have been completed in Construction Phase *sections 1, 1A, 1B and 2* (less any work by a Design Consultant which has not given a *Subcontractor undertaking to the Client*) using the *Client's* earned value measurement (EVM) mechanism described in the Scope and
- Not Used.

Z123.4A At each assessment date the *Project Manager* makes an assessment of any

- Performance Repayment and
- Retrospective Performance Repayment

due to the *Client* in accordance with the *performance manual*, section 4 CPF QMP thresholds for Performance Repayment.

- Z123.5 At each assessment date the *Contractor* pays the *Client*
- the Performance Repayment and
 - the Retrospective Performance Repayment
- as calculated in accordance with the *performance manual*.
- If there are no more assessment dates, the *Contractor* pays the *Client* the Retrospective Performance Repayment within 28 days of the assessment.
- Z123.5A At each Withholding Assessment Date the *Project Manager* assesses
- the Improvement Payment and
 - Performance Withheld Amount
- in accordance with the *performance manual* and the Improvement Payment such the Improvement Payment is included in the amount due at the next assessment date. The *Contractor* does not recover Performance Withheld Amount.
- Z123.6 The Mobilisation Phase Fee and Construction Phase Fee (including the Construction Phase Works Fee In The Mobilisation Phase) is reduced in accordance with any accepted quotation under clause 45.2 of the *conditions of contract*.
- Z123.7 If a compensation event in clause 60.1 of the *conditions of contract* occurs to
- the Mobilisation Phase, the Mobilisation Phase Fee is adjusted by applying the Mobilisation Phase Fee Percentage to the changes to the Defined Cost for the Mobilisation Phase Activities, assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the Mobilisation Phase Fee
 - *section 3*, the Construction Phase Section 3 Fee is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost for the Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the Construction Phase Section 3 Fee or
 - *section 4*, the Construction Phase Section 4 Fee is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost for the Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the Construction Phase Section 4 Fee.

- Z123.8 If the *Project Manager* instructs Construction Phase Activities During The Mobilisation Phase then the relevant Fee for such activities is the lump sum calculated by applying the Construction Phase Fee Percentage to the *Project Manager's* forecast Defined Cost (at the *base date* level) for each of the relevant activities in the Activity Schedule to be undertaken during the Mobilisation Phase and is done when the relevant instruction is issued in accordance with clause Z117.2, the "Construction Phase Works Fee In The Mobilisation Phase".
- Z123.9 After an instruction is issued in accordance with clause Z117.6, if a compensation event occurs that affects such Construction Phase Activities During The Mobilisation Phase, the Construction Phase Works Fee In The Mobilisation Phase is adjusted by applying the Construction Phase Fee Percentage to the changes to the Defined Cost (at the *base date* level) for the relevant Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64 and option X1. The product of this calculation is added to or deducted from the Construction Phase Works Fee In The Mobilisation Phase.
- Z123.10 If the *Project Manager*
- instructs the *Contractor* to submit a quotation for a proposed instruction to change the insurances provided by the *Contractor* or
 - instructs a change to the insurance provided by the *Contractor*,
- for
- *sections* 1, 1A, 1B and 2, the change to the Construction Phase Works Fee is the proportion of DD incurred by the *Contractor* during *sections* 1, 1A, 1B and 2,
 - *section* 3 the change to the Construction Phase Section 3 Fee is the proportion of DD incurred by the *Contractor* during *section* 3 and
 - *section* 4 the change to the Construction Phase Section 4 Fee is the proportion of DD incurred by the *Contractor* during *section* 4
- where DD is as defined in clause Z139.

Clause Z124 Not Used.

Clause Z125 Not Used.

Clause Z126 Not Used.

Clause Z127 Additional cost or delay

Z127.1 The *Contractor* is deemed to have allowed in the Risk Quota for any

- additional cost or
- delay to Completion or achieving a Key Date

arising from any instruction of the *Project Manager* or the *Supervisor* or any breach of contract by the *Client* (including a default by the *Project Manager* or the *Supervisor*) which is not a compensation event under clause 6.

Z127.2 The *Contractor* agrees and acknowledges, that in the event of any act, inaction or omission of the *Client*, the *Project Manager* or the *Supervisor* (whether accidental or deliberate)

- causing delay to or in connection with the *Contractor* Providing the Works and
- which is not a compensation event under clause 6,

the *Contractor* remains liable for delay damages in accordance with clause X7.1 or general damages under clause 30.3 (as the case may be) and the *Contractor* is not relieved of its obligation to achieve

- Completion by the relevant Completion Date or
- the relevant Condition by each Key Date,

and the *Contractor* is deemed to have allowed for all such risks in the lump sum Prices and Risk Quota.

Clause Z128 Remedy for any breach by the *Client*

Z128.1 Except for a Client Breach, the Parties have agreed that the Risk Quota is an allowance within the Target Budget for all and any risk that the *Contractor* bears under or in connection with the contract (including those referred to in clause Z128.2) and the *Contractor* is deemed to have in its consideration of the operation of clause 6 and any Programme Incentive excluded or waived any entitlement to any other all remedies at law or under the contract which it may otherwise have had against the *Client* in respect of such risk other than those rights and remedies expressly set out in the contract and which result in

- payments due or

- adjustments to a Key Date or Completion Date in accordance with the contract.

Z128.2 Except for a Client Breach, the *Contractor's* sole remedy for any

- breach,
- neglect or
- default

under or in connection with the contract by

- the *Client*,
- any person employed by or contracted to the *Client* or for whom the *Client* is otherwise responsible under the contract including the *Project Manager* or the *Supervisor* or
- any Others

is the payment of

- Defined Cost and Fee and
- lump sum

under the contract subject to the operation of clauses 54 and X12 and any adjustment to a Key Date or Completion Date under the contract. In consideration of such payments and adjustments the *Contractor* excludes any and all other remedies at law or under the contract which it might otherwise have against the *Client* in respect of any such breach, neglect or default.

Z128.3 Nothing in the contract excludes or limits the liability of either Party for

- death or personal injury caused by negligence and
- fraud or fraudulent misrepresentation.

Clause Z129 Duration of *section 3*

Z129.1 If at expiry of the Initial Duration of Section 3 the Section 3 Performance Requirements were achieved for the whole of the Initial Duration of Section 3 period then the *Project Manager* certifies Completion of *section 3* and the Duration of Section 3 is not extended, otherwise the Duration of Section 3 is extended by twelve weeks commencing on the expiry of the Initial Duration.

Z129.2 If

- the Duration of Section 3 is extended and

- the Section 3 Performance Requirements are achieved for the whole of last twelve weeks of the Duration of Section 3

then the *Project Manager* certifies Completion of *section 3* at the end of the Duration of Section 3 and the Duration of Section 3 is not extended, otherwise the Duration of Section 3 is extended by twelve weeks commencing on the expiry of the last twelve weeks of the Duration of Section 3 immediately prior to such extension.

Z129.3

If the

- Duration of Section 3 is extended to forty-eight weeks in accordance with this clause Z129 and
- the Section 3 Performance Requirements are not achieved for the whole of last twelve weeks of the Duration of Section 3

then

- the *Contractor* pays the *Client* an amount equivalent to 50% of the value of the performance bond required by clause X13 before any step down in the value in the bond and this amount is included in the amount due at the next assessment date,
- the *Project Manager* certifies Completion of *section 3* upon the earlier of
 - payment by the *Contractor* of an amount equivalent to 50% of the value of the performance bond required by clause X13 or
 - if the *Contractor* does not make the payment to the *Client* as required by this clause Z129.3, the *Client* receiving the payment for an amount equivalent to 50% of the value of the performance bond from the bond issuer and
- any Programme Incentive (excluding that related to achievement of the CCIM) is reduced to nil.

Z129.4

Any payment due to the *Client* under this clause Z129 does not relieve the *Contractor's* obligation to correct Defects.

Clause Z130 Change to the Completion Date for *sections 1 to 4*

Z130.1

The *Project Manager* may change the Completion Date for *sections 1, 1A, 1B, 2, 3 and 4* to an earlier or later date in order that the Completion Date for *section 1*

- is aligned with the completion dates for
 - *section 3* for Roads North Works and

- section 2 for Roads South Works
as defined in the relevant contract or
- aligns Completion of *section 1* as shown in the Accepted Programme with completion as shown in the accepted programmes for
 - section 3 for Roads North Works and
 - section 2 for Roads South Works
as defined in the relevant contract

subject to clauses Z130.2 and Z130.3.

Z130.2 The Completion Date for *sections 1, 1A, 1B, 2, 3 and 4* may only be changed by the *Project Manager* to an earlier date (whether or not before the *completion date* for that *section*)

- in order to align that date in accordance with clause Z130.1 and
- where at the date of the proposed change, Completion of that *section* is shown on the Accepted Programme by a date no later than the proposed changed Completion Date for that *section* or the *Contractor* has agreed to such change.

Z130.3 A change to the Completion Date for *sections 1, 2, 3 and 4* under clause Z130.1 may be made notwithstanding that the change is not a compensation event under clause 60.1(10) due to

- a default by the *Contractor* includes a failure by the *Contractor* to achieve Completion of any *section* by the relevant Completion Date or
- a default by the contractor for either Roads North Works or Roads South Works includes a failure by that contractor to achieve completion of any section by the relevant completion date, as such terms are defined in the relevant contract.

Clause Z131 Payments for Plant and Materials outside of the Working Areas

Z131.1 The *Client* pays for Plant and Materials outside of the Working Area only where

- the aggregated value does not exceed £25,000,000.00 or the value of the bond (required by this clause) if less than £25,000,000.00,
- the *Supervisor* or *Contractor* has marked it for payment in accordance with the contract,
- the *Contractor* has given the payment bond required by this clause to the *Client* (and it remains in force) and
- the credit rating of the issuer of a payment bond has not fallen below the levels stated in this clause Z131

unless the *Project Manager* states that a replacement payment bond as required by this clause Z131 is not required.

Z131.2 The *Contractor* gives a payment bond to the *Client* for an amount equal to £25,000,000.00 or lessor amount proposed by the *Contractor* for any payment for any Plant and Materials marked for payment outside of the Working Areas, unless the *Project Manager* states that a payment bond is not required for a payment to the *Contractor*.

The bond is in the form set out in the Scope (or such other form as the *Client* may reasonably require). Any amount to be paid by the *Client* in respect of a payment for any Plant and Materials marked for payment outside of the Working Areas is included at the next assessment date after the *Client* receives the payment bond.

Z131.3 A payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting a proposed bank or insurer is that

- it does not have a credit rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Project Manager*,

- it does not have a commercial position which is strong enough to carry the payment bond,
- it is not issued by a bank or insurer registered as a company in England and is not subject to the *law of the contract* and a legal opinion in accordance with clause Z131.7 is not received,
- the payment bond is not subject to the *law of the contract* or
- it does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

Z131.4 If the credit rating of the issuer of a payment bond falls below

- long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
- long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.),

- long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.) or
- if the advanced payment bond becomes invalid or unenforceable for any reason

the *Contractor* replaces the payment bond with a new payment bond issued by a bank or insurer accepted by the *Project Manager* in the form set out in the Scope (or such other form as the *Client* may reasonably require) within four weeks, unless the *Project Manager* states that a replacement payment bond is not required.

Z131.5 A failure to comply with clause Z131.4 is treated as a substantial failure by the *Contractor* to comply with its obligations and no further payments are made to the *Contractor* until a replacement payment bond for any relevant payment bond is provided.

Z131.6 Any payment of Defined Cost under the Schedule of Cost Components is an advanced payment and is considered as repaid when

- the relevant Plant and Materials marked for payment outside of the Working Areas is incorporated in to the *works* or
- where relevant Plant and Materials marked for payment outside of the Working Areas has been included in the Price for Work Provided to Date and such Defined Cost has been repaid to the *Client* by the *Contractor*.

No amount of this advanced payment is considered repaid, at any time prior

- to relevant Plant and Materials marked for payment outside of the Working Areas being incorporated in to the *works* or
- where relevant Plant and Materials marked for payment outside of the Working Areas has been included in the Price for Work Provided to Date, such Defined Cost being repaid to the *Client* by the *Contractor*.

Z131.7 If the bank or insurer proposed by the *Contractor* is not a company incorporated in and subject to the *law of the contract*, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- independent of the bank or insurer, the *Contractor*, Consortium Members Guarantors and alternative guarantors,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and

- agreed by the *Project Manager*.

The legal opinion is addressed to the *Client* 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* via the *Project Manager*).

The legal opinion confirms that the method of execution of the payment bond is valid and binding under applicable local law and in particular covers the matters listed in the Scope S1600.

Clause Z132 Aggregated incentive payment

Z132.1 Not Used.

Z132.2 Not Used.

Z132.3 Not Used.

Z132.4 Not Used.

Z132.5 The Aggregated Incentive Amount paid to the *Contractor* does not exceed £150,000,000.00.

Z132.6 At each Incentive Assessment Date, the *Project Manager* makes an assessment of the adjustments to each of the

- CPI Fixed Payment,
- CPI Annual Payments,
- payments in accordance with the incentive schemes notified in accordance with clause Z135,
- payments in accordance with the incentive schemes notified in accordance with clause Z143 and
- *Contractor's* share

and these adjustments are included in the amount due to ensure that the Aggregated Incentive Amount does not exceed £150,000,000.00.

Clause Z133 Not Used.

Clause Z134 Contract Performance Incentive

CPI ANNUAL INCENTIVE

Z134.1 On each anniversary of the *starting date*, the *Project Manager* may notify the *Contractor*, of an CPI Annual Incentive scheme including

- the payments due to the *Contractor* under the incentive scheme,
- the Incentive Assessment Dates,
- the conditions (including dates and times) and

- performance to be met and achieved by the *Contractor* to enable such payments to become due to the *Contractor*.

Z134.2 Within two weeks of the notification of CPI Annual Incentive scheme, the *Contractor*

- submits a proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*), including amendments to the relevant contracts for acceptance by the *Project Manager* and
- submits
 - a proposal to amend the Quality Statement and the quality plan and
 - a proposal for Scope provided by the *Contractor* for its design

to enable the *Contractor* to meet the conditions and performance to be met and achieved by the *Contractor* to enable such payments to become due to the *Contractor* for the acceptance by the *Project Manager*

A reason for not accepting

- a proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) is
 - it does not enable the *Contractor* to Provide the Works or
 - it does not provide sufficient detail to enable the *Project Manager* to understand how a relevant subcontractor (at any stage of remoteness from the *Client*) is suitably incentivised to perform and support delivery of the conditions and performance to be met and achieved by the *Contractor*,
- a proposal to amend the Quality Statement and the quality plan is that it does not provide sufficient detail to enable the *Project Manager* to understand how the proposals support delivery of the conditions and performance to be met and achieved by the *Contractor* or
- a proposal for Scope provided by the *Contractor* for its design is that it does not provide sufficient detail to enable the *Project Manager* to understand how the Scope provided by the *Contractor* for its design support delivery of the conditions and performance to be met and achieved by the *Contractor*.

Upon acceptance of a proposal

- to amend the Quality Statement and the quality plan,
- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and

- for Scope provided by the *Contractor* for its design the *Contractor* implements the accepted proposals.

Z134.3 If the *Project Manager* has accepted the proposals

- to amend the Quality Statement and the quality plan,
- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
- for Scope provided by the *Contractor* for its design

related to the CPI Annual Incentive then if (at each CPI Annual Incentive's Incentive Assessment Date), the *Contractor*

- achieves and meets such conditions and performance to enable such CPI Annual Incentive's payments to become due to the *Contractor*, then the relevant payment due to the *Contractor* under such CPI Annual Incentive incentive scheme is included in the amount due at the next assessment date after each Incentive Assessment Date or
- does not
 - meet such conditions and performance to be met and achieved by the *Contractor* to enable the relevant payment,
 - incentivise relevant subcontractors (at any stage of remoteness from the *Client*) in accordance with the accepted proposal,
 - comply with such accepted Quality Statement or quality plan proposals or
 - comply with such accepted Scope provided by the *Contractor* for its design

then the *Client* does not pay the *Contractor* such relevant CPI Annual Incentive payment.

Z134.4 The CPI Annual Payment does not exceed the *cpi annual incentive amount*.

Z134.5 An accepted proposal

- to amend the Quality Statement and the quality plan,
- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
- for Scope provided by the *Contractor* for its design

is not a compensation event.

CPI FIXED
INCENTIVE

Z134.6 The CPI Fixed Payment is £0.00.

Z134.7 Not used.

Z134.8 Not used.

Z134.9 Not used.

Z134.10 Not used.

Clause Z135 Carbon Performance Incentive

Z135.1 The *Contractor* may submit proposals to reduce the carbon/greenhouse gas emissions for the *works* and in Providing the Works below the *carbon target* as updated in accordance with

- Scope paragraph S209.29,
- accepted proposals in accordance with this clause and
- relevant agreed and instructed Enhancements

detailing

- the saving in the carbon/greenhouse gas emissions detailing the emission tonnes reductions and when it will be achieved,
- the amendments to the Quality Statement and the quality plan required to implement the reduction in carbon/greenhouse gas emissions,
- the additional Scope provided by the *Contractor* for its design required to implement the reduction in carbon/greenhouse gas emissions,
- how the proposal to reduce such carbon/greenhouse gas emissions below the *carbon target* (as updated in accordance with paragraph S209.29, accepted proposals in accordance with this clause and relevant agreed and instructed Enhancements),
 - is to be measured (including timings) and confirmed (including timings) and
 - is to be verified as achieved by the *Contractor*, *Project Manager* and *Supervisor*,
- proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*), including amendments to the relevant contracts for acceptance by the *Project Manager*,
- the Incentive Assessment Dates and
- the amounts payable under the proposal

to the *Project Manager* for acceptance.

Z135.2 A reason for not accepting the proposal to reduce carbon/greenhouse gas emissions is

- it does not provide sufficient detail to enable the *Project Manager* to understand how the proposals to amend the

Quality Statement and the quality plan achieve the reduction in carbon/greenhouse gas emissions,

- it does not provide sufficient detail to enable the *Project Manager* to understand how the additional Scope provided by the *Contractor* for its design achieve the reduction in carbon/greenhouse gas emissions,
- it does not provide sufficient detail to enable the *Project Manager* to understand how measurement, confirmation and verification demonstrates the achievement of the reduction in carbon/greenhouse gas emissions,
- a proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*)
 - does not enable the *Contractor* to Provide the Works or
 - does not provide sufficient detail to enable the *Project Manager* to understand how a relevant subcontractor (at any stage of remoteness from the *Client*) is suitably incentivised to perform and support delivery of the conditions and performance to achieved by the *Contractor* or
- the *Client* does not support the proposals.

If the proposal is accepted, then the *Contractor* implements the proposal including

- the amendments to the Quality Statement and the quality plan,
- the additional Scope provided by the *Contractor* for its design and
- undertaking measurements and confirming such measurements and provides such confirmed measurements to the *Project Manager* and *Supervisor*.

Z135.3 If the proposal is accepted and the *Contractor* achieves the reduction in carbon/greenhouse gas emissions and such reduction is verified by the *Project Manager* then the *Project Manager* assesses a Carbon Incentive Payment as

$$\text{carbon_greenhouse rate} \times MS$$

Where MS is the relevant measured carbon/greenhouse gas emission saving at the Incentive Assessment Date.

Z135.4 An accepted proposal

- to reduce the carbon/greenhouse gas emissions for the *works* and in Providing the Works below the *carbon target*,
- to amend the Quality Statement and the quality plan,

- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
 - for Scope provided by the *Contractor* for its design
- is not a compensation event.

Clause Z136 Use of Temporary Accommodation for legacy

Z136.1 The *Contractor* provides details of the title holder to all Temporary Accommodation used to Provide the Works within seven days of the first use of the Temporary Accommodation.

Z136.2 For any Temporary Accommodation (which the *Contractor* (or an Associated Company) holds the legal and beneficial title to) which is brought in to the Working Area it provides to the *Project Manager*

- for Temporary Accommodation purchased for Providing the Works, a copy of the purchase invoice for the Temporary Accommodation or
- for other Temporary Accommodation, the *Contractor's* net book value for the Temporary Accommodation

within seven days of the Temporary Accommodation (which the *Contractor* holds the legal and beneficial title to) being brought in to the Working Area, otherwise

- the new Temporary Accommodation t invoice value is £0.00 and
- the net book value of the asset used in this clause is £0.00.

The net book value is calculated as the original cost of an asset less

- accumulated depreciation,
- accumulated amortisation,
- accumulated depletion and
- accumulated impairment.

Z136.3 At Completion of the relevant *section* or (if earlier) when Temporary Accommodation (which the *Contractor* holds the legal and beneficial title to) is no longer required to Provide the Works, the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title in such Temporary Accommodation. The *Contractor* ensures that the legal and beneficial title in the relevant Temporary Accommodation transfers from the *Contractor* to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

Z136.4 If title is to pass to the *Client*, then the *Contractor* provides the *Project Manager* with the *Contractor's* assessment of the current net book value of such Temporary Accommodation.

Z136.5 If title is to pass to the *Client*, the *Project Manager*

- assesses a market value of such Temporary Accommodation and
- assesses the amount of Defined Cost paid to the *Contractor* for such Temporary Accommodation.

Z136.6 On passing of the title of such Temporary Accommodation to the *Client*, the *Client* pays the *Contractor* the lesser of

- the *Project Manager's* assessment of the market value of such Temporary Accommodation,
- the *Contractor's* assessment of the netbook value in its accounts or
- the invoice value or net book value from clause Z136.1 less the Defined Cost paid to the *Contractor* for such Temporary Accommodation

but not less than £0.00.

Z136.7 The *Project Manager* may instruct the *Contractor* to move such Temporary Accommodation (where title passes to the *Client*) from the Working Area to another location (the "Destination"). If so, the *Contractor*

- moves such Temporary Accommodation, including loading to and offloading from any transportation vehicles, to the Destinations and
- does not damage, or permit damage to, the Temporary Accommodation during such relocation activities.

The *Client* pays the *Contractor* the Defined Cost incurred for relocation from the Working Areas to the Destinations and the Third Party Destinations (as defined in the Scope). The amounts paid to the *Contractor* do not contribute to the Price for Work Done to Date.

For the purposes of calculating the Defined Cost under this clause, the Destinations and Third Party Destinations are considered part of the Working Areas (and for the application of the *Client* provided insurances during the period of their provision or the *Contractor* provided insurances), otherwise the Destinations and Third Party Destinations are not Working Areas.

Z136.8 The *Project Manager* may instruct the *Contractor* to provide services and works (including design services, obtaining consents, foundations and connections of services) for any

Temporary Accommodation (where title passes to the *Client*) at Third Party Destinations.

The *Client* pays the *Contractor* the Defined Cost incurred for such services and works at Third Party Destinations. The amounts paid to the *Contractor* do contribute to the Price for Work Done to Date.

For the purposes of calculating the Defined Cost under this clause, Third Party Destinations are considered part of the Working Areas (and for the application of the *Client* provided insurances during the period of their provision or the *Contractor* provided insurances), otherwise the Third Party Destinations are not Working Areas.

- Z136.9 The *Contractor* keeps detailed records of Defined Costs incurred for services and works under this clause Z136 and provides a separate invoice to the *Client*.

Clause Z137 Repurposed Timber

- Z137.1 If the *Contractor* identifies an organisation that can repurpose trees that are removed as part of Providing the Works, then the Repurposing Destinations (as defined in the Scope) are considered part of the Working Areas for the calculation of the Price for Work Done to Date (and for the application of the *Client* provided insurances during the period of their provision or the *Contractor* provided insurances) for the movement of the repurposing trees to such an organisation, otherwise the Repurposing Destinations are not Working Areas.

- Z137.2 The *Contractor* does make any charges to such organisations that can repurpose trees.

Clause Z138 Support Team

- Z138.1 The *Project Manager* notifies the *Contractor* of Support Team and any changes.

Clause Z139 Changes to the fee percentage

PROPOSED INSTRUCTIONS

- Z139.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for a proposed instruction to change the insurances provided by the *Contractor*. The *Project Manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect.

Z139.2 The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Project Manager*.

Z139.3 If the proposed instruction is a change to the insurances provided by the *Contractor* for the Mobilisation Phase, the quotation

- for the change in the Mobilisation Phase Fee Percentage is assessed as

$$CC \div DCSO$$

where

- CC is the change in the forecast cost of the insurances (at the *base date* level) provided by the *Contractor* for Mobilisation Phase resulting from such proposed instruction and
- DCSO is the forecast Defined Cost (at the *base date* level) in the Prices for Mobilisation Phase for activities in the Mobilisation Phase Activity Schedule that have not been completed at the date of that communication

and

- the change to the Fee and Prices for each activity that have not been completed at the date of that communication is assessed as forecast Defined Cost (at the *base date* level) in the Prices for Mobilisation Phase for activities in the Mobilisation Phase Activity Schedule that have not been completed at the date of that communication is assessed as

$$\frac{CC}{DCSO} \times FDCA$$

where

- FDCA is the forecast Defined Cost (at the *base date* level) in the Prices for Mobilisation Phase for activities in the Mobilisation Phase Activity Schedule that have not been completed at the date of that communication.

The *Contractor* provides the *Project Manager* with the supporting evidence of the forecast change in the cost of the proposed insurance changes and any further information requested by the *Project Manager*.

Z139.4 If the proposed instruction is a change to the insurances provided by the *Contractor* for Construction Phase, the quotation for

- the change in the Construction Phase Fee Percentage is assessed as

$$DD \div DCST$$

where

- DD is the change in the forecast cost of the insurances (at the *base date* level) provided by the *Contractor* for Construction Phase resulting from such proposed instruction or instruction (as the case may be) and
 - DCST is the sum of the Defined Cost (at the *base date* level) in the Prices for Construction Phase activities in the Construction Phase Activity Schedule and the Risk Quota in the Risk Quota Activity Schedule at proposed instruction or instruction (as the case may be),
- the change to each Price is assessed as forecast Defined Cost (at the *base date* level) in the Price at the date of that communication or instruction (as the case may be) is assessed as

$$\frac{DD}{DCST} \times FDCB$$

where

- FDCB is the Defined Cost (at the *base date* level) in the relevant Price for Construction Phase activity in the Construction Phase Activity Schedule at the date of that communication or instruction (as the case may be) and
- the Construction Phase Fee and the lump sum Fee for *section 2* is calculated in accordance with clause Z123 using the Construction Phase Activity Schedule at the date of that communication.

The *Contractor* provides the *Project Manager* with the supporting evidence of the forecast change in the cost of the proposed insurance changes and any further information requested by the *Project Manager*.

Z139.5 The *Project Manager* replies to the *Contractor's* quotation by the date when the proposed instruction may be given. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- the issue of the instruction together with
 - a notification of the revised
 - Mobilisation Phase Fee Percentage,
 - Fee and

- Prices or
- a notification of the revised
 - Construction Phase Fee Percentage,
 - Fee and
 - Prices
- and acceptance of the quotation or
- a notification that the quotation is not accepted.

The notified revised Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage is not used in the assessment of compensations events notified prior to the *Project Manager's* reply and instruction to the change to the insurances provided by the *Contractor*, the Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage appropriate to the relevant activity at the date of the notification of the compensation event is used.

Z139.6 The *Project Manager* may assess the change to the relevant fee percentage, Fee and Prices if

- the *Contractor* has not submitted the quotation and details of its assessment within the time allowed or
- the *Project Manager* decides that the *Contractor* has not assessed the change to the Prices or the relevant fee percentage correctly and has not instructed the *Contractor* to submit a revised quotation.

Z139.7 The *Project Manager*

- notifies the *Contractor* of the assessment of the change to the Fee, Prices and the relevant fee percentage and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same proposed instruction. This period starts when the need for the *Project Manager's* assessment becomes apparent and
- instructs the change to the insurances provided by the *Contractor*.

The notified revised Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage is not used in the assessment of compensations events notified prior to the *Project Manager's* reply and instruction to the change to the insurances provided by the *Contractor*, the Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage appropriate to the relevant activity at the date of the notification of the compensation event is used.

INSTRUCTIONS

Z139.8 If the *Project Manager* instructs a change to the insurance provided by the *Contractor*,

- for Mobilisation Phase, the *Contractor* assesses
 - the change in the Mobilisation Phase Fee Percentage is assessed as

$$CC \div DCSO$$

- the change to the Fee and Prices for each activity that have not been completed at the date of that communication is assessed as forecast Defined Cost (at the *base date* level) in the Prices for Mobilisation Phase for activities in the Mobilisation Phase Activity Schedule that have not been completed at the date of that communication is assessed as

$$\frac{CC}{DCSO} \times FDCA$$

or

- for Construction Phase, the *Contractor* assesses
 - the change in the Construction Phase Fee Percentage as

$$DD \div DCST$$

- the change in the Prices for each activity assessed as

$$\frac{DD}{DCST} \times FDCB$$

and

- the Construction Phase Fee and the lump sum Fee for *section 2* is calculated in accordance with clause Z123 using the Defined Cost (at the *base date* level) in the Construction Phase Activity Schedule at the date of that instruction.

The *Contractor* provides the *Project Manager* with the supporting evidence of the forecast change in the cost of the proposed insurance changes (and any further information requested by the *Project Manager*) and submits its assessment to the *Project Manager* within 3 weeks of the instruction.

Z139.9 The *Project Manager* replies to the *Contractor's* assessment within three weeks. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- a notification of the revised
 - Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee and
 - Prices

- and acceptance of the assessment,
- a notification of the revised
 - Construction Phase Fee Percentage
 - Construction Phase Works Fee and
 - Pricesand acceptance of the assessment or
- a notification that the assessment is not accepted.

The notified revised Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage is not used in the assessment of compensations events notified prior to the *Project Manager's* instruction change to the insurance provided by the *Contractor*, the Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage appropriate to the relevant activity at the date of the notification of the compensation event is used.

Z139.10 The *Project Manager* may assess the change to the relevant fee percentage, Fee and Prices if

- the *Contractor* has not submitted the quotation and details of its assessment within the time allowed or
- the *Project Manager* decides that the *Contractor* has not assessed the change to the Fee, Prices or the relevant fee percentage correctly and has not instructed the *Contractor* to submit a revised quotation.

Z139.11 The *Project Manager* notifies the *Contractor* of the assessment of the change to the Fee, Prices and the relevant fee percentage and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same proposed instruction. This period starts when the need for the *Project Manager's* assessment becomes apparent.

The notified revised Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage is not used in the assessment of compensations events notified prior to the *Project Manager's* instruction change to the insurance provided by the *Contractor*, the Stage Mobilisation Phase Percentage or Construction Phase Fee Percentage appropriate to the relevant activity at the date of the notification of the compensation event is used.

**OUTSTANDING
COMPENSATION
EVENTS**

Z139.12 If there are outstanding compensation events affecting the relevant Prices, the assessment of the change to

- the relevant fee percentage and
- Prices and
- Fee

includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the day of assessment as advised by the *Project Manager*.

Z139.13 Once such compensation events have been implemented, the *Contractor* submits to the *Project Manager* the updated assessment of the change to

- the relevant fee percentage and
- Prices and
- Fee

within one week of the compensation event's implementation.

Z139.14 The *Project Manager* replies to the *Contractor's* assessment within two weeks. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- a notification of
 - the revised Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee and
 - the revised Pricesand acceptance of the quotation,
- a notification of
 - the revised Construction Phase Fee Percentage,
 - Construction Phase Fee and
 - the revised Pricesand acceptance of the quotation or
- a notification that the assessment is not accepted.

Z139.15 The *Project Manager* may assess the change to the relevant fee percentage, Fee and Prices if

- the *Contractor* has not submitted the assessment and details of its assessment within the time allowed or
- the *Project Manager* decides that the *Contractor* has not assessed the change to the Prices or the relevant fee percentage correctly and has not instructed the *Contractor* to submit a revised quotation.

Z139.16 The *Project Manager* notifies the *Contractor* of the assessment of the change to the Fee, Prices and the relevant fee percentage and gives details of the assessment within the period allowed for the *Contractor's* submission of its assessment. This period starts when the need for the *Project Manager's* assessment becomes apparent.

The notified revised Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage is not used in the assessment of compensations events notified prior to the *Project Manager's* instruction change to the insurance provided by the *Contractor*, the Mobilisation Phase Fee Percentage or Construction Phase Fee Percentage appropriate to the relevant activity at the date of the notification of the compensation event is used.

Clause Z140 *boundaries of the site, development consent orders, Relocation Schedule and Special Allowance Schedule*

Z140.1 Not Used.

Z140.2 The *Project Manager* notifies the *Contractor* of any changes to

- the *boundaries of the site* to reflect the Mobilisation Phase DCO and Development Consent Order and
- Tilbury Fields to reflect Development Consent Order.

Z140.3 The *Project Manager*

- may notify the *Contractor* of a Mobilisation Phase DCO and
- notifies the *Contractor* of Development Consent Order.

Z140.4 The *Project Manager* and the *Contractor* may agree changes to the Relocation Schedule. The *Project Manager* notifies the changes to the Relocation Schedule.

Z140.5 If the *Project Manager* issues an instruction to change the Scope provided by the *Client*, the *Project Manager* and the *Contractor* may agree changes to the Special Allowance Schedule. The *Project Manager* notifies the changes to the Special Allowance Schedule.

Clause Z141 Offset Registries

Z141.1 The *Project Manager* may notify the *Contractor* of

- additional Offset Registries and
- registries that are no longer to be Offset Registries.

Clause Z142 Key Dates

Z142.1 The *Contractor's* liability to the *Client* for the *Client's* additional cost either

- in carrying out work or

- by paying an additional amount to Others in carrying out work

for the *Contractor's* work that does not meet the Condition stated for a Key Date by the date stated

- is limited to £25,000,000.00,
- does not accrue at more than £76,000.00 per day

excluding any tax or equivalent which the law requires the *Client* to pay.

Z143 *Client* additional incentive schemes

Z143.1 The *Project Manager* may at any time notify the *Contractor*, of an incentive scheme including

- the payments due to the *Contractor* under the incentive scheme,
- the Incentive Assessment Dates,
- the conditions (including dates and times) and performance to be met and achieved by the *Contractor* to enable such payments to become due to the *Contractor*.

Z143.2 Within two weeks of the notification of an incentive scheme, the *Contractor*

- submits a proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*), including amendments to the relevant contracts for acceptance by the *Project Manager* and
- submits
 - a proposal to amend the Quality Statement and the quality plan and
 - a proposal for Scope provided by the *Contractor* for its design

to enable the *Contractor* to meet the conditions and performance to be met and achieved by the *Contractor* to enable such payments to become due to the *Contractor* for acceptance by the *Project Manager*

A reason for not accepting

- a proposal to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) is
 - it does not enable the *Contractor* to Provide the Works or
 - it does not provide sufficient detail to enable the *Project Manager* to understand how a relevant subcontractor (at any stage of remoteness from the

Client) is suitably incentivised to perform and support delivery of the conditions and performance to be met and achieved by the *Contractor* and

- a proposal to amend the Quality Statement and the quality plan is it does not provide sufficient detail to enable the *Project Manager* to understand how the proposals support delivery of the conditions and performance to be met and achieved by the *Contractor* or
- a proposal for Scope provided by the *Contractor* for its design is it does not provide sufficient detail to enable the *Project Manager* to understand how the Scope provided by the *Contractor* for its design support delivery of the conditions and performance to be met and achieved by the *Contractor*.

Upon acceptance of a proposal

- to amend the Quality Statement and the quality plan,
 - to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
 - for Scope provided by the *Contractor* for its design
- the *Contractor* implements the accepted proposals.

Z143.3 If the *Project Manager* has accepted the proposals

- to amend the Quality Statement and the quality plan,
- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
- for Scope provided by the *Contractor* for its design

related to the incentive scheme then if (at each additional incentive scheme's Incentive Assessment Date), the *Contractor*

- achieves and meets such conditions and performance to enable such relevant payment to become due to the *Contractor*, then the relevant payment due to the *Contractor* under such incentive scheme is included in the amount due at the next assessment date after each Incentive Assessment Date or
- does not
 - meet such conditions and performance to be met and achieved by the *Contractor* to enable the relevant payment, the *Client* does not pay the *Contractor* such incentive payment,
 - incentivise relevant subcontractors (at any stage of remoteness from the *Client*),
 - comply with such accepted Quality Statement or quality plan proposals or

- comply with such accepted Scope provided by the *Contractor* for its design

then the *Client* does not pay the *Contractor* such relative incentive payment.

Z143.4 An accepted proposal

- to amend the Quality Statement and the quality plan,
- to incentivise relevant subcontractors (at any stage of remoteness from the *Client*) and
- for Scope provided by the *Contractor* for its design

is not a compensation event.

Z144 Scope Annex AA Table A – Non-Utility Agreements and Scope Annex AA, Table B – Non-Utility Agreements

Z144.1 When the *Client* finalises the agreements listed in Scope Annex AA, Table B – Non-Utility Agreements the *Client* may obtain, the *Project Manager* instructs a change with Scope Annex AA Table A – Non-Utility Agreements obtained by the *Client* to incorporate such finalised agreements.

Z144.2 If the *Project Manager* instructs an amendment to an agreement listed in Scope Annex AA Table A – Non-Utility Agreements obtained by the *Client* in Scope Annex AA Table 1: Agreements obtained by the *Client* - Agreements Placed, then the *Project Manager* instructs the same amendment in Scope Annex AA Table A – Non-Utility Agreements obtained by the *Client*.

Z145 zero tailpipe emission vehicles used for all Staff movements and support community initiatives through volunteering

Z145.1 The *Client* pays the *Contractor* the Defined Cost incurred for

- the provision and use of ‘zero tailpipe emission vehicles used for all Staff movements
 - to and from public transport hubs’ or
 - between the north portal site and the south portal site and
- “Support Community Initiatives through Volunteering” in accordance with the Scope.

Z145.2 For the purposes of calculating the Defined Cost under this clause,

- the use of ‘zero tailpipe emission vehicles used for all Staff movements’
 - to and from public transport hubs’ or
 - between the north portal site and the south portal siteis considered part of the Working Areas (and for the application of the *Contractor* provided insurances during the period of their provision), otherwise the use of ‘zero tailpipe emission vehicles used for all Staff movements to and from public transport hubs’ is not considered within Working Areas” and
- the locations for provision of “Support Community Initiatives through Volunteering” in accordance with the Scope is considered part of the Working Areas (and for the application of the *Contractor* and *Client* provided insurances during the period of such provision), otherwise the locations for provision of “Support Community Initiatives through Volunteering” in accordance with the Scope is not considered within Working Areas”.

Z146 Not Used

Z147 TBM, STP and Tunnel Mould supplier

Z147.1 The *Contractor* ensures, and procures from

- a *tunnel boring machine supplier*,
- a *slurry treatment plant supplier* and
- a *tunnel lining mould supplier*

that such subcontracts (at any stage of remoteness from the *Client*) includes the provisions

- that any payments made to such a supplier are repaid less the agreed cancellation charge (in accordance with the provisions of Scope paragraph S1205.13B) immediately upon termination of the contract or following notification to the *Contractor* from the *Project Manager* that a notice to proceed to Construction Phase is not to be issued for any reason. If the *Client* has terminated the contract for reasons R1 to R10, then such a supplier makes payment directly to the *Client*,

- that title to any Equipment and Plant and Materials under such subcontracts becomes the property of the *Contractor* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party (if title is being transferred under the subcontract),
- that in the event of termination of the contract and to the extent that title has not transferred to the *Contractor* either
 - title in any Equipment supplied under such subcontracts becomes the property of the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party (if title is being transferred under the subcontract) or
 - the *Client* is provided with an unencumbered right to use any Equipment supplied under such subcontracts to complete the *works* (if title is not being transferred under the subcontract)
- that to the extent title has not transferred to the *Contractor* title in any Plant and Materials supplied under such subcontracts becomes the property of the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party and
- that the *Client* can enforce such a provision through a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Z147.2 The *Project Manager* notifies the *Contractor* if a notice to proceed to Construction Phase is not to be issued for any reason. Such advance payments less any agreed cancellation charges are included in the next amount after such notification.

Z147.3 Immediately upon termination of the contract or following notification to the *Contractor* from the *Project Manager* that a notice to proceed to Construction Phase is not to be issued for any reason, the *Contractor* repays the *Client* any payments made to the *Contractor* for such a supplier less the agreed cancellation charge in accordance with the provisions of Scope paragraph S1205.13B.

Z148 TBM Power Requirements

Z148.1 The *Project Manager* may give an instruction amending the TBM Power Requirements to reflect the *Contractor's*

proposals and the *Client's* Observations in the *non-material schedule*.

Z149 Not Used

Z150 Not Used

Z151 Week 136 to 148

Z151.1 If a notice to proceed to the Construction Phase is not issued within 135 weeks of the *starting date*, then the *Project Manager* issues an instruction for either

- the design Construction Phase Activities on the *design deliverable schedule week 136 and week 139* to become Mobilisation Phase Activities or
- instructs the *Contractor* to demobilise.

The *Project Manager* does not issue an instruction for activities requiring access to land.

An instruction to demobilise is assessed as a compensation event.

Z151.2 If

- the *Project Manager* issued an instruction for the design Construction Phase Activities on the *design deliverable schedule week 136 and week 139* to become Mobilisation Phase Activities and
- if a notice to proceed to the Construction Phase is not issued by the day after the commencement of the week 140 after the *starting date*,

then the *Project Manager* issues an instruction for either

- the design Construction Phase Activities on the *design deliverable schedule week 140 and week 143* to become Mobilisation Phase Activities or
- instructs the *Contractor* to demobilise.

The *Project Manager* does not issue an instruction for activities requiring access to land.

An instruction to demobilise is assessed as a compensation event in accordance with clause 63 or 64.

Z151.3 If

- the *Project Manager* issued an instruction for the design Construction Phase Activities on the *design deliverable schedule week 140 and week 143* to become Mobilisation Phase Activities and

- a notice to proceed to the Construction Phase is not issued by the day after the commencement of the week 144 after the *starting date*,

then the *Project Manager* issues an instruction for either

- the design Construction Phase Activities on the *design deliverable schedule week 144 and week 148* to become Mobilisation Phase Activities
- instructs the *Contractor* to demobilise.

The *Project Manager* does not issue an instruction for activities requiring access to land.

An instruction to demobilise is assessed as a compensation event in accordance with clause 63 or 64.

Z151.4 If the *Project Manager* does not issue a notice to proceed to the Construction Phase by the end of week 148 after the *starting date*, then the *Project Manager* may issue an instruction for

- design Construction Phase Activities to become Mobilisation Phase Activities or
- the *Contractor* to demobilise.

The *Project Manager* does not issue an instruction for activities requiring access to land.

An instruction to demobilise is assessed as a compensation event in accordance with clause 63 or 64.

Z151.5 If the *Contractor* is instructed to demobilise, the demobilisation activity is deemed a Mobilisation Phase Activity.

Z151.6 If the *Project Manager* instructs the *Contractor* to remobilise, such instruction to remobilise is assessed as a compensation event in accordance with clause 63 or 64 and the remobilisation activity is deemed a Mobilisation Phase Activity.

Z152 Over Target Budget

Z152.1 If prior to Completion of *section 2*, the Price for Work Done to Date is greater than the Target Budget (less the lumps sums for *sections 3 and 4*) along with the *Project Manager's* interim assessment of the changes to the *sections 1 and 2* Prices for a compensation event which has not been implemented, then

- at the first assessment date when the Price for Work Done to Date exceeds the Target Budget (less the lumps sums for *sections 3 and 4*) along with the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not

been implemented, the Price for Work Done to Date includes an amount equal to

$$\text{CIDC} \times \text{overspend percentage}$$

where

- CIDC is an amount equal to

Price for Work Done to Date – Target Budget_{S1-2} – CPFC

- CPFC is the change in the Construction Phase Fee due to be paid to the *Contractor* from the last assessment to the current assessment date and
- Target Budget_{S1-2} is the Target Budget (along with the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented) less the lump sum Prices for *sections* 3 and 4, or
- at the second and each later assessment date when the Price for Work Done to Date exceeds the Target Budget (less the lumps sums for *sections* 3 and 4) along with the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented, the Price for Work Done to Date includes an amount equal to

$$(\text{PWDD}_{\text{change}} - \text{Construction Phase Fee}_{\text{change}}) \times \text{overspend percentage}$$

since the last assessment date, where

- PWDD_{change} is the change in Price for Work Done to Date since the last assessment date and
- Construction Phase Fee_{change} is the change in Construction Phase Fee since the last assessment date.

Z152.2 If at any later date, the Target Budget is greater than Price for Work Done to Date, then the *Contractor* repays any amounts paid to the *Contractor* under clause Z152.1.

Z153 Electricity for the Tunnel Boring Machine and Slurry Treatment Plant

Z153.1 For the purposes of calculating the *Contractor's* share, the Defined Cost of the payments for the provision and use in the Working Area of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant are not included in the Price for Work Done to Date or the *Project Manager's* forecast of the final Price for Work Done to Date.

Z153.2 The *Contractor* does not include any forecast Defined Cost for the payments for the provision and use in the Working

Area of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant in the Target Budget.

Z153.3 If the *Project Manager* gives an instruction to change the Scope so

- the *Contractor* is no longer to purchase the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant and
- the *Client* is to purchase the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant

the *Client* is not liable for any supply failure by electricity supplier.

Z153.4 The *Contractor* ensures that the provision of electricity for the operation of the Tunnel Boring Machine and Slurry Treatment Plant is metered separately and such metered supply is used only for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant.

Z153.5 The *Contractor* may seek the *Project Manager's* agreement to use the metered supply for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant for other purposes. The *Contractor* ensures that any such use for other purposes are submetered before the such other use commences.

Z153.5(i) If

- the *Contractor* is purchasing such electricity for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant and the *Project Manager* has agreed such metered supply can be used for other purposes but the *Contractor* uses electricity for other purposes without it being submetered, then the Defined Cost for the provision of electricity for the operation of the Tunnel

Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant (including all the costs of the unmetered use for other purposes) is a Disallowed Cost or

- the *Client* is purchasing such electricity for the provision of electricity for the operation of the Tunnel Boring Machine and Slurry Treatment Plant and the *Contractor* uses electricity for other purposes without it being submetered, then the *Contractor* pays the *Client* the cost for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant (including all the costs of the unmetered use for other purposes).

Z153.5(ii) If the *Client* is purchasing such electricity for the provision of electricity for the operation of the Tunnel Boring Machine and Slurry Treatment Plant, the *Contractor* pays the *Client* the cost of any submetered use of electricity and such payment is included in the next assessment after the *Project Manager* has confirmed the cost of such electricity.

Z153.6 If the *Contractor* uses electricity from the metered supply for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant for other purposes without the *Project Manager's* agreement then

- if the *Contractor* is purchasing such electricity, the Defined Cost for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant including all the costs of the unmetered use for other purposes is a Disallowed Cost or
- if the *Client* is purchasing such electricity, the *Contractor* pays the *Client* the cost it incurs for the provision of electricity for the operation of the Tunnel Boring Machine, Slurry Treatment Plant and the Equipment to transport the slurry from and to the Tunnel Boring Machine to the Slurry Treatment Plant including all the costs of the unmetered use for other purposes.

Z153.7 For the purposes of calculating the *Contractor's* share, payments to the *Client* in accordance with clause Z153.5(ii)

are deemed to be included in the Price for Work Done to Date or the *Project Manager's* forecast of the final Price for Work Done to Date.

Z154 *Client* and *Contractor* liabilities

Z154.1 If the *Contractor* or the *Client* considers or becomes aware of any matter resulting from that fault of

- the *Client*,
- the *Project Manager*,
- the *Supervisor* or
- *Contractor*

which could

- increase the Defined Cost to complete the whole of the *works*,
- increase the cost to complete the whole of the *works*, Roads North Works or Roads South Works
- delay Completion,
- delay completion of the whole of the *works*, Roads North Works or Roads South Works,
- delay meeting a Key Date or
- impair the performance of the *works*, Roads North Works or Roads South Works in use

then the *Contractor* or *Client* may raise the matter by giving the *Client's* representative on the Core Group a warning.

Within seven days of a warning being issued, the *Contractor's* and the *Client's* representatives on the Core Group meet. If either representative is not available, then their nominate attends. The purpose of the meeting is to identify any systemic

- process and procedures matters within either Parties' process and procedures or
- application or operation matters of such process and procedures by the relevant Parties and their respective employees and subcontractors (at any stage of remoteness from the *Client*)

that are likely to

- increase the Defined Cost to complete the whole of the *works*,
- increase the cost to complete the whole of the *works*, Roads North Works or Roads South Works
- delay Completion,

- delay Completion of the whole of the *works*, Roads North Works or Roads South Works,
- delay meeting a Key Date or
- impair the performance of the *works*, Roads North Works or Roads South Works in use.

A Party's representatives may instruct other people to attend a matter's warning meeting if the other agrees.

Z154.2 The Parties' representatives record any agreed actions, including timescales and the action holder, to be taken and

- the *Client* instructs the *Project Manager*, its staff, its other contractors and other its representatives to implement the relevant actions within the agreed timeline and
- the *Contractor* implements the relevant agreed actions within the agreed timeline.

Z155 Working in special circumstances and Special Allowances

Z155.1 The costs for working in special circumstances are payment to people (to which the Construction Industry Joint Council working rule agreement, Joint Industry Board for the Electrical Contracting Industry or equivalent agreement applies) for

- working at height,
- working in exposed conditions,
- trades supplements,
- plus rates,
- shift allowances,
- tool allowances,
- local allowances (in accordance with such agreements) and
- food allowances (in accordance with such agreements)

but excluding

- travel and subsistence costs (see *Client's* travel and subsistence guide) and
- Expatriate's Allowances.

Z155.2 The costs for Special Allowances are payment to people

- who are covered by the Construction Industry Joint Council working rule agreement, Joint Industry Board for the Electrical Contracting Industry or equivalent agreement that are not special circumstances payments and

- who are not covered by the Construction Industry Joint Council working rule agreement, Joint Industry Board for the Electrical Contracting Industry or equivalent agreement
 - plus rates and
 - shift allowances

but excluding

- travel and subsistence costs (see *Client's* travel and subsistence guide) and
- Expatriate Allowances.

Z156 *Client's* correction of Defects and interim Defect correction

- Z156.1 Following Completion of *section 2*, the *Contractor* acknowledges that actions taken by the *Client* and its other contractors to correct Defects prior to notification of a Defect to the *Contractor* in accordance to the contract, such correction of Defects is treated as if the *Contractor* was not given access in order to correct a notified Defect before the *defects date*. The *Project Manager* provides details of the Defect correction to the *Contractor*.
- Z156.2 Following Completion of *section 2*, if the *Client* and its other contractors has instituted an interim correction to the Defect to enable the lane or bore to be reopened and remain open, the *Project Manager* assesses the cost to the *Contractor* of instituting such interim correction to the Defect and the *Contractor* pays that amount.
- Z156.3 Any instituted interim correction to a Defect does not amend the Scope.

Z157 Exclusive Systems

- Z157.1 At Completion or (if earlier) when an Exclusive System is no longer required to Provide the Works, the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title (where it is capable of transfer) in any Exclusive System (or part thereof).
- Z157.2 The *Contractor* ensures that the legal and beneficial title in the relevant Exclusive System transfers from the *Contractor* or a subcontractor to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.
- Z157.3 Where the title cannot transfer to the *Client*, the *Project Manager* states which rights in the relevant Exclusive

System are to transfer to the *Client* including the extent of the exclusions of any freedom of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

Annex One

Schedule of Cost Components

Annex 1: Schedule of Cost Components

| | | |
|---------------|----------|--|
| | | <p>This schedule is part of the <i>conditions of contract</i>. An amount is included</p> <ul style="list-style-type: none"> only in one cost component and only if it is incurred in order to Provide the Works. <p>In this schedule the <i>Contractor</i> means the <i>Contractor</i> and Associated Companies, but not its Subcontractors.</p> |
| People | 1 | <p>The following components of</p> <ul style="list-style-type: none"> the cost of people who are directly employed by the <i>Contractor</i> (excluding people identified in the <i>fee schedule</i>) and whose normal place of working is within the Working Areas, the cost of people who are directly employed by the <i>Contractor</i> (excluding people identified in the <i>fee schedule</i>) and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and the cost of people undertaking design who are directly employed by the <i>Contractor</i> (excluding people identified in the <i>fee schedule</i>) and who are Providing the Works outside the Working Areas, proportionate to the time they spend working. |
| | 11 | Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked on the contract. |
| | 12 | <p>Payments related to work on the contract and made to people for¹¹</p> <ul style="list-style-type: none"> a) overtime b) working in special circumstances |

¹¹ Payment under item 12 d) excludes payments for

- absences (between the previous assessment of the Price for Work Done to Date and the current assessment of the Work Done to Date) prior to the commencement of working to Provide the Works
- absences due to sickness, after
 - the first 14 consecutive days (including bank holidays, public holidays and weekends) and
 - more than 28 days in any annual period commencing on the *starting date* and
- absences due to annual leave exceeding the proportion of the forecast or actual time working (excluding absence due to training, sickness) to Provide the Works in any annual period commencing on the *starting date*

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| | | <ul style="list-style-type: none"> c) special allowances listed on the Special Allowances Schedule d) absence due to sickness and holidays e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works. |
| | 13 | <p>Payments made in relation to people in accordance with their employment contract for</p> <ul style="list-style-type: none"> a) travel, subsistence and lodging in accordance with the <i>Client's</i> travel and subsistence guide b) relocation expenses in accordance with the relocation guide for people on the Relocation Schedule c) medical examinations d) passports and visas for people on the Relocation Schedule excluding external consultancy or legal costs e) travel insurance f) items (a) to (e) for dependents on the Relocation Schedule g) protective clothing h) contributions, levies or taxes imposed by law i) pensions and life assurance excluding payments made in relation to any pensions deficits j) death benefit premium k) occupational accident benefits premium l) medical aid and health insurance premium m) a vehicle <ul style="list-style-type: none"> o including <ul style="list-style-type: none"> ■ UK annual statutory vehicle safety certification (known as MOT certificate) ■ routine maintenance and routine repairs ■ UK vehicle tax (known as road fund licence or vehicle excise duty) for vehicles with CO₂ emissions of 0g/km for <ul style="list-style-type: none"> (i) first registrations up to and including 31st March 2017, the annual tax payment <ul style="list-style-type: none"> (1) annual tax payment onwards (ii) first UK registrations for new vehicles after but not including 31st March 2017, (iii) the first year UK registration charge (if use to by a person Providing the Works during the first twelve months since its first UK registration) <ul style="list-style-type: none"> (1) the subsequent annual tax payment onwards ■ fuel |

| | | |
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| | | <p>all in proportion for the mileage undertaken in Providing the Works</p> <ul style="list-style-type: none"> ○ but excluding <ul style="list-style-type: none"> ▪ insurance and any insurance tax ▪ UK additional vehicle tax for vehicles with a 'list price' (the published price before any discounts and grants) of more than £40,000 b) safety training specific to Providing the Works |
| | 14 | <p>The following components of the cost of people who are not directly employed by the <i>Contractor</i> but are paid for by the <i>Contractor</i> according to the time worked while they are within the Working Areas (but excluding people identified in the <i>fee schedule</i>).</p> <p>Amounts paid by the <i>Contractor</i></p> |
| | 15 | <p>The following components of the cost of people who are not directly employed by the <i>Contractor</i> but are paid for by the <i>Contractor</i> according to the time worked while they are outside the Working Areas (but excluding people identified in the <i>fee schedule</i>)</p> <p>Amounts paid by the <i>Contractor</i></p> |
| Equipment | 2 | <p>The following components of the cost of Equipment (but excluding a Tunnel Boring Machine, Slurry Treatment Plant, Tunnel Lining Mould and Exclusive Systems) which is used within the Working Areas.</p> |
| | 21 | <p>Payments for the hire or rent of Equipment not owned by</p> <ul style="list-style-type: none"> • the <i>Contractor</i>, • the <i>Contractor's</i> ultimate holding company or • a company with the same ultimate holding company <p>at the hire or rental rate multiplied by the time for which the Equipment is required.</p> |
| | 22 | <p>Payments for Equipment which is not listed in the Contract Data but is</p> <ul style="list-style-type: none"> • owned by the <i>Contractor</i>, • purchased by the <i>Contractor</i> under a hire purchase or lease agreement or • hired by the <i>Contractor</i> from the <i>Contractor's</i> ultimate holding company or from a company with the same ultimate holding company <p>at the lessor of</p> <ul style="list-style-type: none"> • open market rates, multiplied by the time for which the Equipment is required or • the 75% of the applicable rate stated in CECA Schedules - Vol 2: Schedules of Contractors Equipment Rates for use on Construction Contracts including Rail Equipment Items dated 12 July 2019, including amendment dated 10th July 2020, further |

| | | |
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| | | amendments or any later replacements (including amendments). |
| | 23 | <p>Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of</p> <ul style="list-style-type: none"> the change in value over the period for which the Equipment is required and the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required. <p>The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.</p> <p>If the <i>Project Manager</i> agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.</p> |
| | 24 | <p>Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.</p> <p>If the <i>Project Manager</i> agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.</p> |
| | 25 | Payments for the purchase price of Equipment which is consumed. |
| | 26 | <p>Unless included in the hire or rental rates, payments for</p> <ul style="list-style-type: none"> transporting Equipment to and from the Working Areas other than for repair and maintenance, erecting and dismantling Equipment and constructing, fabricating or modifying Equipment as a result of a compensation event. |
| | 27 | Payments for purchase of materials used to construct or fabricate Equipment. |
| | 28 | Unless included in the hire rates, the cost of operatives is included in the cost of people. |
| Exclusive Systems | 2A | The following components of the cost of Exclusive Systems |

| | | |
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| | 2A1 | <p>Payments for the hire or rent of an Exclusive System not owned by</p> <ul style="list-style-type: none"> the <i>Contractor</i>, the <i>Contractor's</i> ultimate holding company or a company with the same ultimate holding company <p>at the hire or rental rate multiplied by the time for which the Equipment is required.</p> |
| | 2A2 | <p>Payments for an Exclusive System which is</p> <ul style="list-style-type: none"> owned by the <i>Contractor</i> or purchased by the <i>Contractor</i> under a hire purchase or lease agreement <p>at open market rates, multiplied by the time for which the Exclusive System is required</p> |
| | | |
| Plant and Materials | 3 | The following components of the cost of Plant and Materials. |
| 31 | 31 | <p>Payments for</p> <ul style="list-style-type: none"> purchasing Plant and Materials delivery to and removal from the Working Areas, providing and removing packaging and samples and tests. |
| Subcontractors | 4 | The following components of the cost of Subcontractors |
| | 41 | Payments to Subcontractors, excluding Associated Companies, for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Contractor</i> , which would result in the <i>Client</i> paying or retaining the amount twice. |
| Charges | 5 | The following components of the cost of charges paid or received by the <i>Contractor</i> . |
| | 51 | <p>Payments for the provision and use in the Working Areas of</p> <ul style="list-style-type: none"> water, gas, electricity, telephone and internet. |
| | 52 | Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> . |

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| | 53 | <p>Payments for</p> <ul style="list-style-type: none"> a) cancellation charges arising from a compensation event b) buying or leasing land or buildings within the Working Areas c) compensation for loss of crops or buildings d) royalties e) inspection certificates f) charges for access to the Working Areas g) facilities for visits to the Working Areas by Others h) consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> offices. |
| | 54 | Payments made and received by the <i>Contractor</i> for the removal from Site and disposal or sale of materials from excavation and demolition. |
| | 55 | <p>Payments made for</p> <ul style="list-style-type: none"> • escrow agreements • novation agreements for escrow agreement. <p>for Deposited Software (as defined in the Scope).</p> |
| | 56 | Payments made for temporary rehousing in accordance with paragraph S207.49 of the Scope. |
| | 57 | Payments made for Carbon Credits. |
| Charges for design consultant's office overhead | 5A | The following components of the cost of support people and office overhead for <i>design consultants</i> |
| | 51A | A charge for support people and office overhead costs calculated by applying the relevant <i>overhead percentage</i> stated in the Contract Data to the total of people items 11, 12 and 13 for the relevant <i>design consultant</i> undertaking design outside of the Working Area. The charge includes provision and use of people, accommodation, equipment, supplies and services, but excluding Exclusive Systems, required to provide the office and to support people providing the <i>works</i> . |
| Manufacture and fabrication | 6 | <p>The following components of the cost of manufacture and fabrication of Plant and Materials by the <i>Contractor</i> which are</p> <ul style="list-style-type: none"> • wholly or partly designed specifically for the works and • manufactured or fabricated outside the Working Areas. |

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| | 61 | <ul style="list-style-type: none"> Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas. |
| Design | 7 | Not Used. |
| Insurance | 8 | <p>The following are deducted from cost</p> <ul style="list-style-type: none"> the cost of events for which the contract requires the <i>Contractor</i> to insure and other costs paid to the <i>Contractor</i> <ul style="list-style-type: none"> by its insurers and by the <i>Client's</i> insurer (either directly or indirectly). |
| Legal Services | 9 | The following components of the cost of legal services done outside the Working Areas for Protester Action and Trespassers. |
| | 91 | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on legal services for Protester Action and Trespassers outside the Working Areas. |
| | 92 | The cost of travel (at the rates within the <i>Client's</i> travel allowances) to and from the Working Areas for the categories of legal people listed in the Contract Data. |
| Tunnel Boring Machine | 10 | During the Construction Phase (or if the <i>Client</i> agrees during the Mobilisation Phase), the following components of the cost of Tunnel Boring Machine which is used within the Working Areas |
| | 101 | Payments for a TBM Payment for Tunnel Boring Machine purchased for work included in the contract. |
| | 102 | Payments for the purchase price of Tunnel Boring Machine Material which is consumed. |
| | 103 | <p>Unless included in payments for Tunnel Boring Machine or Tunnel Boring Machine Material purchased, payments for</p> <ul style="list-style-type: none"> transporting Tunnel Boring Machine to and from the Working Areas other than for repair and maintenance, erecting and dismantling Tunnel Boring Machine, constructing, fabricating or modifying Tunnel Boring Machine as a result of a compensation event, purchase of materials used to assemble, construct or fabricate Tunnel Boring Machine and the cost of operatives is included in the cost of people. |

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| | 104 | Cost is credited with payments received for disposal of <ul style="list-style-type: none"> • Tunnel Boring Machine Materials and • Tunnel Boring Machine. |
| | 105 | Cost is credited with payments due to the <i>Contractor</i> from a <i>tunnel boring machine supplier</i> (or should have been less any agreed cancelation charge in accordance with the Scope) on termination (or equivalent) of a <i>tunnel boring machine supplier's</i> contract. |
| Slurry Treatment Plant and Tunnel Lining Mould | 11 | During the Construction Phase, the following components of the cost of Slurry Treatment Plant and Tunnel Lining Mould which is used within the Working Areas. |
| | 111 | Payments for a STP Payment for Slurry Treatment Plant purchased for work. |
| | 112 | Payments for a TLM Payment for Tunnel Lining Mould purchased for work. |
| | 113 | Payments for the purchase price of Slurry Treatment Plant and Tunnel Lining Mould Material which is consumed. |
| | 114 | Unless included in payments for Slurry Treatment Plant, Tunnel Lining Mould or Slurry Treatment Plant and Tunnel Lining Mould Material purchased, payments for <ul style="list-style-type: none"> • transporting Slurry Treatment Plant to and from the Working Areas other than for repair and maintenance, • erecting and dismantling Slurry Treatment Plant, • constructing, fabricating or modifying Slurry Treatment Plant as a result of a compensation event, • the purchase of materials used to assemble, construct or fabricate Slurry Treatment Plant and the cost of operatives is included in the cost of people. |
| | 115 | Cost is credited with payments received for disposal of <ul style="list-style-type: none"> • Slurry Treatment Plant and Tunnel Lining Mould Material • Slurry Treatment Plant and • Tunnel Boring Machine |
| | 116 | Cost is credited with payments due to the <i>Contractor</i> from <ul style="list-style-type: none"> • a <i>slurry treatment plant supplier</i> and • a <i>tunnel lining mould supplier</i> |

| | | |
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| | | <p>(or should have been <u>less any agreed cancelation charge in accordance with the Scope</u>) on termination (or equivalent) of a</p> <ul style="list-style-type: none">• a <i>slurry treatment plant supplier's</i> contract and• a <i>tunnel lining mould supplier's</i> contract. |
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Annex 2 Partnering Information

See

- HE540039-LTC-STU-GEN-REG-COM-00002_Partnering Information Requirements Capture_Tunnels and Approaches_P01, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 11.
- HE540039-LTC-STU-GEN-REG-COM-00001_X12 SoP_Tunnels and Approaches_P01, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 13, and
- HE540039-LTC-STU-GEN-REG-COM-00003_Schedule of core group members_Tunnels and Approaches_P01, as set out in provided document entitled 'Contract Documents Register for Tunnels and Approaches HE540039-LTC-COM-GEN-REG-COM-00017' on the tab entitled "Contract Documents Register", item 12.

Annex 3 Z115 DCO Enabling Works and Mobilisation Phase Pre-commencement Development Consent Order¹²

| DCO Requirement Reference | Paragraph Title of DCO Requirement | DCO Deliverable Title | OCI Reference | OCI Deliverable Title | Applicable Scope Sections include | Owner | Content Coverage Required | Comment |
|-------------------------------------|---|-------------------------------------|---------------|--------------------------------|-----------------------------------|-------------------|---|--|
| Paragraph 4 of Part 1 of Schedule 2 | Construction and handover of environmental management plans | EMP (Second Iteration) | B-5-01 | Second iteration of EMP (EMP2) | Sections S207 and S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |
| Paragraph 7 of Part 1 of Schedule 2 | Protected species | Pre-Construction Survey Work | n/a | n/a | n/a | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | Where additional protected species are identified by the <i>Client</i> , the <i>Contractor</i> is required to incorporate required protection and mitigation |

¹² Note: Content subject to the final DCO.

| DCO Requirement Reference | Paragraph Title of DCO Requirement | DCO Deliverable Title | OCI Reference | OCI Deliverable Title | Applicable Scope Sections include | Owner | Content Coverage Required | Comment |
|-------------------------------------|------------------------------------|--|---------------|-------------------------------------|-----------------------------------|-------------------|---|---|
| | | | | | | | | into both the design of the works and their Protected Species Licences. |
| Paragraph 7 of Part 1 of Schedule 2 | Protected species | Scheme of Protection and Mitigation Measures | B-5-10 | Draft Protected Species Licences | Section S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |
| Paragraph 8 of Part 1 of Schedule 2 | Surface and foul water drainage | Written Details of the Surface and Foul Water Drainage System | B-2-03 | Co-ordinated Drainage Design Report | Sections S300 and S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |

| DCO Requirement Reference | Paragraph Title of DCO Requirement | DCO Deliverable Title | OCI Reference | OCI Deliverable Title | Applicable Scope Sections include | Owner | Content Coverage Required | Comment |
|--------------------------------------|------------------------------------|---|---------------|--|--|-------------------|---|---------|
| Paragraph 9 of Part 1 of Schedule 2 | Archaeological interests | Written Scheme of Investigation | B-5-09 | Detailed Written Scheme of Investigation | Section S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |
| Paragraph 10 of Part 1 of Schedule 2 | Traffic management | Traffic Management Plan for Construction | C-2-02 | Traffic Management Plan | Sections S240, S929 and numbered appendix 1/16 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |
| Paragraph 11 of Part 1 of Schedule 2 | Construction of travel plans | Construction Travel Plan | n/a | n/a | Section S240 and S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |

| DCO Requirement Reference | Paragraph Title of DCO Requirement | DCO Deliverable Title | OCI Reference | OCI Deliverable Title | Applicable Scope Sections include | Owner | Content Coverage Required | Comment |
|--------------------------------------|------------------------------------|---|---------------|-----------------------------------|-----------------------------------|-------------------|---|---------|
| Paragraph 12 of Part 1 of Schedule 2 | Fencing | Permanent and Temporary Fencing and other means of enclosure | n/a | n/a | Sections S300 and S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |
| Paragraph 16 of Part 1 of Schedule 2 | Carbon and Energy Plan | Carbon and Energy Plan | B-5-06 | Carbon and Energy Management Plan | Sections S209 and S929 | <i>Contractor</i> | linked to that part of the <i>works</i> to be delivered in the 18 months following the <i>access</i> date to <i>section 1</i> | |

Annex 4 Form of Agreement by Deed

National Highways Limited

**NEC4 Engineering and Construction
Contract**

(June 2017)

**FORM OF
AGREEMENT BY DEED
(Combined Standard & Unincorporated Joint Venture
version)**

CONTENTS AMENDMENT SHEET

| Amend. No. | Issue Date | Amendments | Initials | Date |
|---------------|------------|------------|----------|------|
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DATED [*National Highways procurement to enter date that the National Highways
common seal is affixed*]

NATIONAL HIGHWAYS LIMITED

[CONTRACTOR/ JOINT VENTURE]

FORM OF AGREEMENT BY DEED

relating to the [design and] construction

of the [.....] [*identify Scheme(s)*]

Contract Reference Number [*compiler to enter appropriate Share reference number*]

DATE: *[National Highways procurement to enter date the National Highways seal is affixed]*

PARTIES:

- 1 NATIONAL HIGHWAYS LIMITED a company incorporated in and in accordance with the laws of England having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, England, GU1 4LZ ("the **Client**"); and
- 2 *[.....] a joint venture comprising [.....] ["X"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] and [.....] ["Y"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] and [.....] ["Z"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] (together referred to as "the **Contractor**").*

RECITALS:

- A The *Client* wishes to appoint a provider of works and services to undertake the design, build and maintain of the *works*, during the contract term and for that purpose has issued invitations to tender (including the Scope) to, amongst others, the *Contractor*.
- B In response to the *Client's* invitation to tender, the *Contractor* has submitted a tender to design, build and maintain and complete the *works* in accordance with the Scope.
- C The *Client* has examined the *Contractor's* tender and now wishes to appoint the *Contractor* to design, build and maintain and complete the *works* on the terms of this Agreement and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1 In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.

2. Contract Documents

2.1 The following documents form part of this Agreement:

1. the NEC4 Engineering and Construction Contract (June 2017 and amendments January 2019) incorporating Main Option C together with dispute resolution Option W2 and secondary Options [X1, X2, X5, X7, X8, X10, X11, X12, X13, X15 and X18], Y(UK)1, Y(UK)2, Y(UK)3 and Z1 to Z145 [*compiler to amend as appropriate and check this list is the same as in FOT and other parts of the document*], (“the Conditions”);
2. the Contract Data Parts One and Two and the documents referred to in them;
3. the Scope;
4. Tender Amendments [insert references or delete]; and
5. The *activity schedule*.

all as identified on the “Contract Documents Register for Tunnels and Approaches” reference number HE540039-LTC-COM-GEN-REG-COM-00017 dated 19 November 2023” on the CD attached at the Schedule to this Agreement.

- 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 *Contractor* agrees to Provide the Works for the *Client* in accordance with the provisions of this Agreement.
- 3.2 The *Client* will pay to the *Contractor* the amounts due under and in accordance with the provisions of this Agreement.

4. Publication of Information

- 4.1 The *Contractor* acknowledges that the *Client* is obliged to publish the provisions of the contract in accordance with the Cabinet Office guidance entitled ‘Guidance on the transparency requirements for publishing on Contracts Finder’ (or any later revision), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000 (Amendment) (EU Exit) Regulations 2018. The *Client* consults with the *Contractor* before deciding whether information is exempt, but the *Contractor* acknowledges that the *Client* has the final decision. The

Contractor co-operates with and assists the *Client* to publish this contract in accordance with the *Client's* obligation.

[Joint ventures only:]

5. Joint and Several Liability

- 5.1 Each of [X] and [Y] will be jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under this Agreement.
- 5.2 Each of [X] and [Y] will give not less than 4 weeks' notice to the *Client* of any proposed termination of the joint venture arrangement.
- 5.3. Termination of the joint venture arrangement for any reason will be treated as a substantial failure by the *Contractor* to comply with his obligations.
- 5.4 Not Used

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

Authorised Signatory

Authorised Signatory

Executed as a deed by the [PARTY X] in))
the presence of:

Director

Director/Company Secretary

Executed as a deed by the **[PARTY Y]** in))
the presence of:

Director

Director/Company Secretary

Executed as a deed by the **[PARTY Z]** in))
the presence of:

Director

Director/Company Secretary

NB: For joint Ventures repeat the bottom section to accommodate signatures from each member of the Joint Venture if appropriate.