

**(1) KELTBRAV HIGHWAYS LIMITED**

**- AND -**

**(2) XXXXXX**

**PROFESSIONAL SERVICE SHORT SUBCONTRACT**

**S-HI7410-XXXXX**

**RELATING TO**

**SCHEME 03A**

**SITUATED AT THE**

**A66 NORTHERN TRANS-PENNINE PROJECT**

This amended contract is based on the NEC4 Professional Service Short Contract, the copyright of which belongs to the Institution of Civil Engineers

**CONTENTS**

**Form of Subcontract Agreement**

**Subcontract Forms, comprising**

- The *Contractor's* Subcontract Data
- The *Subcontractor's* Subcontract Data
- Price List
- Subcontract Scope

**Conditions of Subcontract**

**Additional conditions, comprising**

- Client's* additional conditions
- Contractor's* additional conditions

**Schedule A – Constraints on how the *Subcontractor* is to Provide the Subcontract Service**

- Appendix A – Data Protection
- Appendix B – Parent Company Guarantee
- Appendix C – Self-Billing Agreement
- Appendix D – Responsibilities Matrix
- Appendix E – Supply chain mapping
- Appendix F – Project Bank Account
- Appendix G – Not used.
- Appendix H – Social value commitments & local recruitment plan

**Schedule B – Commercial Information**

**Schedule C – Information and other things provided by the *Contractor***

**FORM OF SUBCONTRACT AGREEMENT**

This agreement is made on the .... day of ..... 202[ ] between

**Keltbray Highways Limited** (Company No. 12788652) whose registered office is at St Andrews House, Portsmouth Road, Esher, England, KT10 9TA (the “**Contractor**”)

**AND**

**[S/C Name]** registered in England and Wales (Company No. **XXXX**) whose registered office is at **Xxxx** (“the **Subcontractor**”)

**WHEREAS**

- (1) The *Contractor* has entered into a framework contract (the “Framework Contract”) with National Highways Limited (the “*Client*”) for the delivery of a programme of schemes as part of the *Client*’s Regional Investment Programme.
- (2) Pursuant to the terms of the Framework Contract, the *Contractor* has entered into a Package Contract (the “Package Contract”), as amended by a Deed of Variation dated **XXX**, with the *Client* in respect of the works within Package **XXX**, which includes the *works* in the main contract.
- (3) The *Subcontractor* having been afforded the opportunity to read and note the provisions of the main contract (other than details of the *Contractor*’s prices there under), has agreed to Provide the Subcontract Services which form part of the *works* to be executed by the *Contractor* under the main contract:

**NOW IT IS HEREBY AGREED AS FOLLOWS**

1. The documents forming the subcontract are:
  - (a) This Form of Subcontract Agreement executed by the Parties as a deed;
  - (b) The *conditions of subcontract*;
  - (c) The additional conditions
  - (d) The Subcontract Scope
  - (e) Constraints on how the *Subcontractor* is to Provide the Subcontract Services (Schedule A)
  - (f) Commercial information (Schedule B)
  - (g) Information and other things provided by the *Contractor* (Schedule C)
2. The *Subcontractor* Provides the Subcontract Services in accordance with the *conditions of subcontract*.
3. The *Contractor* pays the *Subcontractor* the amount due in accordance with the *conditions of subcontract*.

EXECUTED AS A DEED (BUT NOT DELIVERED UNTIL THE DATE OF THIS DEED) BY THE  
**SUBCONTRACTOR**

**FOR AND ON BEHALF OF [INSERT SUBCONTRACTOR NAME]**

Acting by two Directors

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Statutory Director

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Statutory Director

EXECUTED AS A DEED (BUT NOT DELIVERED UNTIL THE DATE OF THIS DEED) BY THE  
**CONTRACTOR**

**FOR AND ON BEHALF OF KELTBRA Y HIGHWAYS LIMITED**

Acting by two Attorneys

Print

Witness Name:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

☐ I confirm that the named  
witness was physically present  
with me when I electronically  
signed this Deed

☐ I confirm that I was physically  
present with the Attorney when  
they electronically signed this  
Deed

Signature: \_\_\_\_\_  
Attorney

Signature: \_\_\_\_\_  
Witness

Print

Witness Name:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

☐ I confirm that the named  
witness was physically present  
with me when I electronically  
signed this Deed

☐ I confirm that I was physically  
present with the Attorney when  
they electronically signed this  
Deed

Signature: \_\_\_\_\_  
Attorney

Signature: \_\_\_\_\_  
Witness

# Subcontract Data

## The *Contractor's* Subcontract Data

|  |  |
|--|--|
| Name   | The <i>Contractor</i> is<br>Keltbray Highways Limited  |
| Address for communications                   | St Andrews House<br>Portsmouth Road<br>Esher<br>KT10 9TA   |
| Address for electronic communications        | CEMAR, Prism, other alternative contract management system or Project Director's email address           |
| Name   | The <i>Client</i> in the main contract is<br>National Highways Limited                                   |
| Address                                      | Bridge House<br>1 Walnut Tree Close<br>Guildford<br>Surrey<br>GU1 4LZ                                    |
| The <i>contractor's</i> authorised person is | Chris Till   |
| The <i>contractor's</i> facilitator is       | Niall Drayne   |
| The <i>works</i> in the main contract are    | the A66 Northern Trans-Pennine Project   |
| The <i>subcontract</i> service is            | The provision of professional services in relation to Stage One of the project for directional drilling. |
| The <i>subcontract</i> starting date is      | TBC  |
| The <i>subcontract</i> completion date is    | TBC  |
| The <i>delay damages</i> are                 | Nil per day.   |
| The <i>law of the subcontract</i> is         | the law of England and Wales and subject to the jurisdiction of the courts of England and Wales.         |
| The <i>period for reply</i> is               | three weeks  |

|   |  |
|---|--|
| The <i>defects date</i> is                        | 52 weeks after completion of the <i>works</i> in the main contract |
| The <i>assessment day</i> is                      | on the dates detailed in Schedule B.                               |
| Work is to be carried out on a time charge basis. |  |

## Subcontract Data

### The *Contractor's* Subcontract Data

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply.

|                           |   |
|---------------------------|---|
| The <i>Adjudicator</i> is | the person chosen by the Parties from the list of Adjudicators published by the Institution of Civil Engineers. |
|---------------------------|---|

|                                      |   |
|--------------------------------------|---|
| The interest rate on late payment 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. |
|--------------------------------------|---|

# Subcontract Data

## The *Contractor's* Subcontract Data

The *Subcontractor* provides the following insurance cover

| Insurance against  | Minimum amount of cover   | Period following Completion or earlier termination |
|--|---|--|
| Liability of the <i>Subcontractor</i> for claims made against it arising out of the <i>Subcontractor's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>subcontract service</i> . | £10,000,000 in respect of each claim, without limit to the number of claims | 12 years   |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Subcontractor</i> ) arising from or in connection with the <i>Subcontractor</i> Providing the Subcontract Service.        | £10,000,000 in respect of each claim, without limit to the number of claims | 52 weeks   |
| Liability for death of or bodily injury to employees of the <i>Subcontractor</i> arising out of and in the course of their employment in connection with the subcontract.  | £10,000,000 in respect of each claim, without limit to the number of claims | 52 weeks   |

The *Adjudicator* nominating body is

The Institution of Civil Engineers.

The *tribunal* is

Arbitration.

If the *tribunal* is Arbitration the arbitration procedure is

The Institution of Civil Engineers Arbitration Procedure (Third Edition) April 2012.

If Z125B is used

- If Options Z124B and Z125B are both used

- The *conditions of subcontract* are the core clauses and the following additional conditions.

*Client's* additional and revised conditions within the clauses identified within the left-hand margin by annotation “H”

*Contractor's* additional and revised conditions within the clauses identified within the left-hand margin by annotation "B"

*Client's* additional conditions as detailed in clauses Z1H to Z12H

*Contractor's additional conditions as detailed in clauses Z100B to Z135B*



# Subcontract Data

## The *Subcontractor's* Subcontract Data

|  | The <i>Subcontractor</i> is   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
|--|---|------|--|--------------------|------|------|--|--|--|--|--|--|--|--|--|--|--|--|
| Name   | Xxxx  |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| Address for communications   | Xxxx  |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| Address for electronic communications  | Xxxx  |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| The <i>fee percentage</i> is   | Xx%   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| The <i>people rates</i> are  | <table border="1"> <thead> <tr> <th>category of person</th><th>unit</th><th>rate</th></tr> </thead> <tbody> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> </tbody> </table> <p>People not stated here are at open market or competitively tendered rates.</p> |      |  | category of person | unit | rate |  |  |  |  |  |  |  |  |  |  |  |  |
| category of person   | unit  | rate |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
|  |   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
|  |   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
|  |   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
|  |   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| The <i>key persons</i> are   | Name (1): [Xxxx]<br>Job: [Xxxx]<br>Responsibilities: [Xxxx]<br>Qualifications: [Xxxx]<br>Experience: [Xxxx]<br>Name (2): [Xxxx]<br>Job: [Xxxx]<br>Responsibilities: [Xxxx]<br>Qualifications: [Xxxx]<br>Experience: [Xxxx]  |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| The <i>Subcontractor</i> offers to Provide the Subcontract Services in accordance with the <i>conditions of subcontract</i> for an amount to be determined in accordance with the <i>conditions of subcontract</i> . |   |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |
| The offered total of the Prices is   | Not Applicable (if engaged on a time charge basis)  |      |  |                    |      |      |  |  |  |  |  |  |  |  |  |  |  |  |

## Price List

The *Contractor* is required to approve these timesheets to validate that the *Subcontractor's* invoice sufficiently details how the amount due has been assessed, in accordance with clause 50.2.

The *Subcontractor* is to notify the *Contractor* of any expenses prior to them be expended. The *Subcontractor* must have the written acceptance that the expenses can be incurred from the *Contractor*. Only expenses that have been demonstrated as properly spent by the *Subcontractor*, in order to provide the *subcontract service*, will be paid by the *Contractor* under clause 51.

| Item number | Description | Unit                           | Quantity | Rate  | Price |
|-------------|-------------|--------------------------------|----------|-------|-------|
|             |             |                                |          |       |       |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| Expenses    |             |                                |          |       |       |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
| .....       | .....       | .....                          | .....    | ..... | ..... |
|             |             | <b>The total of the Prices</b> |          | £     |       |
|             |             |                                |          |       |       |

## Subcontract Scope

## 1 Purpose of the *subcontract service*

The provision of professional services in relation to Stage One of the project for directional drilling.

#### Preferred Supplier Status

The award of this Subcontract gives the *Subcontractor* preferred supplier status meaning the *Contractor* and *Subcontractor* will aim to agree the subcontract for Stage Two via direct negotiation.

Failure to comply with the Scope could result in the *Subcontractor* losing preferred supplier status.

#### Activities to be reimbursed under this Subcontract

The *Subcontractor* will be instructed to as described in Section 2 of the scope. This will include but is not limited to attendance at solution workshops, collaborative planning events, design reviews and interface meetings.

The *Subcontractor* will not be reimbursed for activities deemed to be normal work winning activities. Estimating, pricing and Stage Two subcontract negotiations.

#### Overview

The *Contractor* has been engaged to deliver Stage One and Stage Two of the A66 Northern Trans-pennine Project Schem 3a (the Project). The A66, between M1 Junction 53 (Scotch Corner and M6 Junction 40, has intermittent sections of single and dual carriageway which results in;

- Inconsistent journey times,
- A higher than average number of accidents on some sections,
- Severance to the local community

Options have been considered for the A66 Northern Trans-Pennine Project and a preferred route has been made, approved and announced. The Contractor is to meet or exceed the described requirements and characterises in the Development Consent Order (DCO), which is based on the Stage 3 outline design.

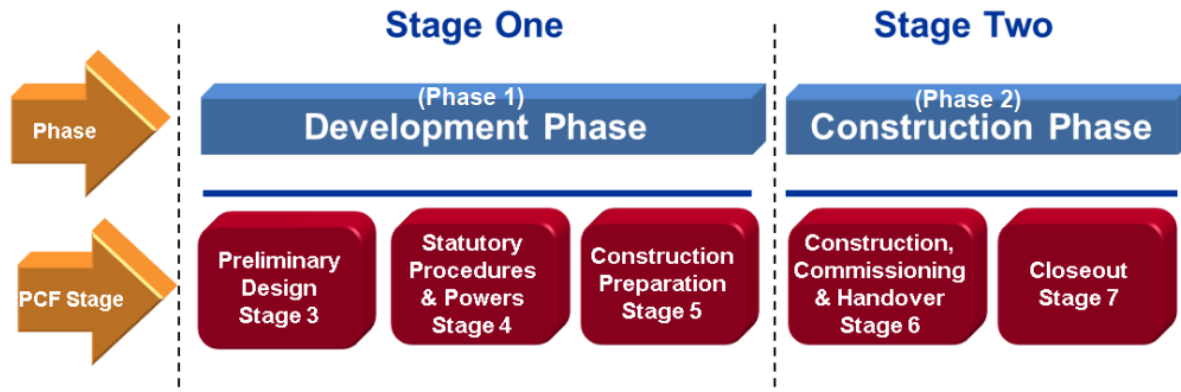
The *Contractor* has been awarded the following elements of the A66 Project;

#### Awarded Schemes

|           |   |
|-----------|---|
| Scheme 3a | Penrith to Temple Sowerby - River Eamont to Whinfell Park |
|           |   |

### Stage One and Stage Two

Stage One and Stage Two are set out below;



Development Phase Activities and Construction Phase Activities have the definition given to them in this contract.

The PCF Stage 3 design has been done by others, the PCF Stage 4 and PCF Stage 5 deliverables matrix is contained within Scope Appendix 01.

The *Subcontractor* is to support the *Contractor* in its delivery of these requirements, this will include but is not limited to;

- Solution reviews,
- Buildability reviews,
- Planning reviews,
- Construction methodology reviews,
- Pricing exercises

This may include attendance of workshops, both virtual (Microsoft Teams), site of other offices as requested by the *Contractor*. The *Subcontractor* may be requested to make or support in written submissions and pricing information.

There are no Construction Phase Activities within this Subcontract’.

### Outcome

The purpose of this agreement is for the *Subcontractor* to support the *Contractor* in identifying risk and mitigations that could impact time, cost and quality of Stage Two.

### Integrated Project Team

The *Contractor* operates within an Integrated Project Team (IPT). The IPT includes the *Client* and other subcontractors. The *Subcontractor* is expected to work as part of the IPT and demonstrate the behaviours of a fully integrated project team.

The six behaviours that underpin the IPT are;

- Decision making,
- Accountability,
- Constructive challenge,
- Open and honest communication and engagement,
- Trust and collaboration, and
- Improvement and innovation.

## 2 Description of the *subcontract service*

### Process for calling off works

The *Contractor* will administrate the subcontract on a call off basis. The *Subcontractor* will be instructed as required in accordance with the terms and conditions of Subcontract.

### General Dates – (High level package start dates)

Stage Two of the Project only occurs if the *Client* issues a Notice to Proceed to the *Contractor*. The below table sets out the dates that the *Contractor* is currently working to, these dates are subject to change and are provided for information only. The *Contractor* will inform the *Subcontractor* of any amendments in dates.

|                   |               |
|-------------------|---------------|
| Notice to Proceed | March 2024    |
| Start of Works    | 25 March 2024 |

### General Dates - Generic scheme dates

Below are indicative scheme specific dates the Subcontractor should be aware of. The *Contractor* will inform the *Subcontractor* of any amendments in dates.

|    |    |
|----|----|
| ## | ## |
| ## | ## |

### Solution Reviews

The *Subcontractor* is to support in solution reviews. These reviews will include but are not limited to buildability, design, product selection, innovation, construction methodology for the programme and interface management planning.

The *Subcontractor* will be expected to identify solutions, risks and mitigations whilst following the expected behaviours of a member of the IPT,

The *Subcontractor* will be required to attend workshops and may be required to provide written submissions. The *Subcontractor* is expected to provide challenge and expert knowledge in its area of expertise.

The *Subcontractor* will provide individuals who have the relevant industry experience in major highways schemes in the United Kingdom.

The output from the solutions review will inform the deliverables required for the Gateways.

### Solution - Product Proposal

In the event a solution proposal is a specific product which maybe unique to the *Subcontractor* the *Subcontractor* will ensure this is made clear within the Gateways.

### Solution – Carbon

The *Contractor* actively encourages the *Subcontractor* to propose carbon reducing solutions. In the event a carbon solution may negatively budget and/or programme the *Subcontractor* is still encouraged to make a proposal to the *Contractor*.

### Gateways & Updates

The *Contractor* will be utilising a Gateway approach to assess *Subcontractor* maturity against the deliverables.

There will be three gateway reviews across Stage 1. The planned gateway dates are set out below, there is potential for the dates to change. The *Contractor* will issue an instruction to the *Subcontractor* if the dates change. Any change to the dates will not be a compensation event.

The gateway reviews will be used to review progress against the deliverables set above, namely;

- Pricing,

- Stage Two programme,
- Capacity and capability, and
- Contract.

The output from each gateway will be agreed decisions and areas of challenge to be progressed for the next gateway.

The frequency and timing of the gateways will be confirmed to the *Subcontractor*. The *Contractor* will give reasonable notice to the *Subcontractor*.

#### Gateways – Progressive Assurance

The purpose of the progressive assurance is to ensure progress against the deliverables is being achieved. It gives the *Subcontractor* and *Contractor* a formal point to ensure progress matches the project timescales and requirements.

#### Deliverables – Pricing (Schedule of rates)

The *Subcontractor* is to support the *Contractor* in the pricing activities.

The *Contractor* will be progressively updating a cost estimating tool called the Interim Forecasting Tool (IFT). This tool is submitted to the Client progressively over Stage One.

The *Subcontractor* is to provide updates to its Schedule of Rates and inflation as appropriate. The rates provided in the tender, known as the Baseline Rates, are contained within appendix (##)

The *Contractor* and *Subcontractor* will use historic cost intelligence to identify where cost has increased on previous projects. The *Subcontractor* will assist the *Contractor* on how to mitigate cost increases.

In the event the schedule of rates increase or decrease from the Baseline Rates, the *Subcontractor* is expected to provide detailed explanations.

#### Deliverable – Programme

The *Subcontractor* is expected to develop its programme for Stage Two. The programme will support the pricing deliverable.

#### Deliverable – Capacity and Capability

The *Subcontractor* will be requested to provide updated information that it has the capacity and capability to deliver the Stage Two Work.

The *Subcontractor* is required to update the Assurance of Supply questions 1, 2 and 4 at each gateway, for review by the *Contractor*.

The *Subcontractor* will provide the following as part of the update to the Assurance of Supply questions;

- Pipeline, capacity ability to undertake the works
- Materials availability
- Equipment (owned v hire)
- Reliance on subsubcontractors
- Any changes changes to business ownership

#### Deliverables – Stage Two Subcontract

The parties will work together to agree the subcontract for the main works (Stage Two). A key component to this will be the approach to risk and incentive. Agreement on the subcontract is expected to be progressive with an executed agreement made prior to Notice to Proceed.

The *Contractor* and *Subcontractor* may agree to amend this date if it is mutually agreeable.

In the first instance the *Contractor* will look to agree heads of terms and red lines with the *Subcontractor*.

#### Quality Management Points

In the event the *Subcontractor* fails to provide any of the above information a Quality Management Point will be awarded per a deliverable category.

If the *Subcontractor* provides evidence that is not accepted by the *Contractor*, the *Subcontractor* will have two week to re-submit evidence. If after the second submission the *Contractor* has not accepted the evidence the *Contractor* will award Quality Management Points per a deliverable category not accepted.

In the event the *Subcontractor* is awarded a quality management point, it may lose its status as a preferred supplier. This decision is at the discretion of the *Contractor*.

#### Status as preferred supplier and Stage Two

The *Subcontractor* has preferred supplier status, this will be lost in the event a quality management point is awarded.

In the event the *Subcontractor* loses its status as the preferred supplier this will not prevent it from entering a competitive competition for the Stage Two works.

### **3 Existing Information**



| Title | Reference | Date | Revision |
|-------|-----------|------|----------|
|       |           |      |          |
|       |           |      |          |

The *Subcontractor* has been issued with the latest copy of the above documents.

#### 4 Specifications and standards

| Title   | Date or Revision                                     |
|---|--|
| Volume 3 Subcontract EEC Scope Part One – General Scope applicable to all schemes | Version 1.4.1a (Core) dated 3 <sup>rd</sup> May 2022 |

The *Subcontractor* has been issued with the latest copy of the above documents under Jaggaer RFQ reference RFQ\_12710

## Subcontract Scope

#### 5 Constraints on how the *Subcontractor* Provides the Subcontract Service

As described in Schedule A

#### 6 Requirements for the programme

A programme is to be produced and submitted in line with the deliverables described in section ‘1 Purpose of the *subcontract service*’ of the Subcontract Scope.

**7 Information and other things provided by the *Contractor***

As detailed in Schedule C

## CONDITIONS OF SUBCONTRACT

### CORE CLAUSES

#### 1 GENERAL

|                              |      |   |
|------------------------------|------|---|
| Actions                      | 10   |   |
|                              | 10.1 | The Parties shall act as stated in this subcontract.  |
|                              | 10.2 | The Parties act in a spirit of mutual trust and co-operation.   |
| <b>B</b>                     | 10.3 | The <i>Subcontractor</i> Provides the Subcontract Service such that no act, failure to act, or omission by the <i>Subcontractor</i> leads to a breach of the obligations of the <i>Contractor</i> under the terms of the main contract.   |
| Identified and defined terms | 11   |   |
|                              | 11.1 | In these <i>conditions of subcontract</i> , terms identified in the Subcontract Data are in italics and defined terms have capital initials.  |
| <b>B</b>                     | 11.2 | <p>(1) Completion is when the <i>Subcontractor</i> has</p> <ul style="list-style-type: none"> <li>completed the <i>subcontract service</i> in accordance with the Subcontract Scope except for correcting notified Defects which do not prevent the <i>Client</i> or the <i>Contractor</i> from using the <i>subcontract service</i> or others from doing their work and</li> <li>provided to the <i>Contractor</i> all the documents and other information which under the subcontract are to be provided by the Subcontract Completion Date.</li> </ul> <p>(2) The Subcontract Completion Date is the <i>subcontract completion date</i> unless later changed in accordance with the subcontract.</p> <p>(3) A Corrupt Act is</p> <ul style="list-style-type: none"> <li>the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or</li> <li>abusing any entrusted power for private gain</li> </ul> <p>in connection with this subcontract or any other contract with the <i>Contractor</i>. This includes any commission paid as an inducement which was not declared to the <i>Contractor</i> before the date of the <i>Contractor's</i> Acceptance.</p> <p>(4) A Defect is a part of the <i>subcontract service</i> which is not in accordance with the Subcontract Scope or the applicable law.</p> <p>(5) Defined Cost is the cost of the following components incurred by the <i>Subcontractor</i> in Providing the Subcontract Service</p> <ul style="list-style-type: none"> <li>People employed directly or indirectly by the <i>Subcontractor</i>, calculated by multiplying each of the People Rates by the total time appropriate to that rate.</li> <li>Work subsubcontracted by the <i>Subcontractor</i>, the amount paid by the <i>Subcontractor</i> to the subsubcontractor.</li> </ul> <p>(6) The Fee is the amount calculated by applying the <i>fee percentage</i> to the amount of Defined Cost.</p> <p>(7) The Parties are the <i>Contractor</i> and the <i>Subcontractor</i>.</p> <p>(8) The People Rates are the <i>people rates</i> unless later changed in accordance with the subcontract.</p> <p>(9) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.</p> <p>(10) To Provide the Subcontract Service means to do the work necessary to complete the <i>subcontract service</i> in accordance with the subcontract and all incidental work, services and actions which the subcontract requires.</p> |

- (11) The Subcontract Scope is information which
- specifies and describes the *subcontract service* or
  - states any constraints on how the *Subcontractor* Provides the Subcontract Service
- and is either
- in the document called Subcontract Scope or
  - in an instruction given in accordance with the subcontract.
- B** (12) Health and Safety Executive has the meaning as defined in section 10 of the Health and Safety at Work act 1974, as amended by paragraph 4 of the Legislative Reform (Health & Safety Executive) Order 2008.
- B** (13) Fee for Intervention has the meaning as defined in Regulation 23 of the Health and Safety (Fees) Regulations 2012.
- B** (14) Client's Persons means all persons employed, engaged or authorised by the *Client*, excluding the *Contractor*, Contractor's Persons, the *Subcontractor*, Subcontractor's Persons and any statutory undertaker.
- B** (15) Contractor's Persons means the *Contractor's* employees and agents and all other persons employed or engaged on or in connection with the *works* in the main contract or any part of them or any other person properly on the site in connection therewith excluding the *Client*, Client's Persons, the *Subcontractor*, Subcontractor's Persons and any statutory undertaker.
- B** (16) Subcontractor's Persons means the *Subcontractor's* employees and agents and all other persons employed or engaged on or in connection with the *subcontract services* or any part of them or any other person properly on the site in connection therewith including without limitation any supplier, subsubcontractor or manufacturer, excluding the *Client*, Client's Persons, the *Contractor*, Contractor's Persons and any statutory undertaker.
- B** (17) Contractor's Authorised Person is the *Contractor's authorised person* unless later changed in writing by the *Contractor*.
- B** (18) Anti-slavery Policy is the Keltbray Highways Limited document entitled 'GRP-CAL-PCY-019 - Modern Slavery and Human Trafficking policy statement' as included in the Subcontract Scope and as amended from time to time.
- H** (19) Associated Company is any of
- a Consortium Member or
  - 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 *Subcontractor*.
- H** (20) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Subcontractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Subcontractor* 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 *Subcontractor* or a Consortium Member.
- H** (21) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Subcontractor*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company,
- H** (22) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- H** (23) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Subcontractor* or a Consortium Member or
  - holds or controls the largest direct or indirect interest in the relevant share capital of the *Subcontractor* or a Consortium Member.

- H** (24) The Data Protection Acts are the General Data Protection Regulation (EU 2016/679) and any other laws or regulations relating to privacy or personal data.
- H** (25) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- H** (26) 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).
- H** (27) Enforcement Action is enforcement action brought by a regulatory authority against the *Subcontractor* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.
- H** (28) 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.
- H** (29) Guarantor is a person who gives a Parent Company Guarantee to the *Contractor*.
- H** (30) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- H** (31) Information Systems are the systems specified in the main contract for the collection and storage of information regarding the site and the *subcontract works* or any revised systems introduced by the *Client* from time to time.
- H** (32) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.
- H** (33) Parent Company Guarantee is a parent company guarantee of the *Subcontractor's* performance in the form set out in Part 3 of Schedule A.
- H** (34) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Acts.
- H** (35) Regional Investment Programme is the programme of Schemes required by the *Client's* Major Projects and Operations Directorates to be delivered by the *Contractor* and others during Roads Periods 1 and 2, all as detailed in the main contract.
- H** (36) Relevant Tax Authority is HM Revenue & Customs or, if the *Subcontractor* is established in another jurisdiction, the tax authority in that jurisdiction.
- H** (37) RIDDOR Incident is an incident occurring under any contract between
- the *Subcontractor* or an Associated Company and
  - the *Contractor* or any other person
- which results in death or serious injury to any worker or non-worker and for which the *Subcontractor* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).
- H** (38) Tax Non-Compliance is where a tax return submitted by the *Subcontractor* 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 *Subcontractor* 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 *Subcontractor* or a Consortium Member was involved which was (or should have been)

notified to a Relevant Tax Authority under the DOTAS or a similar regime or

- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

**H** (39) Technical Adviser is any person or organization appointed to provide technical assurance services in relation to the part of the Regional Investment Programme that is being delivered by the *Contractor*.

**B** (40) A Supply Chain Map is a document in the form set out in Appendix E of Schedule A.

(41) Construction Phase Activities are the activities listed in the Scope as being intended to be performed during Stage Two.

(42) Development Phase Activities are the activities listed in the Scope as being intended to be performed during Stage One.

**(43)**

## Interpretation and the law 12

- H** 12.1 In the subcontract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round. 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.
- 12.2 The subcontract is governed by the *law of the subcontract*.
- 12.3 No change to the subcontract, unless provided by these *conditions of subcontract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 The subcontract is the entire agreement between the Parties.
- H** 12.5 An amount due under the subcontract that is 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.

## Communications 13

- 13.1 Each communication which the subcontract requires has effect when it is received in a form that can be read copied and recorded at the last address notified by the recipient for receiving communications.
- 13.2 If the subcontract requires the *Contractor* or the *Subcontractor* to reply to a communication, unless otherwise stated in these *conditions of subcontract*, they reply within the *period for reply*.
- B** 13.3 The *Subcontractor* does not make any press announcements or publicise the subcontract in any way that conflicts or does not comply with any communications protocol as set out in the Subcontract Scope.
- H** 13.4 The *Subcontractor* 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 perform its obligations under this subcontract.

## The Contractor's authority and delegation 14

- 14.1 The *Subcontractor* obeys an instruction which is in accordance with the subcontract and is given by the *Contractor*.
- 14.2 The *Contractor* may give an instruction to the *Subcontractor* which changes the Subcontract Scope.
- 14.3 The *Contractor* gives an instruction to correct a mistake in the Price List which is
- a departure from the method and rules stated in the Price List and used to compile it or
  - due to an ambiguity or inconsistency.

|                          |      |  |
|--------------------------|------|--|
|                          | 14.4 | The <i>Contractor's</i> acceptance of a communication from the <i>Subcontractor</i> or acceptance of the work does not change the <i>Subcontractor's</i> responsibility to Provide the Subcontract Service.  |
|                          | 14.5 | The <i>Contractor</i> , after notifying the <i>Subcontractor</i> , may delegate any of the <i>Contractor's</i> actions and may cancel any delegation. A reference to an action of the <i>Contractor</i> in the subcontract includes an action by its delegate.   |
|                          | 14.6 | The <i>Contractor</i> does not give an instruction to the <i>Subcontractor</i> which would require it to act in a way that is outside its professional code of conduct.  |
| Early warning            | 15   |  |
|                          | 15.1 | <p>The <i>Subcontractor</i> and the <i>Contractor</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> <li>• increase the total of the Prices,</li> <li>• delay Completion,</li> <li>• impair the usefulness of the <i>subcontract service</i> to the <i>Contractor</i> or the <i>Client</i> or</li> <li>• affect the work of the <i>Contractor</i>, the <i>Client</i> or others with whom the <i>Contractor</i> is in contract</li> </ul> <p>The <i>Contractor</i> or <i>Subcontractor</i> may give an early warning by notifying the other of any other matter which could increase the <i>Subcontractor's</i> total cost. Early warning of a matter for which a compensation event has previously been notified is not required.</p> |
|                          | 15.2 | The <i>Subcontractor</i> and the <i>Contractor</i> co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.  |
| B                        | 15.3 | No proposals made and considered or decisions made requiring actions to be taken shall operate to change the contractual allocation of liability between the Parties, unless specifically instructed otherwise in writing by the <i>Contractor</i> .   |
| Provision of information | 16   |  |
|                          | 16.1 | The <i>Contractor</i> provides information and other things which the subcontract requires the <i>Contractor</i> to provide by the dates stated in the Subcontract Scope or a later date if agreed.  |
| Corrupt Acts             | 17   |  |
|                          | 17.1 | The <i>Subcontractor</i> does not do a Corrupt Act.  |
|                          | 17.2 | The <i>Subcontractor</i> takes action to stop a Corrupt Act of a subsubcontractor or supplier of which it is, or should be, aware.   |
|                          | 17.3 | The <i>Subcontractor</i> includes equivalent provisions to these in subsubcontracts.   |

## 2 THE SUBCONTRACTOR'S MAIN RESPONSIBILITIES

|                       |      |   |
|-----------------------|------|---|
| Providing the Service | 20   |   |
|                       | 20.1 | The <i>Subcontractor</i> Provides the Subcontract Service in accordance with the Subcontract Scope.   |
|                       | 20.2 | The <i>Subcontractor's</i> obligation is to use the skill and care normally used by professionals providing services similar to the <i>subcontract service</i> .  |
|                       | 20.3 | The <i>Subcontractor</i> is not liable for a Defect unless it failed to carry out the <i>subcontract service</i> using the skill and care normally used by professionals providing services similar to the <i>subcontract service</i> . |

|                                     |           |  |
|-------------------------------------|-----------|--|
| <b>B</b>                            | 20.4      | The <i>Subcontractor</i> indemnifies and holds harmless the <i>Contractor</i> and the <i>Client</i> from and against all claims, demands, proceedings, damages, costs and expenses arising out of any infringement of any patent, copyright, trademark or other protected or registered right in respect of the <i>Subcontractor's</i> design or work used in or in connection with the <i>subcontract service</i> , or out of any breach of or failure to observe or perform the terms of any licence in relation to those intellectual property or other rights. The <i>Subcontractor</i> obtains all such licences as may be necessary and the Prices include all royalties or other sums payable in connection therewith.  |
| <b>H</b>                            | 20.5      | The <i>Subcontractor</i> attends meetings with the <i>Project Manager</i> and others when requested to do so by the <i>Contractor</i> .  |
| <b>B</b>                            | 20.6      | The <i>Subcontractor</i> and its subsubcontractors <ul style="list-style-type: none"> <li>· actively participate in Lean interventions providing support from employees as requested by the <i>Contractor</i></li> <li>· attend quarterly Lean briefings</li> <li>· attend daily Lean visual management meetings as and when requested by the <i>Contractor</i></li> <li>· supply information to support the Lean process as requested by the <i>Contractor</i>.</li> </ul>  |
| <b>Subsubcontracting and People</b> | <b>21</b> |  |
|                                     | 21.1      | If the <i>Subcontractor</i> subsubcontracts work, it is responsible for Providing the Subcontract Service as if it had not subsubcontracted.   |
| <b>B</b>                            | 21.2      | The <i>Subcontractor</i> either uses each <i>key person</i> named to do the job stated in the Subcontract Data or, following acceptance by the <i>Contractor</i> , uses a replacement person with qualifications and experience as good as those of the person who is replaced. Acceptance by the <i>Contractor</i> of a replacement person proposed by the <i>Subcontractor</i> does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the <i>Subcontractor</i> of its duties or obligations under the subcontract.   |
|                                     | 21.3      | The <i>Contractor</i> may, having stated the reasons, instruct the <i>Subcontractor</i> to stop using a person to Provide the Subcontract Service. The <i>Subcontractor</i> then arranges that, after one day, the person has no further connection with the work included in the subcontract.   |
| <b>B</b>                            | 21.4      | If the <i>Subcontractor</i> does not provide a <i>key person</i> named in the Subcontract Data or their replacement as accepted by the <i>Contractor</i> , or removes without suitable replacement a <i>key person</i> without the prior agreement of the <i>Contractor</i> , the <i>Contractor</i> may retain in assessments of the amount due the sum of £20,000 for each instance of a <i>key person</i> not provided or removed without agreement. If the <i>Subcontractor</i> provides a further key person, who is acceptable to the <i>Contractor</i> , within a period of four weeks of failing to provide or removing without agreement the <i>key person</i> named in the Subcontract Data or their replacement, any monies previously retained by the <i>Contractor</i> will be released within the <i>Contractor's</i> next payment made in accordance with clause 51. |
| <b>B</b>                            | 21.5      | The <i>Contractor</i> may, having stated the reasons, instruct the <i>Subcontractor</i> to remove a subsubcontractor. The <i>Subcontractor</i> then arranges the removal of the subsubcontractor and the appointment of a replacement in accordance with the subcontract.  |

### 3 TIME

|                                |           |   |
|--------------------------------|-----------|---|
| <b>Starting and Completion</b> | <b>30</b> |   |
|                                | 30.1      | The <i>Subcontractor</i> does not start work until the <i>subcontract starting date</i> and does the work so that Completion is on or before the Subcontract Completion Date. |



|               |      |   |
|---------------|------|---|
|               | 30.2 | The <i>Subcontractor</i> submits a forecast of the date of Completion to the <i>Contractor</i> each week from the <i>subcontract starting date</i> until Completion.  |
|               | 30.3 | The <i>Contractor</i> decides the date of Completion and certifies it to the <i>Subcontractor</i> within one week of the date.  |
|               | 30.4 | The <i>Contractor</i> may instruct the <i>Subcontractor</i> to stop or not to start any work. The <i>Contractor</i> subsequently gives an instruction to the <i>Subcontractor</i> to <ul style="list-style-type: none"> <li>• re-start or start the work or</li> <li>• remove the work from the Subcontract Scope.</li> </ul> |
| The programme | 31   |   |
|               | 31.1 | The <i>Subcontractor</i> submits programmes to the <i>Contractor</i> as stated in the Subcontract Scope.  |

## 4 QUALITY MANAGEMENT

|                     |      |   |
|---------------------|------|---|
| Notifying Defects   | 40   |   |
|                     | 40.1 | The <i>Contractor</i> may notify a Defect to the <i>Subcontractor</i> at any time before the <i>defects date</i> .  |
|                     | 40.2 | At Completion, the <i>Subcontractor</i> notifies the <i>Contractor</i> of the Defects which have not been corrected.  |
|                     | 40.3 | The <i>Contractor's</i> rights in respect of a Defect which the <i>Contractor</i> has not found or notified by the <i>defects date</i> are not affected.  |
| Correcting Defects  | 41   |   |
|                     | 41.1 | The <i>Subcontractor</i> corrects a Defect whether or not the <i>Contractor</i> has notified it.  |
|                     | 41.2 | The <i>Subcontractor</i> corrects Defects within a time which minimises the adverse effect on the <i>Contractor</i> , the <i>Client</i> or others who are using the <i>subcontract service</i> .  |
| Accepting Defects   | 42   |   |
|                     | 42.1 | The <i>Subcontractor</i> and the <i>Contractor</i> may each propose to the other that the Subcontract Scope should be changed so that a Defect does not have to be corrected. If the <i>Subcontractor</i> and the <i>Contractor</i> are prepared to consider the change, the <i>Subcontractor</i> submits a quotation for reduced Prices or an earlier Subcontract Completion Date or both to the <i>Contractor</i> for acceptance. If the <i>Contractor</i> accepts the quotation, it changes the Subcontract Scope, the Prices and the Subcontract Completion Date accordingly. |
| Uncorrected Defects | 43   |   |
|                     | 43.1 | If the <i>Subcontractor</i> has not corrected a notified Defect within the time required by the subcontract, the <i>Contractor</i> assesses the cost of having the Defect corrected by other people and the <i>Subcontractor</i> pays this amount.  |

## 5 PAYMENT

|                          |      |  |
|--------------------------|------|--|
| Assessing the amount due | 50   |  |
| B                        | 50.1 | The <i>Subcontractor</i> assesses the amount due at each <i>assessment day</i> and submits an invoice to the <i>Contractor</i> for payment of the amount due no later than the subcontract application date as detailed in Schedule B. There is an <i>assessment day</i> in each month from the <i>starting date</i> until the month after the <i>defects date</i> . |
| B                        | 50.2 | The <i>Subcontractor's</i> invoice includes details of how the amount due has been assessed and evidence that it has paid to its subsubcontractors any amounts included in previous payments for work subsubcontracted.  |

- 50.3 If the *Subcontractor* submits an invoice for payment before the *assessment day*, the amount due at the *assessment day* is
- the Price for each lump sum item in the Price List which the *Subcontractor* has completed,
  - where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Subcontractor* has completed by the rate,
  - the amount of the expenses stated in the Price List properly spent by the *Subcontractor*,
  - for work carried out on a time charge basis, the time expended on work which has been completed multiplied by the appropriate People Rates,
  - plus other amounts to be paid to the *Subcontractor*,
  - less amounts to be paid by or retained from the *Subcontractor*.
- 50.4 If the *Subcontractor* does not submit an invoice for payment before the *assessment day*, the amount due at the *assessment day* is the lesser of
- the amount the *Contractor* assesses as due at the *assessment day*, assessed as though the *Subcontractor* had submitted an invoice for payment before the *assessment day*, and
  - the amount due at the previous *assessment day*.
- If the *Contractor* assesses an amount due it gives details of the how the amount has been calculated.
- 50.5 If the *Subcontractor* has incorrectly assessed the amount due in an invoice submitted before the *assessment day*, the *Contractor* corrects the amount due and gives details of how the corrected amount has been calculated before payment.
- 50.6 The *Subcontractor* pays *delay damages* for each day from the Subcontract Completion Date until Completion.
- B** 50.7 Where the Subcontract Scope requires the submission of documentation including, but not limited to, test certificates, marked up as-built drawings and operation / maintenance manuals the *Contractor* may retain in assessments of the amount due either
- the full amount of the Prices included in the Price List related to that element of the *subcontract services*, or
  - the *Contractor's* estimate of the cost of producing the documentation if such Prices do not exist or the *Contractor* considers that the Prices do not adequately reflect the cost of producing the documentation,
- until such time as the *Subcontractor* has provided the documentation in the format which the Subcontract Scope requires.

**Payment**

- 51**
- 51.1 A payment is made within three weeks after the *assessment day*. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Subcontractor* to the *Contractor* if the amount due is less than the amount due in the previous assessment. Other payments are made by the *Contractor* to the *Subcontractor*.
- 51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Subcontract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.
- 51.3 Any tax which the law requires a Party to pay to the other Party is added to any payment made under the subcontract.

## 6 COMPENSATION EVENTS

### Compensation events 60

60.1 The following are compensation events.

**H**

(1) The *Contractor* gives an instruction changing the Subcontract Scope unless the change is in order to make a Defect acceptable or is a change to the Information Systems or the introduction of a new Information System.

(2) The *Contractor* does not provide something which it is to provide by the date stated in the subcontract.

**B/H**

(3) The *Contractor* gives an instruction to stop or not to start any work, unless

- the instruction relates to a notification from the *Subcontractor* that a conflict of interest may exist or arise or
- the instruction is given as a result of any health, safety or environmental incident within the site.

(4) The *Contractor* does not work within the conditions stated in the Subcontract Scope.

(5) The *Contractor* does not reply to a communication from the *Subcontractor* within the period required by the subcontract.

(6) The *Contractor* changes a decision which it has previously communicated to the *Subcontractor*.

(7) Either Party notifies the other of a correction to an assumption made for the assessment of a compensation event.

(8) The *Contractor* gives an instruction to correct a mistake in the Price List.

### Notifying compensation events 61

61.1 The *Contractor* and the *Subcontractor* notify the other of an event which has happened or which they expect to happen as a compensation event.

61.2 If the *Contractor* notifies the compensation event, it also instructs the *Subcontractor* to submit a quotation for the compensation event. The *Subcontractor* submits the quotation within one week of being instructed to do so by the *Contractor*. If the *Subcontractor* notifies the compensation event, it submits a quotation with the notification.

61.3 If the *Subcontractor* does not notify a compensation event within three weeks of becoming aware that the event has happened the Prices and Completion Date are not changed unless the event arises from a correction to an assumption stated by the *Contractor* or the *Contractor* giving an instruction or changing an earlier decision.

61.4 A compensation event is not notified by the *Contractor* or the *Subcontractor* after the defects date.

### Quotations for compensation events 62

62.1 A quotation for a compensation event comprises proposed changes to the Prices and Subcontract Completion Date assessed by the *Subcontractor*. The *Subcontractor* submits details of its assessment with each quotation. If the effects of a compensation event are too uncertain to be forecast reasonably, the *Subcontractor* states assumptions about the compensation event in the quotation. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party.

62.2 The *Contractor* replies within one week of the *Subcontractor's* submission. If the *Contractor* decides that an event notified by the *Subcontractor*

- arises from the fault of the *Subcontractor*,

- has not happened and is not expected to happen,
- has not been notified within the timescales set out in these *conditions of subcontract* or
- is not one of the compensation events stated in the subcontract

the *Contractor* notifies the *Subcontractor* that the Prices and Subcontract Completion Date are not to be changed.

If the *Contractor* decides otherwise, it notifies the *Subcontractor* accordingly and includes in the notice

- acceptance of the *Subcontractor's* quotation or
- a statement that it does not agree with the quotation and details of the *Contractor's* own assessment.

62.3 If the *Contractor* does not reply to a quotation in accordance with the subcontract and within the time allowed, it is treated as acceptance by the *Contractor* of the quotation.

62.4 If the *Subcontractor* does not provide a quotation which the subcontract requires it to submit in the time allowed, the *Contractor* assesses the compensation event and notifies the *Subcontractor* of the *Contractor's* assessment within one week of when it should have received the *Subcontractor's* quotation.

62.5 The *Contractor* includes details of its assessment of a compensation event when it notifies the *Subcontractor* of the assessment. If the effects of a compensation event are too uncertain to be forecast reasonably, the *Contractor* states assumptions about the compensation event in the assessment. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party.

#### Assessing compensation events

#### 63

63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.

63.2 For other compensation events, the change to the Prices is assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting Fee.

63.3 The *Contractor* and the *Subcontractor* may agree rates or lump sums to assess the change to the Prices.

63.4 The effects of compensation events upon the Defined Cost are calculated using rates and percentages stated in the Subcontract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

63.5 If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the *Contractor* and *Subcontractor* may agree a new rate. If they do not agree the *Contractor* assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.

63.6 A delay to the Subcontract Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed.

63.7 An assessment of the effect of a compensation event made using Defined Cost

- includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events and
- is based upon the assumptions that
  - the *Subcontractor* reacts competently and promptly to the event and
  - any additional Defined Cost and time due to the event are reasonably incurred.

- 63.8 A compensation event which is an instruction to change the Subcontract Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Subcontract Completion Date were for the interpretation most favourable to the *Subcontractor*.
- 63.9 Assessments for changed prices for compensation events are in the form of changes to the Price List.
- 63.10 If
- the *Contractor* has accepted a *Subcontractor's* quotation,
  - a *Subcontractor's* quotation is treated as accepted or
  - the *Contractor* has notified the *Subcontractor* of a *Contractor's* own assessment
- for a compensation event, the assessment of that compensation event is not revised except as stated in these *conditions of subcontract*.

## 7 RIGHTS TO MATERIAL

### The Parties' use of material

70

- 70.1 The *Client* and the *Contractor* have the right to use the material provided by the *Subcontractor* for the purpose stated in the Subcontract Scope. The *Subcontractor* obtains from a subsubcontractor equivalent rights to use material prepared by the Subsubcontractor.
- 70.2 The *Subcontractor* has the right to use material provided by the *Contractor* only to Provide the Subcontract Service. The *Subcontractor* may make this right available to a subsubcontractor.
- 70.3 The *Subcontractor* may use the material provided by it under the subcontract for other work unless stated otherwise in the Subcontract Scope.

## 8 LIABILITIES AND INSURANCE

### Client's and Contractor's liabilities

80

- 80.1 The following are *Contractor's* liabilities.
- Claims and proceedings from others and compensation and costs payable to others which are due to
    - the unavoidable result of the *subcontract service*,
    - negligence, breach of statutory duty or interference with any legal right by the *Contractor* or by any person employed by or contracted to it except the *Subcontractor*.
  - A fault of the *Contractor* or any person employed by or contracted to it, except the *Subcontractor*.

### Subcontractor's liabilities

81

- 81.1 The following are *Subcontractor's* liabilities unless they are stated as being *Contractor's* liabilities
- Claims and proceedings from the *Contractor* and others and compensation and costs payable to the *Contractor* and others which arise from a failure by the *Subcontractor* to use the skill and care normally used by professionals providing services similar to the *subcontract service*.
  - Death or bodily injury to the employees of the *Subcontractor*.

## Recovery of costs 82

- 82.1 Any cost which the *Contractor* has paid or will pay as a result of an event for which the *Subcontractor* is liable is paid by the *Subcontractor*.
- 82.2 Any cost which the *Subcontractor* has paid or will pay as a result of an event for which the *Contractor* is liable is paid by the *Contractor*
- 82.3 The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the subcontract.

## Insurance cover 83

H

- 83.1 The *Contractor* provides the insurances which the *Contractor* is to provide as stated in the Subcontract Data.
- 83.2 The *Subcontractor* provides the insurances stated in the Insurance Table (in compliance with the requirements set out in Annex B of the main contract Scope) except any insurance which the *Contractor* is to provide as stated in the Subcontract Data.
- 83.3 The insurances provide cover for events which are the *Subcontractor's* liability from the *subcontract starting date* until the end of the periods stated in the Subcontract Data.

### INSURANCE TABLE

| Insurance against  | Minimum amount of cover  |
|--|--|
| Liability of the <i>Subcontractor</i> for claims made against it arising out of the <i>Subcontractor's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>subcontract service</i> | The amount stated in the Subcontract Data  |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Subcontractor</i> ) arising from or in connection with the <i>Subcontractor</i> Providing the Subcontract Service       | The amount stated in the Subcontract Data for any one event with cross liability so that the insurance applies to the Parties separately |
| Liability for death of or bodily injury to employees of the <i>Subcontractor</i> arising out of and in the course of their employment in connection with the subcontract   | The greater of the amount required by the applicable law and the amount stated in the Subcontract Data for any one event                 |

## 9 TERMINATION AND RESOLVING DISPUTES

|  |           |  |
|--|-----------|--|
| <b>Termination and reasons for termination</b> | <b>90</b> |  |
|  | 90.1      | A Party may terminate the <i>Subcontractor's</i> obligation to Provide the Subcontract Service for a reason stated in these <i>conditions of subcontract</i> by notifying the other Party and giving details of the reason for terminating. After a notification to terminate has been issued, the <i>Subcontractor</i> does no further work necessary to Provide the Subcontract Service.   |
|  | 90.2      | Either Party may terminate if the other Party has become insolvent or its equivalent (Reason 1).   |
|  | 90.3      | The <i>Contractor</i> may terminate if the <i>Contractor</i> has notified the <i>Subcontractor</i> that the <i>Subcontractor</i> has not stopped one of the following defaults within two weeks of the date when the <i>Contractor</i> notified the <i>Subcontractor</i> of the default <ul style="list-style-type: none"> <li>• Substantially failed to comply with the subcontract (Reason 2).</li> <li>• Substantially hindered the <i>Client</i> or the <i>Contractor</i> (Reason 3).</li> <li>• Substantially broken a health or safety regulation (Reason 4).</li> </ul>   |
|  | 90.4      | The <i>Subcontractor</i> may terminate if <ul style="list-style-type: none"> <li>• the <i>Contractor</i> has not paid an amount due under the subcontract within thirteen weeks of the <i>assessment day</i> which followed receipt of the <i>Subcontractor's</i> invoice for it (Reason 5) or</li> <li>• the <i>Contractor</i> has instructed the <i>Subcontractor</i> to stop or not to start any substantial work or all work for a reason which is not the <i>Subcontractor's</i> fault and an instruction allowing the work to re-start or start or removing work from the Subcontract Scope has not been given within eight weeks (Reason 6).</li> </ul> |
|  | 90.5      | The <i>Contractor</i> may terminate if the <i>Subcontractor</i> does a Corrupt Act, unless it was done by a subsubcontractor or supplier and the <i>Subcontractor</i> <ul style="list-style-type: none"> <li>• was not and should not have been aware of the Corrupt Act or</li> <li>• informed the <i>Contractor</i> of the Corrupt Act and took action to stop it as soon as the <i>Subcontractor</i> became aware of it (Reason 7).</li> </ul>  |
| <b>B</b>                                       | 90.6      | The <i>Contractor</i> may terminate if the <i>Subcontractor</i> commits a breach of the Anti-slavery Policy. (Reason 8)  |
| <b>B</b>                                       | 90.7      | The <i>Contractor</i> may terminate for any other reason (Reason 9).   |
| <b>H</b>                                       | 90.8      | The <i>Contractor</i> may terminate this subcontract with immediate effect <ul style="list-style-type: none"> <li>• where the <i>Subcontractor</i> is an unincorporated joint venture, if the joint venture arrangement is terminated for any reason (Reason 10),</li> <li>• if, following a Change of Control or an event listed in clause Z7.2 or Z8.4, either the Controller or an alternative guarantor proposed by the <i>Subcontractor</i> fails to provide the legal opinion required by clause Z11.1 (Reason 11),</li> <li>• if the warranty given by the <i>Subcontractor</i> under clause Z8.1 is untrue (Reason 12),</li> </ul>                     |

|                                  |           |   |
|----------------------------------|-----------|---|
|                                  |           | <ul style="list-style-type: none"> <li>if the <i>Subcontractor</i> fails to comply (or to ensure that any person employed by the <i>Subcontractor</i> or acting on the <i>Subcontractor's</i> behalf complies) with the <i>Client's</i> Anti Bribery Code of Conduct or Anti Fraud Code of Conduct) (Reason 13),</li> <li>if the <i>Subcontractor</i> fails to comply (or to ensure that any subsubcontractor complies) with the <i>Client's</i> policies relating to bullying and harassment (Reason 14),</li> <li>if the <i>Subcontractor</i> fails to give to the <i>Contractor</i> a Parent Company Guarantee within the relevant timescales stated in clause Z6.1 or Z7.8 (Reason 15),</li> <li>if the <i>Subcontractor</i> fails to notify the <i>Contractor</i> of a Tax Non-Compliance or if the <i>Contractor</i> decides that any mitigating factors notified by the <i>Subcontractor</i> are unacceptable (Reason 16),</li> <li>if the <i>Subcontractor</i> fails to process Personal Data in accordance with (or otherwise puts the <i>Contractor</i> in breach of) the Data Protection Acts (Reason 17) or</li> <li>if the <i>Subcontractor</i> fails to comply with the requirements or instructions of the <i>Contractor</i> in relation to Personal Data (including instructions relating to processing Personal Data outside the European Economic Area) (Reason 18).</li> </ul> |
| <b>H</b>                         | 90.9      | <p>The <i>Contractor</i> may terminate this subcontract with immediate effect if</p> <ul style="list-style-type: none"> <li>an actual or potential conflict of interest exists or arises between the Parties and the <i>Subcontractor</i> has not taken actions acceptable to the <i>Contractor</i> to overcome or mitigate the conflict (Reason 19) or</li> <li>if as a result of a Change of Control <ul style="list-style-type: none"> <li>a person or organisation with which the <i>Contractor</i> does not wish to be associated for ethical or reputational reasons is an Associated Company (Reason 20),</li> <li>the <i>Contractor</i> decides (having reviewed any information provided by the <i>Subcontractor</i> and made appropriate enquiries) that the <i>Subcontractor</i> is no longer in a position to perform its obligations under the subcontract (Reason 21),</li> <li>the <i>Subcontractor</i> or an Associated Company Controls, is under the Control of or is under Common Control with a Technical Adviser, unless the <i>Subcontractor</i> and the <i>Contractor</i> agree and implement the actions needed to overcome the resulting conflict of interest (Reason 22).</li> </ul> </li> </ul>  |
| <b>Procedures on Termination</b> | <b>91</b> |   |
|                                  | 91.1      | On termination, the <i>Contractor</i> may complete the <i>subcontract service</i> and use any material to which it has title.   |
|                                  | 91.2      | After the final payment has been made, the <i>Subcontractor</i> gives to the <i>Contractor</i> information which it has obtained or prepared which it has a responsibility to provide under the subcontract.  |
| <b>Payment on termination</b>    | <b>92</b> |   |
|                                  | 92.1      | <p>The amount due on termination includes</p> <ul style="list-style-type: none"> <li>an amount due assessed as for normal payments and</li> <li>other costs reasonably incurred by the <i>Subcontractor</i> in expectation of completing the <i>subcontract service</i> and to which the <i>Subcontractor</i> is committed.</li> </ul>  |
| <b>B/H</b>                       | 92.2      | If the <i>Contractor</i> terminates for Reason 1, 2, 3, 4, 7, 8 or 10 to 22 the amount due on termination also includes a deduction of the forecast additional cost to the <i>Contractor</i> of completing the <i>subcontract service</i> .   |
| <b>B</b>                         | 92.3      | Not used.   |
|                                  | 92.4      | Within thirteen weeks of termination, the <i>Contractor</i> assesses the final amount due. The final payment is the amount due on termination less the total of previous  |



payments. The *Contractor* gives the *Subcontractor* details of the assessment. Payment is made within three weeks of the *Contractor's* assessment.

## Dispute resolution 93

93.1 A dispute arising under or in connection with the subcontract is referred to and decided by the *Adjudicator*. A Party does not refer a dispute to the *Adjudicator* that is the same, or substantially the same, as one that has already been referred to the *Adjudicator*.

## The Adjudicator

93.2 (1) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *subcontract starting date*. The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(2) If the *Adjudicator* is not identified in the Subcontract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(3) The *Adjudicator* and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

## The adjudication

93.3 (1) A Party may refer a dispute to the *Adjudicator* if

- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
- between two and four further weeks have passed since the notification.

If a disputed matter is not notified and referred within the times set out in the subcontract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.

(2) The Party referring the dispute to the *Adjudicator* includes with its referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within two weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) The *Adjudicator* may

- review and revise any action or inaction of the *Contractor* related to the dispute and alter a matter which has been treated as accepted or correct,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which is considered necessary for the *Adjudicator* to reach a decision and to do so within a stated time.

(4) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(5) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Subcontractor*, the assessment is made in the same way as a compensation event is assessed.

(6) The *Adjudicator* decides the dispute and informs the Parties of the decision and reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties.

If the *Adjudicator* does not inform the Parties of the decision within the time allowed, either Party may act as if the *Adjudicator* has resigned.

(7) Unless and until the *Adjudicator* has notified the Parties of the decision, the Parties proceed as if the matter disputed was not disputed.

(8) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the subcontract that it intends to refer the matter to the *tribunal*.

**B**

(9) The *Contractor* and *Subcontractor* agree that any decision or instruction of the *Contractor* made in respect of

- the removal of any person under clause 21.3 or
- any failure to comply with the *Contractor's* policies on bribery and corruption

is for the purposes of an adjudication, final and conclusive.

**The *tribunal***

93.4

A Party may refer a dispute to the *tribunal* if

- the Party is dissatisfied with the *Adjudicator's* decision or
- the *Adjudicator* did not inform the Parties of a decision within the time allowed and a new adjudicator has not been chosen,

except that neither Party may refer a dispute to the *tribunal* unless they have notified the other Party of their intention to do so not more than four weeks after

- the *Adjudicator* notifies the Parties of the decision, or, if the *Adjudicator* did not inform the Parties of the decision within the time allowed,
- the end of the time allowed for the *Adjudicator's* decision.

## ADDITIONAL CONDITIONS

### Z Clauses

Note - The *Client's* additional and revised terms are incorporated either as clauses Z1H to Z12H below or within the core clauses, with their location identified within the left-hand margin by the notation 'H'.

Note - The *Contractor's* additional and revised terms are incorporated either as clauses Z100B to Z135B below or within the core clauses, with their location identified within the left-hand margin by the notation 'B'

### ***Client's additional conditions of subcontract***

Not used

Z1H

### Discrimination

Z2H

Z2H.1 The *Subcontractor* indemnifies the *Contractor* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Contractor* 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 *Subcontractor* in connection with the subcontract.

### Subsubcontracting

Z3H

Z3H.1 The *Subcontractor* assesses the amount due to a subsubcontractor without taking into account the amount assessed under the subcontract.

Z3H.2 If the *Subcontractor* subsubcontracts work to an Associated Company, the Defined Cost of the work subsubcontracted is assessed as if the work had not been subsubcontracted unless otherwise agreed by the *Contractor*.

Z3H.3 The *Contractor* may, having stated the reasons, instruct the *Subcontractor* to remove a subsubcontractor. The *Subcontractor* then arranges the removal of the subsubcontractor and the appointment of a replacement in accordance with the subcontract.

Z3H.4 Before appointing a proposed subsubcontractor the *Subcontractor* submits to the *Contractor* details of any RIDDOR Incident under any contract for which the proposed subsubcontractor is responsible and of any Enforcement Action brought against the proposed subsubcontractor.

Z3H.5 The *Subcontractor* does not appoint the proposed subsubcontractor until the *Contractor* has accepted the submission. A reason for not accepting the submission is that the *Contractor* is not satisfied that the proposed 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.

Z3H.6 If requested by the *Contractor*, the *Subcontractor* provides further information to support, update or clarify a submission under clause Z3.4.

Z3H.7 If, following the acceptance of a submission under clause Z3.5, it is found that the 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 *Contractor* may instruct the *Subcontractor* to replace the subsubcontractor.

### Adjudication

Z4H

Z4H.1 The *Adjudicator's* appointment under an NEC Dispute Resolution Service Contract current at the *subcontract starting date* includes a term stating that

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

|  |            |   |
|--|------------|---|
| <b>Construction Industry Scheme</b>                                | <b>Z5H</b> |   |
|  | Z5H.1      | In this clause Z5 (but not otherwise) <ul style="list-style-type: none"> <li>• The Act is the Finance Act 2004 and</li> <li>• The Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).</li> </ul>   |
|  | Z5H.2      | In the event that this subcontract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act the following clauses Z5.3 and Z5.4 will apply.  |
|  | Z5H.3      | If this subcontract falls within the scope of the Construction Industry scheme as stated in Z5.2, the <i>Subcontractor</i> provides the information required by the Regulations to enable the <i>Contractor</i> to verify (in accordance with paragraph 6 of the Regulations) whether the <i>Subcontractor</i> under the Act <ul style="list-style-type: none"> <li>• is registered for gross payment,</li> <li>• is registered for payment under deduction,</li> <li>• is exempt from registration as a local authority or other public body or</li> <li>• is neither registered nor exempt from registration.</li> </ul>  |
|  | Z5H.4      | If the <i>Subcontractor</i> is registered for payment under deduction or is neither registered nor exempt from registration <ul style="list-style-type: none"> <li>• the <i>Subcontractor</i> submits an application for payment which separately identifies the direct cost of <ul style="list-style-type: none"> <li>• materials</li> <li>• equipment which is now unusable ('consumable stores')</li> <li>• fuel used, except for travelling</li> <li>• Equipment hired specifically for this subcontract from a third party ('plant hire')</li> <li>• manufacturing or prefabricating materials</li> </ul> </li> <li>• the <i>Contractor</i> deducts the relevant percentage from the amount left after the above costs are deducted from the total of the application for payment in accordance with the Act and the Regulations.</li> </ul> |
| <b>Parent Company Guarantee</b>                                    | <b>Z6H</b> |   |
|  | Z6H.1      | If required by the <i>Contractor</i> , the <i>Subcontractor</i> gives to the <i>Contractor</i> a Parent Company Guarantee. If the Parent Company Guarantee was not given by the <i>subcontract starting date</i> , it is given to the <i>Contractor</i> within four weeks of the <i>subcontract starting date</i> or of the <i>Contractor's</i> request, whichever is later. Parent Company Guarantees are given by <ul style="list-style-type: none"> <li>• for a standalone company – the Controller or</li> <li>• for a joint venture (whether incorporated or unincorporated) – the Controller of each Consortium Member.</li> </ul> <p>In all cases it is for the <i>Contractor</i> to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller</p>                             |
| <b>Merger, take-over, Change of Control and financial distress</b> | <b>Z7H</b> |   |
|  | Z7H.1      | The <i>Subcontractor</i> notifies the <i>Contractor</i> immediately if a Change of Control has occurred or is expected to occur, except only to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.   |
|  | Z7H.2      | The <i>Subcontractor</i> notifies the <i>Contractor</i> immediately of any material change in   |

- the direct or indirect legal or beneficial ownership of any shareholding in the *Subcontractor* 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 *Subcontractor* or a Consortium Member, or
- the composition of the *Subcontractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this subcontract by the *Subcontractor*.

Z7H.3 The *Subcontractor* notifies the *Contractor* immediately of any change or proposed change in the name or status of the *Subcontractor* or a Consortium Member.

Z7H.4 The *Subcontractor* notifies the *Contractor* immediately if any of the following events occurs in relation to the *Subcontractor*, a Consortium Member or a Guarantor

- 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 or
- it commits a material breach of its covenants to its lenders.

Z7H.5 If a Change of Control occurs, the *Subcontractor* provides to the *Contractor*

- 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 *Contractor* a Parent Company Guarantee if so required by the *Contractor*,
- any other information requested by the *Contractor* in order to satisfy itself that the *Subcontractor* remains in a position to perform its obligations under this subcontract.

Z7H.6 If a Change of Control or any of the events listed in clauses Z7.2 to Z7.4 occurs, the *Contractor* may require the *Subcontractor* to give to the *Contractor* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Subcontractor* and accepted by the *Contractor*.

Z7H.7 A reason for not accepting an alternative guarantor proposed by the *Subcontractor* is that it does not meet the legal opinion required in clause Z11.1.

Z7H.8 If so required by the *Contractor*, the *Subcontractor* within four weeks after the *Contractor* notifies the requirement gives to the *Contractor* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Contractor*.

## **Tax Non-Compliance      Z8H**

Z8H.1 The *Subcontractor* warrants that it has notified the *Contractor* of any Tax Non-Compliance or any litigation in which the *Subcontractor* or a Consortium Member is involved relating to any Tax Non-Compliance prior to the *subcontract starting date*.

Z8H.2 The *Subcontractor* notifies the *Contractor* within one week of any Tax Non-Compliance occurring after the *subcontract starting date* and provides details of

- the steps the *Subcontractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information reasonably requested by the *Contractor*.

## **Joint Ventures      Z9H**

Z9H.1 This clause Z9 applies if the *Subcontractor* is an unincorporated joint venture.

Z9H.2 Each Consortium Member is jointly and severally liable to the *Contractor* for the performance of the *Subcontractor's* obligations under this subcontract.

Z9H.3 The *Subcontractor* acknowledges that any payment made by the *Contractor* to a Consortium Member under this subcontract to that extent discharges the *Contractor's* liability to make payment to the *Subcontractor*.

Z9H.4 A Consortium Member gives not less than four weeks' notice to the *Contractor* of any proposed termination of the joint venture arrangement.

Z9H.5 Where two or more Consortium Members comprise the *Subcontractor*, clause 90.2 is amended by inserting after "the other Party" the words "(or, in the case of the *Subcontractor*, any Consortium Member)".

#### Intellectual property rights

##### Z10H

Z10H.1 The *Client* owns (or will own) all IPRs in material prepared in connection with this subcontract except as stated otherwise in the main contract. To the extent that these IPRs do not automatically belong to the *Client*, the *Subcontractor* enters into such documents and does such acts as the *Contractor* on behalf of the *Client* requests to transfer the IPRs to the *Client*, and procures that its subsubcontractors (at any stage of remoteness from the *Client*) do the same. The *Subcontractor* provides to the *Contractor* for transmission to the *Client* the documents which transfer these IPRs to the *Client*.

Z10H.2 The *Subcontractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the main contract. Any licence granted under this clause survives the termination or expiry of this subcontract and cannot be terminated by the *Subcontractor* or its assignees or any third party. The *Subcontractor* provides to the *Contractor* for transmission to the *Client* the documents which license these IPRs to the *Client*.

Z10H.3 The *Subcontractor* ensures that any subsubcontract (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.

#### Legal opinion

##### Z11H

Z11H.1 If the *Subcontractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Subcontractor* (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 *Subcontractor* 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
- accepted by the *Contractor*.

Z11H.2 The legal opinion is addressed to the *Contractor* 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 *Contractor*.

Z11H.3 The legal opinion addresses the matters listed in Section 4.2 of the main contract Framework Information.

#### Change of Control and conflict of interest

##### Z12H

Z12H.1 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Subcontractor* and the *Contractor* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. The Parties implement any actions agreed, including (where appropriate) termination of this subcontract or any other contract between the Parties relating to the Regional Investment Programme.

Z12H.2 For the purposes of this clause, a conflict of interest is likely to arise (without limitation) where the *Subcontractor* or an Associated Company takes over, merges with or is taken over by

- another delivery integration partner within the same Lot (or an Associated Company of that delivery integration partner) or
- a Technical Adviser (or an Associated Company of that Technical Adviser).

**Contractor's additional conditions of subcontract**

|                                 |              |  |
|---------------------------------|--------------|--|
| <b>The Construction Act</b>     | <b>Z100B</b> | IF THE UNITED KINGDOM HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY THE LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009 (THE ACT) APPLIES TO THE CONTRACT, THE FOLLOWING ADDITIONAL CONDITIONS APPLY.   |
| <b>Definitions</b>              | Z100B.1      | <p>(1) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.</p> <p>(2) Each <i>assessment day</i> is a payment due date. If there is a termination, the payment due date is thirteen weeks after the notice of termination.</p> <p>(3) The final date for payment is 28 days after the payment due date.</p>  |
| <b>Assessing the amount due</b> | Z100B.2      | If the <i>Subcontractor</i> submits an invoice for payment before the payment due date, the invoice is the notice of payment specifying the sum that the <i>Subcontractor</i> considers to be due at the payment due date (the notified sum). The <i>Subcontractor's</i> invoice states the basis on which the amount is calculated and includes details of the calculation.   |
|                                 | Z100B.3      | If the <i>Subcontractor</i> does not submit an invoice for payment before a payment due date, the notified sum is zero or, if an amount is to be paid to the <i>Contractor</i> , the amount which the <i>Contractor</i> considers is to be paid. The <i>Contractor</i> notifies the <i>Subcontractor</i> of the notified sum.  |
|                                 | Z100B.4      | <p>The following replaces clause 50.5</p> <p>If a Party intends to pay less than the notified sum, it notifies the other Party of its assessment of the amount due not later than seven days (the prescribed period) before the final date for payment. The notification states the basis on which the amount due is calculated and includes details of the calculation. A Party pays the notified sum unless it has notified its intention to pay less than the notified sum.</p> |
| <b>Compensation event</b>       | Z100B.5      | If the <i>Subcontractor</i> exercises its right under the Act to suspend performance, it is a compensation event.  |
| <b>The adjudication</b>         | Z100B.6      | <p>The following replaces clause 93.3(1)</p> <p>A Party may issue to the other Party a notice of its intention to refer a dispute to adjudication at any time. The Party refers the dispute to the <i>Adjudicator</i> within seven days of the notice.</p>   |
|                                 | Z100B.7      | The <i>Adjudicator</i> may in the decision allocate the <i>Adjudicator's</i> fees and expenses between the Parties.  |
|                                 | Z100B.8      | The <i>Adjudicator</i> may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.  |
|                                 | Z100B.9      | If the <i>Adjudicator's</i> decision changes an amount notified as due, payment of the sum decided by the <i>Adjudicator</i> is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.  |
| <b>Instructions</b>             | <b>Z101B</b> |  |
|                                 | Z101B.1      | Notwithstanding any other provision of the subcontract the <i>Subcontractor</i> shall not act or seek to rely on any instruction given by the <i>Contractor</i> unless that  |

instruction has been issued or countersigned by the Contractor's Authorised Person or any other person delegated with such authority by the *Contractor*.

**Bonds,  
guarantees,  
collateral  
warranties**

**Z102B**

Z102B.1 If the *Subcontractor* does not execute and deliver to the *Contractor*

- a performance bond
- a parent company guarantee
- any collateral warranties or
- any other certificates and guarantees

which this subcontract requires within the times stated, or if not so stated, within 14 days of the *Contractor's* request, one quarter of the amount due is retained in assessments of the amount due in accordance with clause 50.3 until the *Subcontractor* has executed and delivered the required documents to the *Contractor*.

**Final Payment**

**Z103B**

Z103B.1 Agreement of the final amount due under the subcontract together with written confirmation that the *Subcontractor* has no further claims in respect of the subcontract shall be a condition precedent to any final payment to be made under clause 51.

**Allocation Sheets**

**Z104B**

Not used.

**Timesheets**

**Z104(a)B**

Z104(a)B.1 The *Subcontractor* shall provide a time report listing each person engaged in the provision of the *subcontract services* detailing the hours spent on individual activities. The time reports shall be provided to the *Contractor* each Monday detailing the previous weeks work.

Z104(a)B.2 The *Subcontractor* shall, at the end of each month, complete and submit to the *Contractor* a summary of the staff hours expended in carrying out the *services* in that month. This summary is to be presented in a format agreed with the *Contractor* and at the same time as the *Subcontractor's* invoice.

**Accident Reporting**

**Z105B**

Z105B.1 The *Subcontractor* complies with

- the *Contractor's* incident reporting and investigation procedure as referenced in the Subcontract Scope
- the latest edition of all the *Contractor's* policies and policy statements

The *Subcontractor* reports to the *Contractor* details of any near miss, incident or accident to any person employed by or contracted to him on the site as soon as possible after an incident occurs.

**Financial  
Reporting**

**Z106B**

Z106B.1 The *Subcontractor* shall comply with any financial / commercial reporting requirements in relation to Earned Value Management (EVM).



|                                     |              |  |
|-------------------------------------|--------------|--|
| <b>Novation</b>                     | <b>Z107B</b> |  |
|                                     | Z107B.1      | Notwithstanding any other provision of this subcontract, the <i>Subcontractor</i> shall not novate the subcontract.  |
| <b>Code of Conduct</b>              | <b>Z108B</b> |  |
|                                     | Z108B.1      | The <i>Subcontractor</i> shall respect and comply with the <i>Contractors</i> “Code of Conduct for subcontractors, suppliers and partners” at all times. In addition, the <i>Subcontractor</i> shall ensure that all of its subsubcontractors, suppliers and other parties engaged for the purposes of fulfilling the subcontract comply in all respects with the aforementioned Code of Conduct. The <i>Subcontractor</i> shall provide such supporting evidence of compliance as the <i>Contractor</i> may reasonably request.   |
| <b>Insolvency</b>                   | <b>Z109B</b> |  |
|                                     | Z109B.1      | If the <i>Client</i> becomes insolvent (as defined under section 113 of the Housing Grants, Construction and Regeneration Act 1996 as the same may have been, or may from time to time be, amended, modified or re-enacted, including but not limited to amendments by the Local Democracy, Economic Development and Construction Act 2009) the <i>Contractor</i> is relieved of his obligation to pay the <i>Subcontractor</i> under this subcontract except only if and to the extent that the <i>Contractor</i> has received payment in respect thereof from the <i>Client</i> .  |
|                                     | Z109B.2      | If the <i>Subcontractor</i> becomes insolvent (as defined under section 113 of the Housing Grants, Construction and Regeneration Act 1996 as the same may have been, or may from time to time be, amended, modified or re-enacted, including but not limited to amendments by the Local Democracy, Economic Development and Construction Act 2009) after the last date upon which a pay less notice could have been given by the <i>Contractor</i> pursuant to clause Z100B.4, the <i>Contractor</i> is relieved of his obligation to pay the amount due as stated in the invoice submitted by the <i>Subcontractor</i> pursuant to clause 50.1. |
| <b>Defects Following Completion</b> | <b>Z110B</b> |  |
|                                     | Z110B.1      | The <i>Subcontractor</i> indemnifies the <i>Contractor</i> against any claim relating to or arising from defects in the <i>subcontract services</i> which become apparent after Completion.  |
| <b>Compensation Events</b>          | <b>Z111B</b> |  |
|                                     | Z111B.1      | Not Used.  |
| <b>Progressing the services</b>     | <b>Z112B</b> |  |
|                                     | Z112B.1      | On the <i>subcontract starting date</i> the <i>Subcontractor</i> shall commence to Provide the Subcontract Services and shall thereafter proceed with the same with due diligence and without any delay, except such as may be expressly sanctioned or ordered by the <i>Contractor</i> or be wholly beyond the control of the <i>Subcontractor</i> .  |
|                                     | Z112B.2      | If the <i>Subcontractor</i> fails to proceed with the services with due diligence after being required to do so in writing by the <i>Contractor</i> , the <i>Subcontractor</i> will be deemed to have substantially failed to comply with its obligations under this subcontract.  |
|                                     | Z112B.3      | For the purposes of this clause due diligence shall be deemed to mean the <i>Subcontractor</i> complying with the order and procedure as detailed within the programme submitted under clause 31.1 or as otherwise agreed between the Parties.   |

|  |              |   |
|--|--------------|---|
| <b>Validity</b>                            | <b>Z113B</b> |   |
|  | Z113B.1      | If proper legal effect cannot be given to any of the additional conditions as stated in the Subcontract Data then such clauses are severed from the subcontract. The remaining clauses still have full force and effect.  |
| <b>Health and safety intervention Fees</b> | <b>Z114B</b> |   |
|  | Z114B.1      | <p>If due to the acts or omissions of the <i>Subcontractor</i> or the Subcontractor's Persons, the <i>Contractor</i> incurs any costs, claims, liabilities, charges or expenses ("Costs") arising out of or in connection with:</p> <ul style="list-style-type: none"> <li>· any Fee for Intervention that the Health and Safety Executive levies on the <i>Contractor</i>; or</li> <li>· any Fee for Intervention that the Health and Safety Executive levies on the <i>Client</i>,</li> </ul> <p>then subject to clause Z114B.2, the <i>Subcontractor</i> shall indemnify the <i>Contractor</i> against such Costs. Notwithstanding any other provision of this subcontract the <i>Contractor</i> shall be entitled to set-off against any sum due to the <i>Subcontractor</i> any sum for which the <i>Subcontractor</i> is liable under this clause</p> |
|  | Z114B.2      | If the Health and Safety Executive concludes that the breach of health and safety legislation was caused solely by the wrongful acts or omissions of the <i>Client</i> , the Client's Persons, <i>Contractor</i> , or Contractor's Persons, the <i>Subcontractor</i> will be entitled to recover such monies paid or retained pursuant to clause Z114B.1  |
|  | Z114B.3      | For the avoidance of doubt the <i>Subcontractor</i> will provide the indemnity in clause Z114B.1 whether or not the Health and Safety Executive also levies a Fee for Intervention against the <i>Subcontractor</i> .   |
|  | Z114B.4      | The indemnity in clause Z114B.1 will apply irrespective of any decision by the Health and Safety Executive as regards the prosecution of any person for an offence under the health and safety legislation.   |
| <b>Documentation</b>                       | <b>Z115B</b> |   |
|  | Z115B.1      | <p>The <i>Subcontractor</i></p> <ul style="list-style-type: none"> <li>· has the right to use the Subcontract Scope or any other material relating to the <i>services</i> only for the purposes of providing the <i>subcontract services</i> and may make this right available to his subsubcontractors.</li> <li>· returns the Subcontract Scope or any other material relating to the <i>subcontract services</i> to the <i>Contractor</i> after the <i>defects date</i>.</li> <li>· does not disclose information obtained in connection with the <i>works</i> in the main contract or this subcontract to any other person without the <i>Contractor's</i> written consent.</li> </ul>  |
| <b>Anti-slavery</b>                        | <b>Z116B</b> |   |
|  | Z116B.1      | <p>In Providing the Subcontract Services, the <i>Subcontractor</i> shall and shall ensure that each of its subsubcontractors complies with</p> <ul style="list-style-type: none"> <li>· all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and</li> <li>· the Anti-slavery Policy.</li> </ul>  |
|  | Z116B.2      | <p>The <i>Subcontractor</i> undertakes warrants and represents that neither it nor any of its officers, or employees has</p> <ul style="list-style-type: none"> <li>· been convicted of any offence involving slavery and human trafficking;</li> </ul>   |

- been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- Z116B.3 The *Subcontractor* shall implement due diligence procedures for its subsubcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- Z116B.4 The *Subcontractor* shall notify the *Contractor* as soon as it becomes aware of
  - any breach, or potential breach, of the Anti-slavery Policy; or
  - any actual or suspected slavery or human trafficking in its supply chain which has a connection with this subcontract;
  - it being the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- Z116B.5 The *Subcontractor* shall prepare and deliver to the *Contractor* each year within one month of the anniversary of the subcontract date, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- Z116B.6 The *Subcontractor* shall
  - maintain a complete set of records to trace the supply chain of all Equipment, Plant and Materials or other services provided to the *Contractor* in connection with this subcontract; and
  - implement annual subsubcontractor audits, either directly or through a third party auditor to monitor compliance with the Anti-slavery Policy, the first of which shall be completed within 6 months of the subcontract date.
- Z116B.7 The *Subcontractor* shall implement a system of training for its employees to ensure compliance with the Anti-slavery Policy.
- Z116B.8 The *Subcontractor* shall keep a record of all training offered and completed by its employees to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to *Contractor* on request.
- Z116B.9 The *Subcontractor* shall indemnify the *Contractor* against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the *Contractor* as a result of any breach of the Anti-slavery Policy by the *Subcontractor* or any of its subconsultants.

#### **Bribery / Corruption**

#### **Z117B**

- Z117B.1 The *Subcontractor* shall
  - a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - c) comply with the *Contractors* ethics, anti-bribery and anti-corruption policies ("Relevant Policies") as the *Contractor* may update from time to time.
  - d) have and shall maintain in place throughout the term of this subcontract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause Z117B.1(b), and will enforce them where appropriate;

e) promptly report to the *Contractor* any request or demand for any undue financial or other advantage of any kind received by the *Subcontractor* in connection with the performance of this subcontract;

f) immediately notify the *Contractor* in writing if a foreign public official becomes an officer or employee of the *Subcontractor* or acquires a direct or indirect interest in the *Subcontractor* and the *Subcontractor* warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the subcontract date;

g) within one month of the subcontract date, and annually thereafter, certify to the *Contractor* in writing signed by an officer of the *Subcontractor*, compliance with this clause Z117B by the *Subcontractor* and all persons associated with it under clause Z117B.2. The *Subcontractor* shall provide such supporting evidence of compliance as the *Contractor* may reasonably request.

Z117B.2 The *Subcontractor* shall ensure that any person associated with the *Subcontractor* who is performing services or providing goods in connection with this subcontract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Subcontractor* in this clause Z117B (Relevant Terms). The *Subcontractor* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *Contractor* for any breach by such persons of any of the Relevant Terms.

Z117B.3 Breach of this clause Z117B shall be deemed a material breach.

Z117B.4 For the purpose of this clause Z117B, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause Z117B a person associated with the *Subcontractor* includes but is not limited to any subsubcontractor of the *Subcontractor*.

Z117B.5 The *Subcontractor* shall not offer hospitality to the *Contractor's* staff that would breach the following

a) Gifts other than low-value items such as diaries or calendars (up to £10 in value). Calendars, diaries or other small items of office equipment may be offered and accepted but the gift must bear the company's name or insignia and can legitimately be regarded as being in the nature of advertising material

b) Benefits and/or hospitality and / or entertainment such as cocktail parties, meals, receptions, and also invitations to social, cultural and sporting events

c) Overnight accommodation and travel to and from a venue at which an event is being held.

The acceptance of hospitality under the following, limited, circumstances only are permitted:

- Industry events e.g. Professional bodies, trade associations or other industry wide events and
- Nominal value of hospitality not exceeding £150, and
- Individual is responsible for determining whether they have any personal Conflicts of Interest or matters that might be perceived as Conflicts of Interest, in which case accepting hospitality would be unacceptable, and
- The individual is not involved in any current procurement, assessment, dispute management or other specific commercial discussions with the company offering hospitality

**Termination due to  
lack of Notice to  
Proceed to  
Construction**

- Z118B.1 In the event that the *Client* decides that the works in the main contract shall not proceed to construction, the *Contractor* shall notify the *Subcontractor* of the *Client's* decision and the subcontract will be terminated, effective at the date of the notification. The *Contractor's* notification shall be final and conclusive on the *Subcontractor*.
- Z118B.2 After a notification of termination has been issued the *Subcontractor* does no further work necessary to complete the *subcontract services*. The *Subcontractor* shall forthwith in an orderly manner and with the *Contractor's* prior approval
- hand over all documents including without limitation design data, drawings, calculations, reports, correspondence, minutes, models, photographs, records and data electronically recorded, prepared or obtained by the for the purposes of development the design including all materials subject to intellectual property rights.
  - the *Subcontractor* may prepare and retain at his cost a copy of such material.
- Z118B.3 Within fourteen weeks of termination and subject to the *Subcontractor* having performed his obligations under clause Z118B.2 the *Contractor* certifies a final payment to or from the *Subcontractor* which is the *Contractor's* assessment of the amount due on termination less the total of previous payments.
- Z118B.4 Not used
- The *Contractor* shall have no further or other liability to the *Subcontractor* whatever and without limitation the *Client* shall be free to use (or grant to others sub-licences to use) the intellectual property rights together with all material referred to in clause Z118B.2 to complete (or employ others to complete) the design and construction of the works in the main contract if a decision is made in the future to proceed with the same.
- Z118B.5 This clause shall have precedence over any other termination clause contained within this subcontract.

**Tax liability**

- Z119B.1 The *Subcontractor* indemnifies the *Contractor* without limitation for any tax liability which may arise through the *Subcontractor's* engagement of indirectly employed freelance staff, subconsultants, subsubcontractors or other supply chain members of any tier to perform their obligations.
- Z120B Not used.**

**Data Protection**

- Z121B.1 The Parties agree to comply with the data protection provisions set out in the Subcontract Scope.
- Z122B Not used.**
- Z123B Not used.**

**Project Bank  
Account**

- Z124B.1 (1) The Authorisation is a document authorising the *project bank* to make payments to the *Contractor*, the *Subcontractor* and Subcontract Named Suppliers.

(2) Subcontract Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed.

(3) Project Bank Account is the account established by the *Contractor* and used to make payments to the *Subcontractor* and Subcontract Named Suppliers.

(4) A Supplier is a person or organisation who has a contract to

- construct or install part of the *subcontract services*,
- provide a service necessary to Provide the Subcontract Services or
- supply Plant and Materials for the *subcontract services*.

(5) Trust Deed is an agreement which contains provisions for administering the Project Bank Account and is in the document which the Subcontract Data states it is in.

(6) Joining Deed is an agreement under which the Supplier joins the Trust Deed and is in the document which the Subcontract Data states it is in.

|                          |         |  |
|--------------------------|---------|--|
| <b>Named Suppliers</b>   | Z124B.2 | The <i>Subcontractor</i> includes in its contracts with Subcontract Named Suppliers the arrangements in the subcontract for the operation of the Project Bank Account and Trust Deed. The <i>Subcontractor</i> notifies the Subcontract Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.  |
|                          | Z124B.3 | The <i>Subcontractor</i> submits proposals for adding a Supplier to the Subcontract Named Suppliers to the <i>Contractor</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Subcontract Scope. The <i>Contractor</i> , the <i>Client</i> , the <i>Subcontractor</i> and the Supplier sign the Joining Deed after acceptance.   |
| <b>Payments</b>          | Z124B.4 | The <i>Subcontractor</i> shows in the application for payment the amounts due to Subcontract Named Suppliers in accordance with their contracts.   |
|                          | Z124B.5 | The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Subcontract Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Subcontractor</i> for the balance of the payment due under the subcontract. The <i>Contractor</i> notifies the <i>Subcontractor</i> of the sums due to the <i>Subcontractor</i> and Subcontract Named Suppliers stated in the Authorisation.  |
|                          | Z124B.6 | The <i>Client</i> and the <i>Contractor</i> make payment into the <i>project bank</i> of the amount stated in the Authorisation.   |
|                          | Z124B.7 | The <i>Subcontractor</i> and Subcontract Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.  |
|                          | Z124B.8 | A payment which is due from the <i>Subcontractor</i> to the <i>Contractor</i> is not made through the Project Bank Account.  |
| <b>Effect of payment</b> | Z124B.9 | Payments made from the Project Bank Account are treated as payments from the <i>Contractor</i> to the <i>Subcontractor</i> in accordance with the subcontract or from the <i>Subcontractor</i> or Subsubcontractor to Subcontract Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the <i>Subcontractor</i> to comply with the requirements of this clause is not treated as late payment under the subcontract. |

If the  
**Subcontractor** is  
identified as a  
Named Supplier in  
the Contract Data  
for the main  
contract

**Trust Deed**                      Z124B.10      The *Client*, the *Contractor*, the *Subcontractor* and named suppliers sign the Trust Deed before the first assessment date in the contract between the *Contractor* and the *Client*.

If the  
**Subcontractor** is  
added as a Named  
Supplier after the  
Contract Date in  
the main contract

**Joining Deed**                      Z124B.11      The *Client*, the *Contractor*, the *Subcontractor* and the Subcontract Named Supplier sign the Joining Deed before the first assessment date.

**Termination**                      Z124B.12      If the *Contractor* issues a termination certificate, no further payment is made into the Project Bank Account.

**Third party rights**              **Z125B**

Z125B.1      A person or organisation who is not one of the Parties may enforce a term of this subcontract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation are stated in the Subcontract Data.

**Record Keeping  
and Audit**                      **Z126B**

Z126B.1      The *Subcontractor* makes, retains, provides to the *Contractor* and makes available for inspection such information in such form and at such times as is reasonably required by the *Contractor* to comply with the main contract terms.

Z126B.2      The *Subcontractor* provides the *Contractor*, *Client* (or anyone so authorised by the *Client*) and/or the Comptroller and Auditor General with all reasonable co-operation and assistance in relation to any examination of the records, including:

- reasonable access to sites controlled by the *Subcontractor*; and
- reasonable access to the *Subcontractor's* staff.

**Employment  
Matters**                      **Z127B**

Z127B.1      The *Subcontractor* at all times complies with all applicable laws relating to the employment eligibility of all Subcontractor's Persons engaged by the *Subcontractor*, including but not limited to compliance with Sections 15 - 25 of the Immigration, Asylum and Nationality Act 2006 (the "**Act**").

Z127B.2      The *Subcontractor* provides to the *Contractor* immediately upon request, all necessary employee records to demonstrate that the *Subcontractor* has complied with its obligations under the Act.

Z127B.3      If the *Subcontractor* does not comply with clause Z127B.2, the *Contractor* is permitted to enter upon the *Subcontractor's* premises, upon giving reasonable notice, for the purpose of ascertaining that the *Subcontractor* has maintained all necessary employee records in compliance with the *Subcontractor's* obligations under the Act.

Z127B.4      Without prejudice to clause Z128B, the *Subcontractor*, at the request of the *Contractor*, ceases to employ on the subcontract service any one or more of the

Subcontractor's Persons to whom the *Contractor* may reasonably object or whose presence on the *subcontract service* may contravene the requirements of the subcontract or the main contract and the *Subcontractor* shall replace such Subcontractor's Persons immediately, at the *Subcontractor's* expense, with others to whom the *Contractor* has no objection. Any cost, losses or expense incurred by reason of any delays to completion of the *subcontract service* caused by such replacement shall be borne by the *Subcontractor*.

Z127B.5 The *Subcontractor* represents and warrants that it is an independent contractor. Nothing in this subcontract renders the *Subcontractor* or any of the Subcontractor's Persons an employee, "worker" (as defined under the Working Time Regulations 1998), agent or partner of the *Contractor* and the *Subcontractor* does not hold itself out as such and procures that the Subcontractor's Persons do not hold themselves out as such.

Z127B.6 The *Contractor* is not vicariously liable for the acts or omissions of the *Subcontractor* or any of the Subcontractor's Persons and the *Contractor* has no liability in respect of any damage, death or injury suffered by the Subcontractor's Persons in connection with the provision of the *subcontract service*, except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the *Contractor* or any of the Contractor's Persons.

Z127B.7 Neither the *Subcontractor* nor the Subcontractor's Persons are entitled by virtue of this subcontract to bind the *Contractor* or to contract in the name of or create liability against the *Contractor* in any way and for any purpose except as expressly authorised in writing by the *Contractor*.

Z127B.8 The *Subcontractor*:

1. is solely responsible for paying to the Subcontractor's Persons the fees or remuneration and benefits (including, but not limited, to salary, holiday pay and sick pay if applicable) and for reimbursing the expenses to which they are entitled by reason of their involvement with the *subcontract service*, and is solely responsible for any costs associated with the provision of such fees, remuneration, benefits and expenses to the Subcontractor's Persons (with no recourse to the *Contractor*);

2. makes deductions and accounts to relevant authorities for any income tax on employment income and any national insurance contributions in respect of the Subcontractor's Persons' fees or remuneration; and

3. maintains at its own cost appropriate levels of employer's liability and public liability insurance as appropriate in respect of the Subcontractor's Persons.

Z127B.9 The *Subcontractor* indemnifies the *Contractor* on demand and keeps it indemnified at all times against any liability, loss, damage, costs (including legal costs on an indemnity basis), claims, proceedings and expenses of whatsoever nature incurred or suffered by the *Contractor* arising from the *Subcontractor's* or the Subcontractor's Persons' performance of or breach of the *Subcontractor's* obligations or warranties under this subcontract including, without limitation:

1. any income tax, national insurance contributions (including secondary contributions to the extent permitted by law (including any interest, penalties or gross-up thereon)) arising in respect of the Subcontractor's Persons for which the *Contractor* is called upon to account to the relevant taxing authority;

2. any act or neglect, breach of statutory duty, omission or default of the *Subcontractor* or the Subcontractor's Persons and any claim that the *Contractor* is vicariously liable for the acts of the Subcontractor's Persons;

3. any liability for any employment related claim or any claim based on worker status brought by *Subcontractor* or Subcontractor's Persons arising out of or in connection with the provision of the *subcontract service*;

4. any injury suffered by any of the Subcontractor's Persons;

5. any claims that may arise under or pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006;



|  |              |  |
|--|--------------|--|
|  |              | 6. any breach resulting in a successful claim by a third party; and  |
|  |              | 7. any liability for a penalty under Sections 15 to 25 of the Act.   |
| Safety and Security                      | <b>Z128B</b> | <b>Not used.</b>   |
|  | <b>Z129B</b> |  |
|  | Z129B.1      | Subject to clause 80.1, the <i>Subcontractor</i> acknowledges and agrees that the <i>Contractor</i> has no responsibility to the <i>Subcontractor</i> for the security and safety of any temporary works, plant, tools, vehicles, equipment, clothing or other protective equipment or other property belonging to or provided by the <i>Subcontractor</i> or the <i>Subcontractor's</i> Persons or of any materials or goods of the <i>Subcontractor</i> (including any things intended for incorporation into the <i>subcontract service</i> ) whilst stored at the <i>Contractor's</i> premises or the site of the <i>works</i> in the main contract.   |
| Traffic Management                       | <b>Z130B</b> | <b>Not Used.</b>   |
|  | <b>Z131B</b> |  |
|  | Z131B.1      | If additional Traffic Management is required due to the actions or inactions of the <i>Subcontractor</i> , that are within the control of the <i>Subcontractor</i> , then the <i>Subcontractor</i> will be charged accordingly.  |
| Promotional communications and marketing | <b>Z132B</b> |  |
|  | Z132B.1      | Neither party shall, and the <i>Contractor</i> and the <i>Subcontractor</i> shall procure that its affiliated companies and the <i>Contractor's</i> Persons and <i>Subcontractor's</i> Persons respectively shall not refer to or use any business name, logo or trade marks (whether registered or not) of the other party or its affiliated companies in any promotional communications; without the prior written approval of the other party and in the case of the <i>Subcontractor</i> , without the prior written approval of the Keltbray Highways Limited Communications team located at the <i>Contractor's</i> office and without complying with the written instructions of the Keltbray Highways Limited Corporate Communications team, except in each case as required by law. |
| Value Added Tax (VAT)                    | <b>Z133B</b> |  |
|  | Z133B.1      | The <i>Subcontractor</i> acknowledges that payments under the subcontract will become subject to the VAT reverse charge for construction services once The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 is enacted.   |
| Supply chain mapping                     | <b>Z134B</b> |  |
|  | Z134B.1      | The <i>Subcontractor</i> shall maintain a Supply Chain Map in the form set out in Appendix E of Schedule A. If a completed copy of the Supply Chain Map was not given by the subcontract date, it is given to the <i>Contractor</i> within four weeks of the subcontract date.   |
|  | Z134B.2      | Not used.  |
| Social value                             | <b>Z135B</b> |  |
|  | Z135B.1      | The <i>Subcontractor</i> shall comply with the social value provisions set out in the Subcontract Scope.   |

## Schedule A – Constraints on how the *Subcontractor* is to Provide the Subcontract Service

### PART 1 -GENERAL

1. Details of the main contract between the *Contractor* and the *Client* have been made available for inspection by the *Subcontractor*. The *Subcontractor* is aware and shall satisfy all requirements therein where relative to the *subcontract service*. The *Subcontractor* has satisfied himself with regard to the physical conditions and circumstances of the Site and adjoining areas.
2. The *Subcontractor* provides all necessary technical submissions to permit acceptance of his approved systems and practices.
3. The *Subcontractor* complies with all aspects of the handover and certification process, including the provision of as-built drawings and assistance with meeting the *Contractor's* KPI's.
4. The *Contractor* provides all necessary permissions, permits and consents to enable the *Subcontractor* to carry out the *subcontract service*. Where requested by the *Contractor* the *Subcontractor* provides any assistance and/or supporting information which enables these permissions, permits or consents to be obtained as promptly as possible
5. The *Subcontractor* provides all technical support required to ensure that any necessary technical approvals (e.g. departures from standard etc) are approved by the *Client* for use as part of the *works* in the main contract.
6. The *Subcontractor* raises and progresses to conclusion, non-conformance reports in respect of any Defect or non-compliance relating to the *subcontract service*.
7. The *Subcontractor* has been granted access to the *Contractor's* web-based document control system ("Business Collaborator Ltd" – hereby known as "BC"). The following users have been identified:

[EXAMPLE@xxx.com]

[EXAMPLE@xxx.com]

- The *Subcontractor* has access (either through the data storage media enclosed with this subcontract order, or through BC) to all documents referred to within the Scope.
  - Document issues will be communicated to the *Subcontractor* through BC email notifications, and the *Subcontractor* shall be deemed to have printed the documents upon receipt of the email.
  - The issue of documents through BC is for information only and the *Subcontractor* will only act upon changes to the Subcontract Scope that have been confirmed via instruction by the *Contractor*.
  - The *Subcontractor* shall submit requests to the *Contractor* should BC access be required for any additional users.
8. Where the *Subcontractor* designs parts of the *subcontract services*, he or his designer shall meet the competency requirements of any approved codes of practice and of the Construction (Design and Management) Regulations 2015. The *Subcontractor* or his designer shall be required, at the *Contractor's* request, to complete a questionnaire to demonstrate his competence in this respect. The *Subcontractor* or his designer shall also be required to document their design risk management assumptions to ensure that construction risks are minimised and shall prepare residual risk registers for use in any subsequent maintenance and/or demolition/removal works.
  9. The *Subcontractor* shall complete and submit the following documents as part of the *Subcontractor's* pre-contract submission:

GBB-BBY-DPD-XX-TE-W-00003\_Supplier BIM Assessment PQQ Stage

GBB-BBY-DPD-XX-TE-W-00013\_Supplier BIM Assessment ITT Stage

GBB-BBY-DPD-XX-SP-W-000002\_Supplier Assessment Form  
GBB-BBY-DPD-XX-SP-W-000003\_Supplier IT Assessment Form  
GBB-BBY-DPD-XX-SP-W-000004\_Supplier Resource Assessment

If the above documents were not provided by the Subcontract Date, they are provided to the *Contractor* within two weeks of the Subcontract Date.

The *Subcontractor* shall comply with the *Contractor's* requirements in relation to any monitoring, assessment and improvement relating to the *Subcontractor's* BIM and/or digital maturity where applicable to the *subcontract services*.

10. The *Subcontractor* shall utilise the *Contractor's* IT platforms and systems including, but not limited to:
  - a. Flowforma, AIMS Job Card or similar digital tool – For daily recording of all *Subcontractor* resources utilised in Providing the Subcontract Service and coded to the Work Breakdown Structure (WBS).
  - b. BIM360, AIMS Job Card or similar digital tool – For daily recording of progress in relation to the *subcontract service* and collection of contemporaneous records relating to events notifiable under the subcontract.
  - c. MSite System – All *Subcontractor's* staff, operatives and subsubcontractors shall sign in and sign out on a daily basis.

## PART 2 – HEALTH AND SAFETY, ENVIRONMENTAL & QUALITY

### a) General

Where applicable and relevant to the *subcontract service* the *Subcontractor* shall comply with the requirements of;

- a) The Construction (Design & Management) Regulations 2015
- b) The following document(s) in relation to the *Contractor's* highways business:
- c) The *Contractor's* Policies

### b) Health and Safety

Where applicable and relevant to the *subcontract service* further specific health and safety requirements include the following; -

1. The *Subcontractor* shall ensure that each of its servants and agents (including supply chain) attending the site, hold an appropriate skill-based accreditation card as issued by CSCS or similar body approved by the *Contractor* for the appropriate works.
2. Buried services and apparatus are present. The *Subcontractor* is required to comply with the *Contractor's* Permit to Dig scheme, Permit to Break Ground and Avoiding Danger from Utilities procedures.
3. Overhead pylons and other above ground services and apparatus are present. The *Subcontractor* is required to work within the *Contractor's* Permit to Enter scheme.

1. The *Subcontractor* is required prior to commencing work upon the site to ensure that all servants and agents (including supply chain) receive the *Contractor's* Site Induction Training and attend updates as required by the *Contractor*. The *Contractor* carries out free of charge in the first instance only Drugs and Alcohol testing on all People. The *Subcontractor* is aware and accepts that if any of the *Subcontractor's* people fail the Site Induction Drugs and Alcohol Testing the *Contractor's* associated costs plus 25% including, but not limited to all Drugs and Alcohol Testing, Secondary Testing, disposable equipment, Transport and Labour Associated with the Testing process for each individual who fails, will be paid by or retained from the *Subcontractor* pursuant to clause 50.3 of the *conditions of subcontract*. This will be true regardless of a positive or negative result during the Secondary Testing Period.

In the case of a Positive Secondary Test for either Drugs or Alcohol or both Drugs and Alcohol on any individual, the *Contractor's* associated Induction costs plus 25% will be paid by or retained from the *Subcontractor* pursuant to clause 50.3 of the *conditions of subcontract*.

2. Unless otherwise stated in the *conditions of subcontract* the *Subcontractor* shall provide compliant PPE (Personal Protective Equipment) which shall include the corporate branding specified in the Subcontract Scope. Hard hat, gloves, Class 3 high-visibility vest and trousers, eye protection, laced footwear (including ankle support) are mandatory requirements.
3. The *Subcontractor* shall ensure that all vehicles are properly equipped with edge protection measures which shall be maintained at all times.
4. The *Subcontractor's* people shall adhere to the *Contractor's* Zero carriageway crossings policy for the purpose of carrying out the *subcontract service*. In the event of carriageway crossings being unavoidable the *Subcontractor* shall obtain the *Contractor's* approval prior to undertaking this activity.
5. The *Subcontractor's* people are to comply with any *Contractor* or *Client* led training initiatives (e.g. driver training, People Plant Interface training etc) implemented for the *works* in the main contract. For the avoidance of doubt, any charges associated with complying with any of these training initiatives is to be borne by the *Subcontractor* and not chargeable under the subcontract.

6. The *Subcontractor* has been made aware that the use of mobile telecommunication devices, either handset or hands free, whilst driving a moving vehicle is strictly forbidden on site unless expressly authorised in writing by the *Contractor*.
7. The *Subcontractor* has been made aware of the National Skills Academy for Construction (NSAFC) scheme, which is implemented and is in use in connection with the *works* in the main contract. The *Subcontractor* is fully supportive of this initiative and will engage closely with the *Contractor* and the *Client* to deliver the schemes objectives.
8. SMSTS qualification is a mandatory requirement for anyone (including the *Subcontractor's* personnel) who 'puts people to work' and/or supervises a safe system of work on a Keltbray Highways Limited project. This role may, with the prior agreement of the *Contractor's* Project Director, be fulfilled by one or more of the *Contractor's* site personnel.
9. The *Subcontractor* accepts strict compliance with the *Contractor's* Plant and People Interface requirements (document HSEN-PC-0033). For the avoidance of doubt the *Subcontractor* accepts and guarantees that any driver who enters upon the site has a copy of this document within his possession and has been sufficiently briefed as to its content.

**c) Quality**

Where applicable and relevant to the *subcontract service* further specific quality requirements include the following:

1. The *Subcontractor* shall work to the *Contractor's* quality regime and will work in compliance with all main contract quality requirements.
2. The *Subcontractor* shall provide evidence of Sector Scheme Approval as appropriate.
3. The *Contractor's* quality plan shall always be complied with. As a minimum, the *subcontract service* shall be carried out within the parameters outlined within the quality plan.
4. The *Subcontractor* shall submit a copy of all quality assurance and testing records to the *Contractor* for incorporation into the *Contractor's* Health and Safety File. The *Subcontractor* will comply with all reasonable requests by the *Contractor* for assistance in production of the Health and Safety.

**d) Environment**

Where applicable and relevant to the *subcontract service* further specific environmental requirements include the following:

1. The Scheme Environmental Requirements shall be complied with at all times. The *Subcontractor* is aware of the intensive environmental conditions and restraints relative to this Agreement and shall at all times only proceed with works in areas and by methods approved in advance by the *Contractor*.
2. The *subcontract service* shall also be carried out within the parameters outlined within Keltbray Highways Limited environmental policies.
3. The *Subcontractor* shall comply with all reasonable environmental requirements of the *Contractor*.

**e) Social value requirements**

1. The *Subcontractor* will deliver against the commitments made in their tender using the Social Value and Skills Subcontract offering (see Appendix G to Schedule A), and will provide the necessary evidence to demonstrate that each commitment has been achieved.

2. If the above commitments were not provided by the subcontract date, they are provided to the *Contractor* within four weeks of the subcontract date.
3. The *Subcontractor* shall comply with all reasonable social value requirements of the *Contractor*.

## APPENDIX A – DATA PROTECTION

1. “Controller”, “Processor”, “Personal Data”, “Personal Data Breach”, “Data Subject” and “Processing” shall have the meanings set out in the Data Protection Legislation and “Process” and “Processed” when used in relation to the processing of personal data, shall be construed accordingly. Any reference to “Personal Data” includes a reference to “Sensitive Personal Data”, as applicable, whereby “Sensitive Personal Data” means personal data that incorporates such categories of data as are listed in Article 9(1) of the GDPR. “Data Subject Request” means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation.

“Data Protection Legislation” means: (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the GDPR or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data; and (b) any code of practice or guidance published by a Regulator from time to time.

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

2. Each Party acknowledge and agree that, for the purposes of this Agreement, the Parties shall each act as ‘joint controllers’ for the purposes of the Data Protection Legislation. The Parties acknowledge and agree that they have allocated responsibility for compliance with the Data Protection Legislation, as set out in Annex A-1 (Data Processing Particulars) to this Agreement.
3. Each Party shall comply with its obligations under the Data Protection Legislation.
4. Each Party agrees to use all reasonable efforts to assist the other to comply with such obligations as are respectively imposed on them by the Data Protection Legislation. Neither Party shall, by its acts or omissions, cause the other Party to breach its respective obligations under the Data Protection Legislation.
5. Where one Party collects Personal Data which it subsequently transfers to the other Party, including (but not limited to) circumstances where one Party receives a request from the *Client* or an auditor on behalf of the *Client* to disclose Personal Data to the *Client* for the purposes of an audit pursuant to the Contract and/or in relation to the Project, it shall ensure that all fair processing notices have been given (and/ or, as applicable, valid consents obtained that have not been withdrawn) and are sufficient in scope and kept up-to-date in order to meet the Transparency Requirements to enable the other Party to Process the Personal Data in order to obtain the benefit of its rights, and to fulfil its obligations, under this Agreement in accordance with the Data Protection Legislation.
6. Each Party may provide management information as agreed with the other Party but will only provide such information in anonymised form to the extent that it will not constitute Personal Data.
7. Each Party acknowledges that nothing in this Agreement purports to appoint it as a Processor for and on behalf of the other Party in respect of the Personal Data and neither Party shall otherwise act as a Processor unless it has been expressly appointed as Processor by the other Party. Such appointment shall be conditional upon such other Party satisfying the other Party's security due diligence review and the Parties, agreeing, in good faith, a set of Processor obligations that comply with the Data Protection Legislation.
8. Each Party shall notify the other of any Data Subject Request or correspondence or request received from the ICO, promptly and without undue delay from the date of receipt and (i) shall not disclose any Personal Data in response to such requests without the other Party's prior written consent and (ii) provide reasonable co-operation and assistance to the other Party as required to comply with such request.
9. Each Party shall notify the other of any actual or suspected Personal Data Breach that occurs in connection with Personal Data Processed by each Party pursuant to this Agreement and/or the Project promptly and without undue delay upon becoming aware of such actual or suspected Personal Data Breach setting out the known facts as regards such breach and shall within a reasonable period of time thereafter following notification of such breach, use reasonable endeavours to implement any measures necessary to restore the security of compromised Personal Data and assist the other Party in making any required notifications

to the ICO and/or affected Data Subjects.

### Annex A-1

#### Data Processing Particulars

|  |  |
|--|--|
| Activities involving Processing of Personal Data being carried out by the <i>Contractor</i>    | Any personal data that the <i>Contractor</i> collects, controls and/or processes in connection with this subcontract<br><br>("Contractor Led Processing Activities")   |
| Activities involving Processing of Personal Data being carried out by the <i>Subcontractor</i> | Any personal data that the <i>Subcontractor</i> collects, controls and/or processes in connection with this subcontract<br><br>("Subcontractor Led Processing Activities")   |
| The <i>Contractor's</i> responsibilities   | To the extent relevant to Personal Data being controlled and processed by the <i>Contractor</i> pursuant to the Contractor Led Processing Activities:<br>(i) Lawfulness, fairness and transparency;<br>(ii) Purpose limitation; and<br>(iii) Compliance with the rights of the Data Subject (i.e. including leading as a point of contact for management and/or responding to Data Subject Requests).<br>(iv) Data minimisation;<br>(v) Accuracy; and<br>(vi) Storage minimisation/ retention.       |
| The <i>Subcontractor's</i> responsibilities  | To the extent relevant to Personal Data being controlled and processed by the <i>Subcontractor</i> pursuant to the Subcontractor Led Processing Activities:<br>(i) Lawfulness, fairness and transparency;<br>(ii) Purpose limitation; and<br>(iii) Compliance with the rights of the Data Subject (i.e. including leading as a point of contact for management and/or responding to Data Subject Requests).<br>(iv) Data minimisation;<br>(v) Accuracy; and<br>(vi) Storage minimisation/ retention. |
| Joint responsibilities   | (i) The security of the Personal Data in its possession or control; and<br>(ii) The restrictions on transfers of Personal Data where that Party instructed the data transfer.  |



**APPENDIX B – PARENT COMPANY GUARANTEE**

The *Subcontractor* provides the *Contractor* with a guarantee by its parent company of the *Subcontractor's* performance as set out in the following form.

**THIS PARENT COMPANY GUARANTEE is dated this [ ] day of [ ] 202[ ] BETWEEN:**

[*Insert Name of Guarantor*] with company number [*insert co. number*] whose registered office is at [*insert registered address*] (the "**Guarantor**"), and **Keltbray Highways Limited**, with company number 4482405, whose registered office is at St Andrews House, Portsmouth Road, Esher, England, KT10 9TA (the "**Contractor**")

**WHEREAS:**

- A. The Contractor has entered into a sub-contract (the "**Sub-Contract**") [dated 202[ ] with [*insert name of Sub-Contractor*] whose registered office is at [*insert registered office address*] (the "**Sub-Contractor**") for [*insert description of sub-contract works*] in relation to [*insert project details*], on the condition that the Guarantor shall enter into this Guarantee.
- B. The Guarantor has agreed that it will to the extent hereinafter set out guarantee the due performance by the Sub-Contractor of its obligations under the Sub-Contract.

**NOW IT IS AGREED** as follows:

- 1. In consideration of the Contractor entering into the Sub-Contract with the Sub-Contractor, the Guarantor irrevocably guarantees the due and proper performance by the Sub-Contractor of the Sub-Contractor's obligations under the Sub-Contract.
- 2. If the Sub-Contractor commits any breach of the terms and conditions of the Sub-Contract, the Contractor shall give written notice to the Guarantor specifying the breach. If the Guarantor has not remedied the breach by either performing itself, or procuring the performance of the Sub-Contract within 14 days (or such longer period as may be agreed with the Contractor) of the date of the Contractor's written notice, the Guarantor shall on written demand from the Contractor reimburse the Contractor for the amount of any losses, costs and expenses incurred by the Contractor by reason of the Sub-Contractor's breach.
- 3. Notwithstanding any other provision of this Guarantee, the obligations and liability of the Guarantor under this Guarantee shall be no greater than the obligations and liability of the Sub-Contractor under the Sub-Contract and the Contractor shall be entitled to recover no more in relation to a claim under this Guarantee than the Contractor would be entitled to recover from the Sub-Contractor in respect of the same matter under the Sub-Contract. The Guarantor shall be entitled to rely on all limitations in the Sub-Contract and have available to it all defences as are or would be available to the Sub-Contractor.
- 4. The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Sub-Contractor and the Contractor or by any alteration in the obligations undertaken by the Sub-Contractor under the Sub-Contract or by any forbearance whether as to payment, time, performance or otherwise notwithstanding that such arrangement, alteration or forbearance may be without the assent of the Guarantor, or by any act, event or omission which, but for this provision, might impair or discharge the Guarantor's liability.

5. The benefit of this Guarantee may be assigned by the Contractor without the consent of the Guarantor to any person to whom the Contractor validly assigns the benefit of the whole of the Sub-Contract provided that the assignment of this Guarantee does not take effect until the Contractor gives written notice of the assignment of this Guarantee to the Guarantor. No other assignment is permitted without the written consent of the Guarantor.
6. Nothing in this Guarantee confers or purports to confer any benefit upon or right to enforce any of its terms on any person who is not a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.
7. This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Guarantee or its subject matter or formation (including non-contractual disputes or claims).
8. Any notice to be given by the Contractor under this Guarantee shall be in writing and shall be sent by recorded or special delivery post to the registered address of the Guarantor and shall be marked for the attention of [*the Company Secretary*].

**IN WITNESS** whereof the parties have executed this Guarantee as a deed and delivered it on the date set out above.

Signed as a deed by

[ \_\_\_\_\_ ]

acting by two directors or by one  
director and the secretary

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

Signed as a deed by

**Keltbray Highways Limited**

acting by two directors or by one  
director and the secretary:

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

## APPENDIX C – SELF-BILLING AGREEMENT

### SELF BILLING AGREEMENT

This is an agreement to a self-billing procedure between;

[Contractor} (the customer), VAT Registration number [number]

and

|               |                      |            |                      |
|---------------|----------------------|------------|----------------------|
| Supplier name | <input type="text"/> | VAT number | <input type="text"/> |
|---------------|----------------------|------------|----------------------|

The self-biller (the customer) agrees:

1. To issue self-billed invoices for all supplies made to them by the self-billee (the supplier) until  (insert either an end date for the agreement or the date your agreement ends).
2. to complete self-billed invoices showing the supplier's name, address and VAT registration number, together with all the other details which constitute a full VAT invoice including confirmation of whether the supplies are subject to the VAT domestic reverse charge.
3. To make a new self-billing agreement in the event that their VAT registration number changes.
4. To inform the supplier if the issue of self-billed invoices will be outsourced to a third party.

The self-billee agrees:

1. To accept invoices raised by the self-biller on their behalf until  (insert either an end date for the agreement or the date your contract ends).
2. Not to raise sales invoices for the transactions covered by this agreement.
3. To notify the customer immediately if they
  - \* change their VAT registration number
  - \* cease to be VAT registered; or
  - \* sell their business, or part of their business.

Signed by \_\_\_\_\_  
On behalf of [Subcontractor]

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
On behalf of [Contractor]

Date \_\_\_\_\_

## APPENDIX D – RESPONSIBILITIES MATRIX

| <u>Scope</u>   | <u>Technical Design<br/>Responsibility</u> | <u>Overall Contract Responsibilities</u> |                  |                |                |                                   |
|--|--|--|------------------|----------------|----------------|-----------------------------------|
|  |  | <u>Purchase<br/>Materials</u>            | <u>Equipment</u> | <u>Install</u> | <u>Testing</u> | <u>Warranty<br/>+ Maintenance</u> |
| <b>Overall Design</b><br><b>TensarTech TW3 Retaining System</b><br><b>60° reinforced slope</b><br><b>Textomur Cage</b><br><b>Concrete Foundation</b><br><b>Permanent Formwork</b><br><b>Temporary Formwork</b><br><b>Scaffolding/Edge Protection</b><br><b>Craneage</b><br><b>Concrete</b><br><b>Steel Reinforcement</b><br><b>Drainage</b><br><b>Reinforced Concrete Masking Wall</b><br><b>Bankseat</b><br><b>Bridge Parapets</b><br><b>Parapet and Edge Beams</b> |  |  |                  |                |                |                                   |

**APPENDIX E – Not Used**

**APPENDIX F – PROJECT BANK ACCOUNT****Joining Deed**

This agreement is made between National Highways Limited (*Employer/Client*),

Keltbray Highways Limited

.....  
(the *Contractor/Supplier/Partners/Service Providers*) and

{Insert Subcontractor name here}

.....  
(the *Additional Supplier/Sub-Contractor*)

Terms in this deed have the meanings given to them in the contract between the Employer and the Contractor/Consultant for the

A66 Northern Trans-Pennine Project (the works)

.....  
Contract (the *Works/Services/Scheme*)

**Background**

The *Employer/Client* and the *Contractor/Supplier/Partners/Service Providers* have entered into a contract for the *Works/Services/Scheme*.

The Named Suppliers have entered into contracts with the ( the *Contractor/Supplier/Partners/Service Providers*) or a an *Additional Supplier/ Sub-Contractor* in connection with the *Works/Services/Scheme*.

The *Contractor/Supplier/Partners/Service Providers* has established a Project Bank Account to make provision for payment to the *Contractor/Supplier/Partners/Service Providers* and the Named Suppliers.

The *Employer/Client*, the *Contractor/Supplier/Partners/Service Providers* and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the *Additional Supplier/Sub-Contractor* may join that deed.

**Agreement**

The Parties to this deed agree that

- the *Additional Supplier/Sub-Contractor* becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the service,
- the benefits under this deed may not be assigned.

**Executed as a deed on** . . . . .

**by**

.....Authorised by National Highways Director

.....Printed Name of the Director

.....Authorised by National Highways Director/Authorised Signatory

.....Printed Name of the Director/Authorised Signatory

Executed as a deed by the

*Contractor/Supplier/Partners/Service Providers*

by ..... (Signature of Director/Authorised Signatory)

..... (Printed name of the Director/Authorised Signatory)

Executed as a deed by the *Additional Supplier/Sub-contractor*

by ..... (Signature of Director/Authorised Signatory)

..... (Printed name of the Director/Authorised Signatory)

## TRUST DEED

**Trust Deed**

This Deed is made between National Highways Company Limited (*Employer*), the  
Balfour Beatty Civil Engineering Ltd .....  
(the *Contractor/Consultant*).

Terms in this Deed have the meanings given to them in the contract between the  
Employer and the Contractor/Consultant for  
A66 Northern Trans-Pennine Project .....  
Contract (the *works*).

**Background**

The *Employer* and the *Contractor/Consultant* have entered into a contract for the  
*works*.

The Named Suppliers have entered into contracts with the *Contractor/Consultant* or a  
Sub Supplier in connection with the *works*.

The *Contractor/Consultant* has established a Project Bank Account to make provision  
for payment to the *Supplier* and the Named Suppliers

**Agreement**

The parties to this Deed agree that

- sums due to the *Contractor/Consultant* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account for distribution to the Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this Deed with the agreement of the *Employer* and *Contractor/Consultant*. The agreement of the *Employer* and *Contractor/Consultant* is treated as agreement by the Named Suppliers,
- this Deed is subject to the law of the contract for the *works*,
- the benefits under this Deed may not be assigned.



Executed as a deed on 22/10/2021 by

DocuSigned by:  
*Martyn Gannicott*  
 516C4F47541B43E... Authorised by National Highways Director

Martyn Gannicott Printed Name of the Director

DocuSigned by:  
*Stephen Hughes*  
 2A369D5D40AF47A... Authorised by National Highways  
 Director/Authorised Signatory  
 Stephen Hughes Printed Name of the Director/Authorised  
 Signatory

Executed as a deed by the  
 Contractor/Consultant

by DocuSigned by:  
*Gavin Russell*  
 DB8EE4B21073480... (Signature of  
 Director/Authorised Signatory)  
 Gavin Russell (Printed name of  
 Director/Authorised Signatory)  
 (Witness Signature)

(Name of Witness)

(Date signed by Witness)

Executed as a deed by the  
 Contractor/Consultant (Joint Venture)

by (Signature of  
 Director/Authorised Signatory)  
 (Printed name of  
 Director/Authorised Signatory)  
 (Witness Signature)

(Name of Witness)

(Date signed by Witness)

**APPENDIX G – NOT USED**

## APPENDIX H – SOCIAL VALUE COMMITMENTS & LOCAL RECRUITMENT PLAN

### Social Value Commitments

| Item | Subcontractor commitment |
|------|--------------------------|
| 1    |                          |
| 2    |                          |
| 3    |                          |
| 4    |                          |
| 5    |                          |
| 6    |                          |
| 7    |                          |
| 8    |                          |
| 9    |                          |
| 10   |                          |

### Local Recruitment Plan

To maximise local employment, attract new or returning people to the construction industry and provide opportunities to those who are out of work in hard to reach categories <sup>(1)</sup>, Keltbray Highways Limited run a Local First Employment Policy. Keltbray Highways Limited, each supplier, labour agency, and designer are required to follow the below recruitment steps and guarantee that all jobs created are advertised locally first.

#### Advanced Planning

Vacancies must be identified up to 3months in advance of the start date. The local JobCentre Plus network must be provided the opportunity to run a Sector-based Work Academy Programme <sup>(2)</sup>, or work with local provides through similar training schemes to fill vacancies.

#### Local First

Roles that have not been filled through advanced planning or training must be advertised through the local JobCentre Plus network; and any local Third Sector organisations, including The Princes Trust must be made aware, at least 2 weeks before vacancies are advertised outside of the local area.

#### Agency / Short Notice Employment

Any vacancies that arise with less than 2weeks notice or are recruited through Labour Agencies must be able to demonstrate a local first approach. This includes suppliers and Labour Agencies working with the local

JobCentre Plus network, training providers and or local Third Sector organisations to increase the number of local individuals in their available talent pool.

### Contacts

| Contact e-mail | Company           | Description  |
|----------------|-------------------|--|
|                | JobCentre Plus    | Local recruitment leads, provide work experience support and arrangement, organise and run Sector Based Work Academies |
|                | The Princes Trust | A youth charity that helps young people aged 11 to 30 get into jobs, education and training                            |
|                |                   |  |
|                |                   |  |
|                |                   |  |

- (1) **Hard to Reach Categories:** Long Term Unemployed, Not in Employment, Education or Training, Homeless, Ex-offenders, Armed Forces Leavers and or Disabled individuals
- (2) **Sector-based Work Academy Programme:** The Sector-based Work Academy Programme can support you to create a skilled workforce for your business. Sector-based work academies help prepare those receiving unemployment benefits to apply for jobs in a different area of work. Placements are designed to help meet your immediate and future recruitment needs as well as to recruit a workforce with the right skills to sustain and grow your business. They are administered by Jobcentre Plus and available in England and Scotland.  
A sector-based work academy requires an employer to have a vacancy which they are looking to fill, to work with the selected training provider to create the course content and to give guaranteed interviews to those who complete the course.  
Sector-based Work Academies are free of charge to access for employers.



## Schedule B – Commercial Information

### PART 1 - GENERAL

1. The *Contractor* provides attendances / facilities as detailed in Schedule C. No other attendances / facilities will be provided, and the *Subcontractor* has allowed for all such other costs as required to Provide the Subcontract Services within his Prices.

### PART 2 – ASSESSMENT DATES

| Month  | Subcontract Application Date | assessment day | Pay Less Notice | Final Date for Payment |
|--------|------------------------------|----------------|-----------------|------------------------|
|        | -14                          | 0              | +21             | +28                    |
| Jan-23 | 13/01/2023                   | 27/01/2023     | 17/02/2023      | 24/02/2023             |
| Feb-23 | 10/02/2023                   | 24/02/2023     | 17/03/2023      | 24/03/2023             |
| Mar-23 | 17/03/2023                   | 31/03/2023     | 21/04/2023      | 28/04/2023             |
| Apr-23 | 14/04/2023                   | 28/04/2023     | 19/05/2023      | 26/05/2023             |
| May-23 | 12/05/2023                   | 26/05/2023     | 16/06/2023      | 23/06/2023             |
| Jun-23 | 16/06/2023                   | 30/06/2023     | 21/07/2023      | 28/07/2023             |
| Jul-23 | 14/07/2023                   | 28/07/2023     | 18/08/2023      | 25/08/2023             |
| Aug-23 | 11/08/2023                   | 25/08/2023     | 15/09/2023      | 22/09/2023             |
| Sep-23 | 15/09/2023                   | 29/09/2023     | 20/10/2023      | 27/10/2023             |
| Oct-23 | 13/10/2023                   | 27/10/2023     | 17/11/2023      | 24/11/2023             |
| Nov-23 | 10/11/2023                   | 24/11/2023     | 15/12/2023      | 22/12/2023             |
| Dec-23 | 15/12/2023                   | 29/12/2023     | 19/01/2024      | 26/01/2024             |

**In the event that the Subcontract Application Date falls on a weekend the *Subcontractor* is to submit its invoice no later than the nearest preceding Friday to the Subcontract Application Date.**

## Schedule C – Information and other things provided by the *Contractor*

The following attendances / facilities will be provided by the *Contractor*, free of charge (unless noted), from the *subcontract starting date* until the Subcontract Completion Date. Unless described otherwise, the attendances / facilities are shared with others and are not for the exclusive use of the *Subcontractor*.

| Attendance / Facility  | Comment  |
|--|--|
| <b>1. Use of <i>Contractor's</i> Site Facilities</b>   |  |
| a. Desk space within <i>Contractor's</i> office  | Specify number   |
| b. IT & Communication (computers, IT network, software, telephones)                                  | Specify:<br>Wifi limited to available band width TBC<br>Computer: specify number<br>Software: specify<br>Telephone: specify number |
| c. Printing, copying   | If available. May not be available in the "Digital" Office   |
| d. Satellite offices   |  |
| e. Water for welfare   |  |
| f. Telephone   |  |
| g. Access to the <i>Contractor's</i> web-based document control system ("Business Collaborator Ltd") |  |
| <b>2. Welfare</b>  |  |
| a. Site branded Hard Hat and Waistcoat (one set only per operative)                                  |  |
| b. Other personal protective equipment and the like  |  |
| c. <i>Contractor's</i> main compound drying room   | Note if any others provided  |
| d. <i>Contractor's</i> First aider and first aid facilities  |  |
| e. <i>Contractor's</i> main compound canteen facilities  | Note if any others provided  |
| f. <i>Contractor's</i> main compound toilet / washing facilities                                     | Note if any others provided  |
|  |  |

No other attendances / facilities will be provided, and the *Subcontractor* has allowed for all such other costs as required to Provide the Subcontract Services within his Prices.

The cost of providing any of the above attendances / facilities beyond the Subcontract Completion Date, will be assessed by the *Contractor* and will be paid by or retained from the *Subcontractor* pursuant to clause 50.3 of the *conditions of subcontract*.

In the event that the *Contractor* supplies the *Subcontractor* with personal protective equipment (PPE) in addition to that stated to be provided above, the *Contractor's* costs plus 25% will be paid by or retained from the *Subcontractor* pursuant to clause 50.2 of the conditions of subcontract.

Save for the *Contractor's* equipment and/or plant and/or facilities provided, if the *Contractor* provides equipment and/or plant and/or facilities and/or services and/or materials at the request of the *Subcontractor*, the provision of the same shall be treated as a trading arrangement separate from the subcontract and subject to the prevailing hire agreement terms but in any event payment by the *Subcontractor* shall be made by means of deduction from

any payments becoming due to the *Subcontractor* under the subcontract or can be recovered as a debt.

The *Contractor* reserves the right to withdraw any of the above attendances / facilities in the event of wilful damage or misuse by the *Subcontractor*. The *Subcontractor* shall be liable for the costs incurred to remedy such damage as a result of their actions.