



National Highways Limited

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

**Contract Data**  
**Parts 1 and 2**

in relation to *works*

**Motorway Service Areas Energy Storage**  
**Systems**

**October 2022**

## CONTENTS AMENDMENT SHEET

Issue. No.	Revision No.	Amendments	Initials	Date
0	0	Tender issue	JH	June 2022
1	1	Section 5 - Contractor's share percentage amended from 90% to 95%	ET	14/07/2022
1	1	Section X5 - All 7 MSA sites added	ET	14/07/2022
1	1	Section X7 – All 7 MSA sites added	ET	14/07/2022
2	2	Z11.2 (70) – removed definition of Quality Warning Notice.	SF	09/08/2022
2	2	Z17.2 - amended to remove reference to Quality Warning Notice	SF	09/08/2022
3	3	Option X5 Sectional Completion and Option X7 Delay Damages – amendment to the description of <i>section</i> (7) to rename from Priority MSA Site 6 to Priority MSA Site 7	SF	27/09/2022
3	3	Option X7 Delay Damages – addition of a maximum amount per <i>section</i>	SF	27/09/2022
4	4	Change to wording in Z162.1	SF	14/10/2022
5	5	Additional entries for Y(UK)3	SF	23/01/2023
5	5	Additional entry for Z1 11.2 relating to Y(UK)3	SF	25/01/2023



# Contract Data

## PART ONE – DATA PROVIDED BY THE *CLIENT*

### 1 General

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

Main Option

C in respect of all works other than the Decommissioning Works and the Redeployment Works  
  
A in respect of the Decommissioning Works and the Redeployment Works

Option for resolving and avoiding disputes

W2

Secondary Options

X1 (which will only be applicable to the Decommissioning Works), X2, X5, X7, X11, X15, X18  
  
Y(UK)1, Trust Deed, Joining Deed, Y(UK)2, Y(UK)3  
  
Z1 Z2, Z3, Z4, Z6, Z7, Z8, Z9, Z10, Z11, Z12, Z13, Z14, Z15, Z16, Z17, Z18, Z19, Z20, Z50, Z55, Z56, Z57, Z59, Z60, Z104, Z161 and Z162

The *works* are

as detailed in the Scope.

The *Client* is

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

Address for electronic communications

info@highwaysengland.co.uk

The *Project Manager* is

Name

██████████

Address for  
communications

c/o National Highways, [REDACTED]  
[REDACTED]

Address for  
electronic  
communications

[REDACTED]

The *Supervisor* is

Name

[REDACTED]

Address for  
communications

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Address for  
electronic  
communications

[REDACTED]

The Scope is in

the document titled MSA-ESS Scope.

The Site  
Information is in

the document titled Site Information

The *boundaries of  
the site* are

as detailed in the Site Information.

The *language of  
the contract* is

English

The *law of the  
contract* is the law  
of

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

The *period for reply* is

two weeks

The following matters will be included in the Early Warning Register

N/a

Early warning meetings are held at intervals no longer than

one month

## 2 The *Contractor's* main responsibilities

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

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

*condition* to be met

*key date*

- (1) All Energy Storage Systems are commissioned, and all Plant, Material and Equipment used to Provide the Works are removed from the site.

30<sup>th</sup> September 2023

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

## 3 Time

The *starting date* is

16<sup>th</sup> January 2023

The access *dates* is

date

1 all Sites

As agreed with MSA Operators

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

one month

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

442 weeks after the *starting date*

#### 4 Quality Management

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

4

weeks

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

4

weeks

The *defect correction period* for each Site is four weeks

#### 5 Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is

one

calendar month

The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require,

3

% per annum above the Bank of England base rate in force from time to time

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

*share range*

*Contractor's share percentage*

less than

95%

0%

from

95 to 105%

25%

greater than

105%

100%

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

#### 6 Compensation events

The place where weather is to be recorded is

the Met Office weather station nearest to the place where the works are performed.

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 12.00 hours GMT

The *weather measurements* are supplied by

Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone 0870 900 0100

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

which were recorded at

the Met Office weather station nearest to the place where the works are performed.

and which are available from

Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone 0870 900 0100

These are additional compensation events

- The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.

## 8 Liabilities and insurance

The *Contractor* provides the insurances from the Insurance Table below and as required by the NEC4 Engineering and Construction Contract June 2017

The minimum amount of cover of insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one occurrence is

Not less than ten million pounds (£10,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period.

But ten million pounds (£10,000,000) any one occurrence and in the aggregate per annum in respect of liability arising out of products and



pollution or contamination liability (to the extent insured by the relevant policy).

The minimum amount of cover of insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one occurrence is

Not less than ten million pounds (£10,000,000) any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of the contract or such greater period as is required by law.

If the *Client* is to provide Plant and Materials.

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Not applicable

If the *Client* is to provide any of the insurances stated in the Insurance Table below:

The *Client* provides these insurances from the Insurance Table

(1) Insurance against

None

Minimum amount of cover is

N/A

The deductibles are

N/A

If additional insurances are to be provided:

The *Client* provides these additional insurances

(1) Insurance against

None

Minimum amount of cover is

N/A

The deductibles are

N/A

The *Contractor* provides these additional insurances

(1) Insurance against

Liability of the *Contractor* for claims made against it arising out of the *Contractor's* failure to use the skill and care normally used by professionals providing services similar to the *works*

Minimum amount of cover is

A limit of indemnity of not less than two million pounds (£2,000,000) in respect of any one claim and in the aggregate per annum.

### Resolving and avoiding disputes

The *tribunal* is

arbitration

The *arbitration procedure* is

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

The place where *arbitration* is to be held is

London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

the President for the time being of the Institution of Civil Engineers or his nominee

The *Senior Representatives* of the *Client* are

Name (1)

[REDACTED]

Address for communications

[REDACTED]  
[REDACTED]

Address for electronic communications

[REDACTED]

The *Adjudicator* is the person chosen by

the Parties from the list of adjudicators published by the Institution of Civil Engineers

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

The *Adjudicator nominating body* is

the Institution of Civil Engineers

**Option X1: Price adjustment for inflation (for use only with Option A)**

If a Notice to Proceed is instructed for Decommissioning Works under clause Z161, the *index* for X1 is EARN03 Average Weekly Earnings - Not Seasonally Adjusted Average Weekly Earnings - Index Figures Excluding Bonuses, Including Arrears – Index K5AH for construction.

The *base date* for indices is

the Contract Date

**Option X5: Sectional Completion**

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

<i>Section</i>	<i>Description</i>	<i>completion date</i>
(1)	Priority MSA Site 1 – Tebay North (M6)	30 <sup>th</sup> September 2023
(2)	Priority MSA Site 2 – Clacket Lane Westbound (M25)	30 <sup>th</sup> September 2023
(3)	Priority MSA Site 3 – Beaconsfield (M40)	30 <sup>th</sup> September 2023
(4)	Priority MSA Site 4 – Corley Northbound (M6)	30 <sup>th</sup> September 2023
(5)	Priority MSA Site 5 – Maidstone (M20)	30 <sup>th</sup> September 2023
(6)	Priority MSA Site 6 – Clacket Lane Eastbound (M25)	30 <sup>th</sup> September 2023
(7)	Priority MSA Site 7 – Taunton Northbound (M5)	30 <sup>th</sup> September 2023

Completion of the whole of the *works* shall be deemed to take place on Completion of the final *section* to be completed under this contract (which for this purpose includes the above *sections* and any additional *sections* that are incorporated in the contract as a result of the issue of Notices to Proceed in respect of the Decommissioning Works and/or the Redeployment Works under clause Z161).

### Option X7: Delay damages

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

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	Priority MSA Site 1 – Tebay North (M6)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>
(2)	Priority MSA Site 2 – Clacket Lane Westbound (M25)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>
(3)	Priority MSA Site 3 – Beaconsfield (M40)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>
(4)	Priority MSA Site 4 – Corley Northbound (M6)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>
(5)	Priority MSA Site 5 – Maidstone (M20)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>
(6)	Priority MSA Site 6 – Clacket Lane Eastbound (M25)	0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each <i>section</i>

(7)

Priority MSA Site 7 – Taunton  
Northbound (M5)

0.1% of the Section A total of the Prices for supply, installation and commissioning to a maximum of 4.0% of the Section A total of the Prices for each *section*

### Option X15: The *Contractor's* design

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

12

years

### Option X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect and consequential loss is limited to

200% of the total of the Prices

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

200% of the total of the Prices

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

200% of the total of the Prices

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters listed in X18.5, is limited to

200% of the total of the Prices

The *end of liability date* is

12

years after Completion of the whole of the *works*.

### Option Y(UK)1: Project Bank Account

The *account holder* is the *Contractor*

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

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

term	beneficiary
The provisions of Option Y(UK) <sup>1</sup>	Named Suppliers
Prompt Payment Scope section S 1212	subcontractors (at any stage of remoteness from the <i>Client</i> )
Subcontracting Scope section S 1200	subcontractors (at any stage of remoteness from the <i>Client</i> )
Final clean Scope section S 420, Security Scope section S 425, Tests and Inspections of Defects correction Scope section S705.6 and Defects Scope section S 735	MSA Operator for the <i>Section</i> <sup>1</sup>

#### Option Z: Additional conditions of contract

The *additional conditions of contract* are the following clauses

Z1, Z2, Z3, Z4, Z6, Z7, Z8, Z9, Z10, Z11, Z12, Z13, Z14, Z15, Z16, Z17, Z18, Z19, Z20, Z50, Z55, Z56, Z57, Z59, Z60, Z104, Z161 and Z162

<sup>1</sup> Subject to the MSA Operator entering into a signed MSA agreement between themselves and the *Client*.

## PART TWO – DATA PROVIDED BY THE CONTRACTOR

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

### 1 General

The *Contractor* is

Name

Ameresco Ltd.

Address for communications

[REDACTED]  
[REDACTED]  
[REDACTED]

Address for electronic  
communications

[REDACTED]

The *Contractor's* nominated representative is

Name

n/a

Address for communications

n/a

Address for electronic  
communications

n/a

The *fee percentage* is

[REDACTED]

%

The *working areas* are

MSA sites

The following matters will be included in the Early Warning Register

[REDACTED]



## 2 The *Contractor's* main responsibilities

The Scope for the *Contractor's* design is in

As per ITT documentation

## 3 Time

The programme identified in the Contract Data is in

[REDACTED]

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

30<sup>th</sup> September 2023

## 4 Quality Management

The *quality submission* is in

[REDACTED]

## 5 Payment

The *activity schedule* is in

[REDACTED]

The tendered total of the Prices is

£6,561,413.89

Six Million, five hundred and sixty-one thousand, four hundred and thirteen pounds and eighty nine pence

## Resolving and Avoiding Disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

[REDACTED]

Address for communications

[REDACTED]  
[REDACTED]  
[REDACTED]

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

### Contract Data entry relating to Data Protection Legislation

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

The Pricing Information is in

### Option Y(UK)1: Project Bank Account

The *project bank* is

*named suppliers* are

All known Tier 2 and 3 suppliers must be listed as *named suppliers*.

### Option Z: *Additional conditions of contract*

### Clause Z9 Change of Control and financial distress

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

Party

rating agency

*credit rating*

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**Contract Data entries relating to the Scope**

**Data for Schedule of Cost Components**

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

Equipment	time-related on cost charge	per time period
N/A		

The rates for special Equipment are

Equipment	rate
N/A	

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

category of person	rate
N/A	

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Z Clause Contents	
Number	Title
Z1	Changes to Core and Secondary Option Clauses
Z2	Interpretation
Z3	Recovery of sums due from <i>Contractor</i>
Z4	Assignment and transfer
Z5	Not Used
Z6	Adjudication
Z7	Termination – Public Contracts Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non - Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>works</i> from the Scope
Z18	Corruption or loss of data
Z19	Conflict of interest
Z20	Other amounts to be paid by the <i>Contractor</i>
Z21 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Not Used
Z52	Not Used
Z53	Not Used
Z54	Not Used
Z55	Payment of the <i>Contractor's</i> share
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z58	Not Used
Z59	Indemnified Claims
Z60	Tax Arrangements of Public Appointees
Z61	Not Used
Z62 – Z102	Not Used
Z103	Not Used
Z104	Single point design responsibility
Z105	Not Used
Z106	Not Used
Z107	Not Used
Z161	Decommissioning and Redeployment Works
Z162	O&M Agreements

**Z1 Changes to core & Secondary Option clauses**

11 Identified and defined terms

11.2 Add the following defined terms

- (36) Associated Company is any of
- a Consortium Member or
  - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Contractor* or a Consortium Member.
- (37) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor* or a Consortium Member.
- (38) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Contractor*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (39) Contract Period means the period commencing on the date of this contract and expiring on the Completion Date after such commencement.
- (40) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (41) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Contractor* or a Consortium Member or
  - holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member.
- (42) Corrective Action has the meaning given in BS EN ISO 9000:2015.
- (43) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Contractor*, a Consortium Member or any Guarantor.
- (44) Data Protection Legislation is
- the UK General Data Protection Regulation (retained EU law version of the General Data Protection Regulation (EU2016/679)),
  - the LED (Law Enforcement Directive (Directive (EU) 2016/680),

- the Data Protection Act 2018,
  - the Privacy and Electronic Communications (EC Directive) Regulations 2003, and
  - any other data protection laws and regulations applicable in England and Wales.
- (45) Decommissioning Works are the decommissioning works that may be instructed in respect of each Agreed Site as additional *sections* under the contract as a result of the issue of Notices to Proceed under clause Z161 as further described in the Scope.
- (46) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (47) 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).
- (48) Enforcement Action is enforcement action brought by a regulatory authority against the Contractor 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.
- (49) EU Reference is any European Union
- regulation,
  - decision,
  - tertiary legislation or
  - provision of the European Economic Area agreement.
- (50) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (51) Financial Standing Test is the financial test for the *Contractor*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the contract.
- (52) 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.
- (53) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.
- (54) Halifax Abuse Principle is the principle explained in the CJEU case C-

255/02 Halifax and others.

- (55) Health, Safety and Wellbeing Plans are
- a completed Supply Chain Maturity Matrix (SCMM) for the *Contractor* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
  - an implementation plan (the SCMM Action Plan), setting out the actions to be taken by the *Contractor* or each Consortium Member over a period of twelve months following the date of the SCMM in order to improve the scores recorded in the SCMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
  - an implementation plan, setting out the specific actions to be taken under the contract by the *Contractor* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Contractor* or each Consortium Member.
- (56) Incoming Contractor is any contractor appointed by the *Client* to Provide the Works or part of it (or a similar service or part of it) in place of the *Contractor*.
- (57) Indemnified Claim is a matter for which the *Contractor* is liable under the contract.
- (58) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the Site and the works or any revised systems introduced by the *Client* from time to time.
- (59) 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.
- (60) Licence is the document entitled “Highways England: Licence” dated April 2015 listed in **Annex 02** to the Scope.
- (61) MSA Operator means the operator of the motorway service area in respect of each Agreed Site as notified by the *Client* to the *Contractor* from time to time.
- (62) Notice to Proceed is a notice to proceed with the Decommissioning Works and/or the Redeployment Works (as applicable) in respect of each Agreed Site, which may be issued by the *Client* to the *Contractor* from time to time under clause Z161.
- (63) Nonconformity has the meaning given in BS EN ISO 9000:2015 (and includes Defects).



- (64) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope.
- (65) Performance Requirement is the required standard for performance of each element of the *works* as specified in the Scope.
- (66) Personal Data is any data relating to an identified or identifiable natural individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- (67) Quality Management Points are points accrued by the *Contractor* in accordance with the quality table in the Contract Data.
- (68) Quality Plan is the quality plan produced in accordance with
- BS EN ISO 9001:2015,
  - clause 40 of the *conditions of contract* and
  - the Scope.
- (69) Quality Submission is the *quality submission* unless later changed in accordance with these *conditions of contract*, detailing the commitments made by the *Contractor* as part of its tender in respect of how it is to perform its obligations under the contract.
- (70) Not used.
- (71) Redeployment Works are the redeployment works that may be instructed in respect of each Agreed Site as additional *sections* under the contract as a result of the issue of Notices to Proceed under clause Z161 as further described in the Scope.
- (72) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.
- (73) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (74) Relevant Tax Authority is HM Revenue & Customs or, if the Contractor is established in another jurisdiction, the tax authority in that jurisdiction.
- (75) RIDDOR Incident is an incident occurring under any contract between the Contractor, an Associated Company and subcontractor (at any stage of remoteness from the Client) and
- the *Client* and
  - the any other person
- which results in death or serious injury to any worker or non-worker and for which the *Contractor*, an Associated Company or subcontractor (at any stage of remoteness from the *Client*) is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it) or equivalent laws outside England applicable to such a contract.

- (76) The Secretary of State is the Secretary of State for Transport.
- (77) Supply Chain Maturity Matrix (SCMM) is the document formed by completing the “Supply Chain Maturity Matrix (SCMM)” template in Annex 02 and is about measuring suppliers’ safety maturity.
- (78) Staff are persons employed or engaged by the *Contractor* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Works at any time.
- (79) Tax Non-Compliance is where a tax return submitted by the *Contractor* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012
- is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Contractor* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
  - the failure of an avoidance scheme in which the *Contractor* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
  - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of the contract or to a civil penalty for fraud or evasion.

Amend the following terms

(26) **Disallowed Cost**

In the definition of “Disallowed Cost”

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

- “implementing any modifications or enhancements to the *Contractor’s* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client’s* requirements as stated in the Scope,
- carrying out additional audits of the *Contractor’s* quality management system during any period while the number of Quality Management Points in effect is above the *threshold level*, complying with section S 1121 (Security) of the Scope and resulting costs,
- complying with section S 1116 (Alcohol and Substance abuse) of the Scope and resulting costs,
- taxes and registration requirements arising in the country where the *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims by or against the *Contractor*,

(ii) after the last bullet point insert an additional paragraph as follows,

“and any other cost stated in the *additional conditions of contract* as being a disallowed cost.”

## **12 Interpretation and the law**

12.2 Delete existing clause and replace it with

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

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

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

## **26 Subcontracting**

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

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

## **28 Assignment**

Delete clause 28.

## **29 Disclosure**

Delete clause 29.

## **60 Compensation events**

60.1(1) In clause 60.1(1) delete “or” at the end of the first bullet point and insert a comma. At the end of the clause delete the full stop and insert

- “a change to the Information Systems or the introduction of a new Information System,
- a change to the method of or requirements for performance measurement or
- a change which is stated elsewhere in these *conditions of*

*contract* not to be a compensation event.”

- 60.1(1) In clause 60.1(1) in the second main bullet point, after “design” insert  
“or for which the *Contractor* is responsible under clause Z104.1”.

Insert an additional sub-bullet after the second main bullet point  
“in order to rectify a Defect in the design of the works,”.

- 60.1(4) In clause 60.1(4) insert at the end (before the full stop)  
“unless the instruction relates to a notification from the *Contractor* that a  
conflict of interest may exist or arise”.

## **80 *Client’s* liabilities**

- 80.1 Insert at the end of the second main bullet point (before the full stop)  
“(excluding a fault in any design for which the *Contractor* has  
responsibility under the contract)”.
- Delete the third main bullet point.

## **82 Recovery of costs**

- 82.1 Delete clause 82.1 and replace it with

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

## **83 Insurance cover**

- 83 Delete clauses 83.2, 83.3 and the Insurance Table and insert new clause 83.2

- “83.2 The *Contractor* provides the insurances as stated in the Contract Data.”

## **93 Payment on termination**

- 93.2 Item A4 in clause 93.2 is deleted and replaced with the following:  
“substantiated tender costs up to a maximum of £50,000.”

## **Option X2 Changes in the law**

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

**Option X11 Termination by the *Client***

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

**Option X18 Limitation of liability**

- X18.5 Delete the bullet points and insert in its place
- “loss of or damage to the *Client*’s property,
  - delay damages if Option X7 applies,
  - low performance damages if Option X17 applies,
  - *Contractor*’s share if Option C or D applies,
  - fraud or fraudulent misrepresentation,
  - infringement of the rights of Others,
  - loss or damage
    - to third party property or
    - due to pollution,
  - loss arising from breach of
    - confidentiality or data protection obligations or
    - anti-bribery or anti-corruption obligations,
  - interest on debt,
  - losses caused by the *Contractor*’s illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct,
  - death of or bodily injury to a person other than an employee of the *Contractor* and
  - other events for which the contract requires the *Contractor* or *Client* to insure (but excluded only up to the minimum amount of cover for each type of insurance stated in the Scope or Contract Data.”

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

- Y2.1 At the end of the clause, before the full-stop, insert
- “and a reference to “invoice” shall mean an “electronic invoice” where an invoice has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. The invoice is an electronic invoice if it complies with the standard on electronic invoicing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European

standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.”

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

After clause Y3.3, insert

- “Y3.4 The rights of the *Contractor* and the *Client* to terminate, vary or amend the contract are not subject to the consent of any identified beneficiary.
- Y3.5 MSA Operators enforce the term noted in the above schedule only in the event that the *Client* does not bring a claim relative to enforcement of the foregoing term.”

### **Schedule of Cost Components**

Delete it and replace with the document entitled “Template Schedule of Cost Components (SoCC)” in **Annex A**.

## **Z2 Interpretation**

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

## **Z3 Recovery of sums due from the *Contractor***

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

## **Z4 Assignment and transfer**

- Z4.1 The *Contractor* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.
- Z4.2 If requested by the *Client*, the *Contractor* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the contract to
- a replacement organisation established to take over the *Client*’s functions or part of it,
  - another public body exercising similar functions,

- a Department or Office of Her Majesty's Government or
- a local authority.

Z4.3 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement through the *Project Manager* to do so. The *Contractor*

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

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

**Z5 Not used.**

## **Z6 Adjudication**

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

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

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

## **Z7 Termination - Public Contracts Regulations 2015**

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

Z7.2 The *Client* may terminate the contract with immediate effect if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015.

Z7.3 The procedure and amount due on termination are the same as for

- R18 if the modification or infringement was due to a default by the *Contractor*,
- R19 if the modification or infringement was due to a default by the *Client* and
- R20 if the modification or infringement was due to any other reason.

## **Z8 Subcontracting**

Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.

- Z8.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Project Manager*.
- Z8.3 The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor (at any stage of remoteness from the *Client*). The *Contractor* then arranges the removal of the subcontractor (at any stage of remoteness from the *Client*) and the appointment of a replacement in accordance with the contract.
- Z8.4 The *Client* may terminate if a Subcontractor or another resource needed for the *works* is no longer available and the *Contractor* is unable to propose an alternative resource acceptable to the *Project Manager*. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
- Z8.5 Before
- appointing a proposed subcontractor or
  - allowing a subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Project Manager* for acceptance
- either
    - a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor or
    - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or subsubcontractor and
  - details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor.
- Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Project Manager* has accepted the submission. A reason for not accepting the submission is that
- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
  - the *Project Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.
- Z8.7 If requested by the *Project Manager*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5.
- Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that
- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or



- the subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

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

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

Z8.9 The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that

- its appointment will not allow the *Contractor* to Provide the Works.

The *Contractor* does not appoint a proposed subcontractor until the *Project Manager* has accepted it.

Z8.10 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.

Z8.11 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Works or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

## **Z9 Change of Control and financial distress**

Z9.1 The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except 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.

Z9.2 The *Contractor* notifies the *Client* immediately of any material change in

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

Z9.3 The *Contractor* notifies the *Client* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.

Z9.4 The *Contractor* notifies the *Client* immediately if any of the following events occur in relation to the *Contractor*, a Consortium Member or a Guarantor

- its Credit Rating falls below the relevant *credit rating*,
- there is a further fall in its Credit Rating below the relevant *credit rating*,

- it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
- it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.

Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Project Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

Z9.6 If as a result of a Change of Control

- a person or organisation with which the *Client* does not wish to be associated for ethical or reputational reasons is an Associated Company or
- the *Client* decides (having reviewed any information provided by the *Contractor* and made appropriate inquiries) that the *Contractor* is no longer in a position to Provide the Works

the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

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

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
- any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
- any other information requested by the *Client* in order to satisfy itself that the *Contractor* remains in a position to perform its obligations under the contract.

Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Contractor* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Contractor* and accepted by the *Client*.

Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9.13 or

- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.

Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.

Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.

Z9.12 If

- the *Contractor* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13,
- the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* within four weeks of a request from the *Project Manager* to do so or
- the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project Manager* will meet the Financial Standing Test within 18 months of the *Project Manager's* acceptance

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

Z9.13 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- accepted by the *Client*.

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

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

## **Z10 Joint ventures**

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

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the

performance of the *Contractor's* obligations under the contract.

- Z10.3 The *Contractor* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.
- Z10.4 The *Contractor* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Contractor*.
- Z10.5 A Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement.
- Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Contractor* to comply with its obligations.
- Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 & 91.1 of the conditions of contract are amended by inserting after "the other Party" the words "or in the case of the *Contractor*, any Consortium Member".

## **Z11 Parent Company Guarantee**

- Z11.1 If required by the *Project Manager*, the *Contractor* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Project Manager's* request, whichever is later.

Parent Company Guarantees are given by;

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

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

- Z11.2 A breach of clause Z11.1 is treated as the *Contractor* having substantially hindered the *Client* or Others.

## **Z12 Discrimination, Bullying and Harassment**

- Z12.1 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with
- any investigation or proceedings under the Discrimination Acts or
  - any allegation of bullying or harassment
- resulting from any act or omission of the *Contractor* in connection with the contract.

## **Z13 Intellectual Property Rights (IPRs)**

- Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Contractor* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.
- Z13.2 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who also has the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Contractor* or its assignees or any third party. The *Contractor* provides to the *Client* the documents which license these IPRs to the *Client*. The *Contractor's* or third-party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.
- Z13.3 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

#### **Z14 Project Bank Account**

- Z14.1 The *Client* may at any time notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with its contracts.

#### **Z15 Tax Non – Compliance**

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

#### **Z16 Value Added Tax (VAT) Recovery**

- Z16.1 An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment.

## **Z17 Termination and removal of the works**

- Z17.1 The *Project Manager* may at any time instruct the *Contractor* that
- part or all of the remaining *works* is to be permanently removed from the contract or
  - for urgent reasons of health and safety, part of the *works* is to be temporarily removed from the contract.

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

- Z17.2 An instruction given under clause 17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*, and if all of the remaining *works* is to be permanently removed, the *Contractor* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the *works* or any part of them.

- Z17.3 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Project Manager*
- completes the performance of any part of the *works* started prior to the date of termination and
  - co-operates with the *Client* or any Incoming Contractor so as to ensure a smooth transfer of functions.

- Z17.4 The *Project Manager* may give the *Contractor* an instruction to Provide the Works (or parts of the *works*) in relation to highway assets outside the Site owned by the *Client* or a third party. The instruction states
- the assets to which it relates,
  - the parts of the *works* which the *Contractor* is to provide in relation to them,
  - the expected duration of the instruction and
  - any constraints on how the *Contractor* is to Provide the Works.

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

## **Z18 Corruption or loss of data**

- Z18.1 If any data of the *Client* is corrupted, lost or degraded as a result of the *Contractor's* default so as to be unusable, the *Contractor* immediately reports this to the *Project Manager* and
- the *Project Manager* may instruct the *Contractor* to restore the data in accordance with the *Project Manager's* requirements (and any cost incurred by

the *Contractor* in so doing is Disallowed Cost) or

- the *Client* may itself restore the data (and the *Contractor* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

## **Z19 Conflict of interest**

- Z19.1 Any steps taken in accordance with paragraph S 212.1 in the Scope is not a compensation event.
- Z19.2 A failure to comply with paragraph S 212.1 in the Scope is treated as a substantial failure by the *Contractor* to comply with its obligations.

## **Z20 Other amounts to be paid by the Contractor**

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

## **Z21 - Z49 Not Used**

## **Z50 Health, Safety and Wellbeing Plans**

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

## **Z55 Payment of the Contractor's share**

- Z55.1 If, prior to Completion of the whole of the *works*, the Price for Work Done to Date exceeds the total of the Prices, the *Project Manager* makes an assessment of the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date at each assessment date. The total of the Prices includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.
- This share is included in the amount due to the *Contractor*.

## **Z56 Construction Industry Scheme**

- Z56.1 In this clause (but not otherwise)
- the "Act" is the Finance Act 2004 and
  - the "Regulations" are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

- Z56.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.
- Z56.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act
- is registered for gross payment,
  - is registered for payment under deduction,
  - is exempt from registration as a local authority or other public body or
  - is neither registered nor exempt from registration.
- Z56.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration
- the *Contractor* submits an application for payment which separately identifies the cost of labour and
  - the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

## **Z57 Infrastructure Act 2015**

- Z57.1 The *Contractor* Provides the Works in compliance with, and so as not to put the *Client* in breach of
- the Licence and
  - any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Project Manager* to the *Contractor*).
- Z57.2 The *Project Manager* notifies the *Contractor* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *works*. The *Contractor* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

## **Z59 Indemnified Claims**

- Z59.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).
- Z59.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.
- Z59.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.



- Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Contractor*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Contractor* in conducting the Indemnified Claim, the *Contractor* is released from its indemnity to the *Client* in respect of it.

## **Z60 Tax Arrangements of Public Appointees**

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- Z60.3 The *Client* may, at any time during the term of the contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.
- Z60.4 If the *Contractor* fails to provide information in response to a request under clause Z60.3
- within the period for reply or
  - which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it
- the *Client* may
- treat such failure as a substantial failure by the *Contractor* to comply with its obligations or
  - instruct the *Contractor* to replace the relevant member of Staff.
- Z60.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Contractor* to comply with its obligations.
- Z60.6 The *Contractor* acknowledges that the *Client* may
- supply any information which it receives under clauses Z60.3 or Z60.5 or
  - advise the non-supply of information

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

**Z104 Single point design responsibility**

- Z104.1 The *Contractor* accepts sole responsibility for the design of the whole of the *works*, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Client*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of the contract as having been carried out by the *Contractor*.

**Z161 Decommissioning and Redeployment Works**

- Z161.1 The *Client* may, from time to time during the Contract Period, issue Notices to Proceed in respect of the Decommissioning Works and/or the Redeployment Works for each of the Agreed Sites. A Notice to Proceed includes:

- confirmation of the work to be undertaken,
- the *starting date*, *access date*, Key Dates, Working Areas and Completion Date(s) for the relevant work,
- the amount of delay damages for late completion of the relevant work, and
- the tendered total of the Prices.

Such data is taken from the Scope where applicable. The *Client* consults with the *Contractor* about the contents of a Notice to Proceed before it issues it.

- Z161.2 Within seven (7) days of receipt of a Notice to Proceed the *Contractor* promptly gives notice to the *Client* if the *Contractor* considers that:

- the Notice to Proceed is not in accordance with the Scope and, if so, the notice includes proposals for appropriate adjustment(s) to the Prices, Key Date(s) and Completion Date(s) as the case may be or
- all or any part of the Notice to Proceed is not in accordance with this contract, and that further instruction is required before the Notice to Proceed can properly be issued.

If the *Contractor* does not provide such notice, it accepts and is bound by the Notice to Proceed, in which case the Decommissioning Works and/or Redeployment Works (as applicable) in respect of the relevant Agreed Site shall constitute a new *section* under the contract for the purposes of Option X5 incorporating the data referred to in the Notice to Proceed.

If the *Contractor* provides such notice:

- the *Client* responds by confirming, revising or withdrawing the Notice to Proceed and upon such confirmation or revision, the Decommissioning Works and/or Redeployment Works (as applicable) in respect of the relevant Agreed Site shall constitute a new *section* under the contract for the purposes of Option X5 incorporating the data specified in the confirmed or revised Notice to Proceed (as applicable) and
- unless the *Client* notifies the *Contractor* otherwise, the *Contractor* does not perform the Decommissioning Works and/or Redeployment Works (as applicable) referred to in the Notice to Proceed whilst awaiting the *Client's* response.

- Z161.3 As indicated above, the Decommissioning Works and/or Redeployment Works

instructed by the *Client* under each Notice to Proceed shall constitute a new *section* of the *works* under the contract for the purposes of Option X5 incorporating the data specified in the relevant Notice to Proceed. The terms of the contract shall govern the carrying out of the Decommissioning Works and/or Redeployment Works as if they were incorporated in each such Notice to Proceed, provided always that:

- Main Option A (Priced Contract with Activity Schedule) shall apply to such Decommissioning Works and/or Redeployment Works, and
- Secondary Option X1 (Price Adjustment for Inflation) shall apply for the purposes of assessing the amount due in respect of such Decommissioning Works.

Z161.4 The *Contractor* acknowledges that the decision to issue any Notice to Proceed in respect of the Decommissioning Works and/or the Redeployment Works is at the sole and absolute discretion of the *Client* and the *Client* is entitled without payment of any compensation to the *Contractor* to elect not to issue Notices to Proceed for, or to elect to award to any other person or persons a contract or contracts in respect of, the whole of any part of the Decommissioning Works and/or Redeployment Works contemplated by this contract.

## **Z162 Operation & Maintenance (O&M) Agreements**

Z162.1 It is acknowledged that the *Contractor* has submitted prices for the carrying out of operation and maintenance services in respect of the completed energy storage system (“ESS”) at each of the Agreed Sites (“the Tendered O&M Prices”) as part of its tender for the *works*. Within one month of request by the *Client* from time to time the *Contractor* enters into an O&M agreement in respect of such operation and maintenance services for each ESS with the relevant MSA Operator (which agreement includes the *Client*’s minimum requirements for such services as described in the Scope) in such form as the MSA Operator requires and the *Contractor* agrees (such agreement not to be unreasonably withheld or delayed). The *Contractor* agrees that the amount payable to the *Contractor* in respect of each such O&M Agreement is calculated by reference to (and in any event be no greater than) the Tendered O&M Prices as amended in accordance with X1.

## Annex A

### Template Schedule of Cost Components

This schedule is part of the *conditions of contract*. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

In this schedule the *Contractor* means the *Contractor* and Associated Companies, but not its Subcontractors.

#### 1 People

The following components of

- the cost of people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is within the Working Areas,
- the cost of people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and
- the cost of people undertaking design who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and who are Providing the Works outside the Working Areas, proportionate to the time they spend working.

11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract.

12 Payments related to work on the contract and made to people for

(a) overtime

(b) working in special circumstances

(c) special allowances

(d) absence due to sickness and holidays

(e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be

deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works.

- 13 Payments made in relation to people in accordance with their employment contract for
- (a) travel, subsistence and lodging in accordance with the *Client's* Travel and Subsistence policy
  - (b) relocation
  - (c) medical examinations
  - (d) passports and visas
  - (e) travel insurance
  - (f) items (a) to (e) for dependents
  - (g) protective clothing
  - (h) contributions, levies or taxes imposed by law
  - (i) pensions and life assurance excluding payments made in relation to any pensions deficits
  - (j) death benefit
  - (k) occupational accident benefits
  - (l) medical aid and health insurance
  - (m) a vehicle
  - (n) safety training specific to Providing the Works.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Working Areas.
- Amounts paid by the *Contractor*.

## **2 Equipment**

The following components of the cost of Equipment which is used within the Working Areas

- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
  - the *Contractor's* ultimate holding company or
  - a company with the same ultimate holding company
  - at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
  - purchased by the *Contractor* under a hire purchase or lease agreement or
  - hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company
  - at open market rates, multiplied by the time for which the Equipment is required.
- 23 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of
- the change in value over the period for which the Equipment is required and
  - the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.
- The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.
- If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.
- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
- 25 Payments for the purchase price of Equipment which is consumed.
- 26 Unless included in the hire or rental rates, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

27 Payments for purchase of materials used to construct or fabricate Equipment.

28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

### **3 Plant and Materials**

The following components of the cost of Plant and Materials.

31 Payments for

- purchasing Plant and Materials,
- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

### **4 Subcontractors**

The following components of the cost of Subcontractors.

41 Payments to Subcontractors, excluding Associated Companies, for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Contractor*, which would result in the *Client* paying or retaining the amount twice.

### **5 Charges**

The following components of the cost of charges paid or received by the *Contractor*.

51 Payments for the provision and use in the Working Areas of

- water,

- gas,
- electricity,
- telephone and
- internet.

52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.

53 Payments for

(a) cancellation charges arising from a compensation event

(b) buying or leasing land or buildings within the Working Areas

(c) compensation for loss of crops or buildings

(d) royalties

(e) inspection certificates

(f) charges for access to the Working Areas

(g) facilities for visits to the Working Areas by Others

(h) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.

54 Payments made and received by the *Contractor* for the removal from Site and disposal or sale of materials from excavation and demolition.

## **6 Manufacture and fabrication**

The following components of the cost of manufacture and fabrication of Plant and Materials by the *Contractor* which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas.

## **7 Design**



Not Used

## **8 Insurance**

The following are deducted from cost

- the cost of events for which the contract requires the *Contractor* to insure and
- other costs paid to the *Contractor* by insurers.



# **National Highways Limited**

## **Heat Networks and Electricity Generation Assets**

### **Dynamic Purchasing Agreement**

### **Contract for Motorway Service Areas Energy Storage Systems**

## **Instructions for Tenders**

**June 2022**

### Contents amendment sheet

Version. No.	Issue No.	Amendments	Initials	Date
0	0	IfT Issue	JH	June 2022
1	1	Table 2 – extended TQ period and tender return date by 2 weeks to accommodate the Tender Amendment changes	ET	14/07/2022
1	1	Section 6.7.4 - Removed reference to prioritised ranking as all sites are now requested to be priced.	ET	14/07/2022
1	1	Section 6.7.6 - Removed reference to NEC contract to simplify wording	ET	14/07/2022
1	1	Section 6.7.7 - Removed reference 'to be arranged between NH contractor and the MSA operator' to simplify wording.	ET	14/07/2022
1	1	Section 6.7.9- Amended from 'the maximum number of MSA sites' to 'all MSA sites'	ET	14/07/2022
1	1	Section 6.7.10 – Removed as budget no longer applies and all sites are to be priced for.	ET	14/07/2022
1	1	Section 6.7.11 – now 6.7.10 - Removed reference 'For the MSA sites where the Tenderer commits to deliver works and services'	ET	14/07/2022
1	1	6.7.20 – amended from 'total of the Prices plus the Fee' to 'tenderer total of the Prices' for increased clarity	ET	14/07/2022
1	1	Section 7.3.9 to 7.3.11 and Table 4 - Amended Commercial model to reflect the need for all sites to be priced for. The new model is based on the price to deliver the sum of the Prices for Sections A and B combined, which removes the need for part 2 of the process.	ET	14/07/2022

1	1	Table 5 - Amended to reflect the Commercial Scores in Table 4	ET	14/07/2022
1	1	Appendix G - Amended to reflect application of the new Commercial model	ET	14/07/2022
1	1	Appendix L - Amended to amalgamate the separate policies into one updated policy	ET	14/07/2022
2	2	Section 1.2 – additional provision for up to four potential future sites	ET	29/09/2022
2	2	Table 2 – extended tender period of 3 weeks to accommodate Tender Amendment 3 changes	ET	27/09/2022

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# **1 PROCUREMENT SUMMARY**

## **1.1 Context and National Highways' Aims**

This procurement will establish a single supplier Contract for the purchase of Motorway Service Area Energy Storage Systems which includes the supply, installation and commissioning of the solutions for the sites specified.

Energy Storage Systems deliver temporary provision of supplementary electricity capacity as well as load balancing (decreasing demands on the permanent electricity networks) at various locations without upgrade of supply, in accordance with National Highways' standards and objectives. This Contract will contribute to the government's commitment to a minimum of 6 high powered electric vehicle charge points at all Motorway Service Areas in England by December 2023, by enabling the rollout at locations where existing Distribution Network Operator or National Grid capacity is insufficient to support delivering the commitment within the required timescales.

The Supplier will be required to enter into one Contract with National Highways for the supply, installation and commissioning of the Energy Storage Systems.

## **1.2 Contract Features**

Key features of the Contract for the supply, installation and commissioning of the Energy Storage Systems include:

- The form of Contract will be an NEC 4 Engineering and Construction Contract with pricing options A (in respect of the Decommissioning Works and Redeployment Works) and C (in respect of all other works).
- The Contract will be for an 8-year period, with no option to extend.
- The Contract is being procured under the Crown Commercial Service's Heat Networks and Electricity Generation Assets Dynamic Purchasing System.
- The Contract will be between the Supplier and National Highways (not the Crown Commercial Service).
- The Contract will require the Supplier to enter into an operations and maintenance agreement with each MSA operator. The operations and maintenance agreement will incorporate the Supplier's tendered operations and maintenance proposal and use the operations and maintenance prices provided in the Supplier's Commercial Workbook.

- The successful Supplier may be required to supply Energy Storage Systems during the contract term at up to four additional sites. This will be subject to the suitability of the sites and will be arranged after award of the Contract.



## 2 DEFINITIONS AND INTRODUCTION

### 2.1 Definitions

2.1.1 Words and phrases with an initial capital letter used in this document shall have the meanings set out below.

**Table 1 Table of Definitions**

Term	Definition
Assessment	the part of the procurement process described in section 7.3 of these Instructions;
Associated Company	has the meaning given in section 256 of the Companies Act 2006;
Award Criteria	the criteria described in these Instructions that National Highways will use to identify the most economically advantageous Tender;
Commercial Assessment Panel	the group of assessors that assesses the Commercial Submission;
Commercial Envelope	the area on the Sourcing Portal in which Tenderers should submit their Commercial Submission;
Commercial Score	the score awarded by the Commercial Assessment Panel after its assessment of the Commercial Submission;
Commercial Submission	the part of the Tender to be submitted in the Commercial Envelope in accordance with section 6.7 of these Instructions, comprising the completed Commercial Workbook;
Commercial Workbook	the document to be completed by Tenderers in the form set out in Appendix E to these Instructions;
Conditions of Tendering	section 4 of these Instructions setting out the general processes, procedures and rules for Tenderers to follow when producing and submitting a Tender;
Contract	the contract to be entered between National Highways and the successful Tenderer;
Contract Policy and Compliance Submission	the part of the Tender to be submitted in accordance with section 6.5 of these Instructions;
Crown Commercial Service (CCS)	the United Kingdom government's Crown Commercial Service;
Distribution Network Operator (DNO)	a company licensed to distribute electricity in the United Kingdom;

Dynamic Purchasing System (DPS)	an electronic procurement system;
EIRs	the Environmental Information Regulations 2004 (S1 2004/3391);
Energy Storage System (ESS)	an intervention which provides for the temporary provision of energy capacity as well as load balancing (decreasing demands on the energy networks) without upgrade of supply, until this can be made;
FOIA	the Freedom of Information Act 2000 (as amended);
Heat Networks and Electricity Generation Assets Dynamic Purchasing System (HELGA)	the CCS' Heat Networks and Electricity Generation Assets Dynamic Purchasing System, which enables public sector bodies to find relevant suppliers through a filtering system, in order to procure energy demand management and generation services;
Instructions	The instructions contained in this Invitation to Tender document;
Mechanical Completion	When the ESS is complete including load testing but less the integration with the high power electric vehicle charging point;
Motorway Service Area (MSA)	a rest and service area for drivers using the United Kingdom's motorway network;
Price	the Price for each Tender determined by the Commercial Assessment Panel in accordance with paragraphs 7.3.8 – 7.3.14 of these Instructions;
Procurement Officer	the individual identified in paragraph 2.2.3 of these Instructions;
Quality Assessment Panel	the group of assessors that assesses the Quality Submission;
Quality Consensus	the part of the procurement process described in section 7.4 of these Instructions;
Quality Moderation	the part of the procurement process described in section 7.5 of these Instructions;
Quality Moderation Panel	the group of moderators that provides independent assurance of the scores awarded by the Quality Assessment Panel in accordance with section 7.5 of these Instructions;

Quality Questions	the Questions set out in Appendix E to these Instructions to be answered by Tenderers as part of their Quality Submission;
Quality Submission	the part of the Tender to be submitted in accordance with section 6.6 of these Instructions;
Regulations	the Public Contracts Regulations 2015 (as amended);
Selection Questionnaire	the document which was submitted by Tenderers to the CCS in order to qualify for admission to the HELGA DPS;
Sectional Completion	is defined in clause X5 of the Contract;
Sourcing Portal	National Highways' web-based system used to conduct and manage the procurement process from Tender invitation, including all communications, provision of data and information and submissions. The Sourcing Portal used for this Tender is called Bravo;
Technical Envelope	the area on the Sourcing portal in which Tenderers should submit their Contract Policy and Compliance Submission and their Quality Submission;
Tender	an offer by a Tenderer in response to these Instructions which includes all supporting Tender response documents, rates and prices and proposals;
Tender Query	a question or request for clarification submitted by a Tenderer and answered by National Highways in accordance with section 5.1 of these Instructions;
Tenderer	the individual, organisation or consortium that has been admitted to the HELGA DPS and is submitting a Tender;
Total Score	the score awarded following the procurement process described in section 7.6 of these Instructions;

## **2.2 Instructions for Tenderers**

- 2.2.1 These Instructions are issued further to Schedule 5 of the HELGA DPS framework agreement with reference number RM3824.
- 2.2.2 The purpose of this document is to provide Tenderers with information about the procurement process, the timetable and the Conditions of Tendering. The document describes the Contract which, National Highways is seeking to procure. It also sets out the Award Criteria and how they will be applied to identify the most economically advantageous Tender.
- 2.2.3 Tenderers may only contact National Highways through the Sourcing Portal, unless they are unable to access the Sourcing Portal in which case they must contact the Procurement Officer by email. The Procurement Officer for this procurement is [MSA-ESSProcurement@nationalhighways.co.uk](mailto:MSA-ESSProcurement@nationalhighways.co.uk)
- 2.2.4 Whenever in these Instructions there is reference to a meeting being held between National Highways and one or more of the Suppliers such a meeting may be held face to face, by telephone, by Microsoft Teams or by another reasonably widely available medium chosen by National Highways.

### 3 PROCUREMENT TIMETABLE – KEY EVENTS AND DATES

#### 3.1 Key Dates

- 3.1.1 Indicative key dates and deadlines for the procurement process are set out in Table 2 below. These dates will be kept under review by National Highways and National Highways reserves the right to change them. National Highways will notify all Tenderers as soon as practicable of any changes that may be made to the key dates of the procurement process:

**Table 2 Key events and dates**

Key Event	Date
Reissue IfT	30 September 2022
Last date for submission of Tender queries	14 October 2022 12:00
Last date for response to Tender queries	19 October 2022
Tender return date	21 October 2022 12:00
Tender Assessment	24 October 2022 – 17 November 2022
HELGA Selection Questionnaire Review	18 November – 28 November 2022
Standstill letters issued	29 November 2022
Contract Award	13 December 2022

## **4 CONDITIONS OF TENDERING**

### **4.1 General**

- 4.1.1 All Tenders must be submitted in accordance with these Instructions. National Highways reserves the right to exclude any Tender from the competition which does not comply with these Instructions.
- 4.1.2 Wherever these Instructions state that National Highways reserves a right to, or “may” exclude a Tenderer (e.g. for non-compliance with any requirement of these Instructions or a “fail” under any specific criterion) then National Highways is at liberty to exercise such discretion as it sees fit to balance fair and equal treatment of all Tenderers with a proportionate response to the relevant non-compliance or failure.
- 4.1.3 The contents of these Instructions and of any other documentation sent to Tenderers in respect of the procurement remain the property of National Highways and must be treated as private and confidential at all times.
- 4.1.4 Tenderers are required to conduct themselves in good faith in all dealings in relation to the procurement.
- 4.1.5 All contact with National Highways during the procurement period in relation to this procurement must be made through the Sourcing Portal, unless a Tenderer is unable to access the Sourcing Portal in which case they must contact the Procurement Officer by email. There should be no direct contact by Tenderers with National Highways or its advisers, consultants or contractors unless this is expressly agreed in advance by National Highways or expressly permitted by these Instructions.
- 4.1.6 National Highways reserves the right to allow any Tenderer to correct an error in its Tender or clarify elements of its Tender to National Highways’ satisfaction rather than exclude such a Tenderer where National Highways is satisfied such action would be proportionate to the relevant issue and would not result in discrimination to other Tenderers or amount to unfair treatment.

### **4.2 Disclosure Requests and Transparency**

- 4.2.1 Under the FOIA, the EIRs or the Regulations National Highways may be obliged (subject to the application of any relevant exemptions and, where applicable, the public interest test) to disclose information relating to the procurement including any Tenders received.
- 4.2.2 Under the UK Government’s Procurement Policy Note 09/21 (Update to Legal and Policy requirements to publish procurement information on Contracts Finder) dated

December 2021, National Highways is obliged to publish the details of the successful Tenderer and the provisions of any Contract let pursuant to this procurement, excluding only information which is exempt from disclosure pursuant to the FOIA, EIRs or the Regulations.

- 4.2.3 Tenderers must be aware that National Highways could receive requests for any information relating to this procurement. National Highways is under a legal obligation to disclose such information if validly requested, unless an exemption applies. National Highways may also be obliged to make disclosures under other legislation or applicable codes or otherwise as required by law, including by order of a court of competent jurisdiction. Without prejudice to National Highways' obligation to disclose information in accordance with the FOIA, EIRs and the Regulations, National Highways will, acting reasonably but at its sole discretion, consider the application of any exceptions set out in section 43 of the FOIA to any information identified by a Tenderer as genuinely commercially sensitive or any other relevant FOIA or EIRs exemption.
- 4.2.4 Tenderers are therefore invited to return (in the Technical Envelope Section 1) a document in the form of **Appendix I** of these Instructions to state which information in their Tender should not be disclosed due to one of the exemptions applying, for example because to do so would, or would be likely to, prejudice their commercial interests. Applications for non-disclosure must include:
- a) Clear and substantive justification; and
  - b) A time limit after which the information may be disclosed as the exemption will no longer apply.
- 4.2.5 National Highways will endeavour to consult with the Tenderer and have regard to the Tenderer's representations before it releases any information in response to a request made under the FOIA or the EIRs. However, National Highways will be entitled to determine in its absolute discretion, including where it considers that it would not be appropriate to consult with the Tenderer, whether any information is exempt from release under either the FOIA or the EIRs, or alternatively is to be disclosed in response to a request for information.
- 4.2.6 All central government departments, their executive agencies and non-departmental public bodies are subject to control and reporting within government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-government role delivering overall government policy on public

procurement - including ensuring value for money and related aspects of good procurement practice.

- 4.2.7 For these purposes, National Highways may disclose within government any documents and information (including any that the Tenderer considers to be confidential and/ or commercially sensitive, such as specific information within the Tender) submitted by the Tenderer to National Highways during this procurement process. Tenderers consent to these terms as part of the procurement process.
- 4.2.8 Tenderers must note that National Highways may be required to publish the names of the Tenderers.

#### **4.3 Non-collusion**

- 4.3.1 Tenderers are required to return (in the Technical Envelope Section 1) a non-collusion declaration in the form of the document at **Appendix J** as part of their Contract Policy and Compliance Submission.
- 4.3.2 Where collusion between Tenderers (or any relevant parties with an interest in the procurement which may prejudice the outcome of the procurement) has been found to occur, National Highways reserves the right to exclude from this procurement any potential Tenderer at its discretion (without prejudice to any other civil remedies available to National Highways and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

#### **4.4 Publicity and marketing**

- 4.4.1 All publicity activity in relation to this procurement or the award of any subsequent Contract is prohibited except with the prior written agreement of National Highways. Tenderers must, prior to any form of response, notify National Highways via the Sourcing Portal of any enquiries received from the media regarding this procurement.

#### **4.5 Conflicts of Interest**

- 4.5.1 A “conflict” or “potential conflict” is any circumstance which creates a conflict of interest for a Tenderer or which could have an impact on the fair, transparent and non-discriminatory nature of this procurement process.
- 4.5.2 Where there is any indication that a conflict of interest, or potential conflict of interest, between the Tenderer, its advisers, National Highways or National Highways’ advisers or any combination thereof has arisen or may arise it will be the responsibility of the Tenderer (using a document in the form of **Appendix K** to be returned in the Technical Envelope Section 1) to inform National Highways immediately via the Sourcing Portal



setting out the conflict or potential conflict in detail together with the measures taken and/or to be put in place to identify, prevent and/or remedy any conflict or potential conflict of interest. In such circumstances, National Highways will be the final arbiter on issues of conflict or potential conflict of interests and, in cases where the actual or potential conflict of interest cannot (in National Highways' reasonable opinion) be effectively remedied, National Highways will exclude the relevant Tenderer from the procurement.

- 4.5.3 If National Highways becomes aware of any actual or potential conflict of interest that the Tenderer has not declared to National Highways, in cases where the actual or potential conflict of interest cannot (in National Highways' reasonable opinion) be effectively remedied, the Tenderer may be excluded from the procurement.
- 4.5.4 National Highways considers that a potential conflict of interest could arise where the same entity is bidding in different capacities, for example, bidding in its own right and as a sub-contractor to another Tenderer or as a consortium partner in another bid. In such circumstances the Tenderer should address the potential conflict in the manner set out in paragraph 4.6.2.

#### **4.6 Tender Warranties**

- 4.6.1 These Instructions and their associated documentation are provided in good faith. No warranty is given by National Highways as to the accuracy or completeness of information contained in it. Any liability for inaccuracy or incompleteness is expressly disclaimed by National Highways. Tenderers are to satisfy themselves they understand all requirements of the procurement process and all associated documents before submitting a Tender.
- 4.6.2 National Highways reserves the right to cancel, amend or vary the procurement process at any point prior to the award of the Contract (in whole or in part) and with no liability on its part.
- 4.6.3 National Highways reserves the right not to accept any Tender for any reason given in these Instructions or the Regulations.
- 4.6.4 National Highways is not liable for any costs resulting from any amendment or cancellation of this procurement process nor any other costs, charges, fees, expenses, claims or disbursements (howsoever arising and including third party costs) incurred by those tendering. Tenderers submit a Tender at their own risk and expense.

- 4.6.5 Tenders will remain open for acceptance by National Highways for a period of 180 days from the closing date for the submission of Tenders after which period the validity of a Tender will be subject to confirmation by the Tenderer.

#### **4.7 Tender Documents**

- 4.7.1 The documents provided to Tenderers are listed in **Appendix A** – Document Register.
- 4.7.2 If Tenderers experience any difficulty in locating or opening documents listed in **Appendix A** or within any of the referenced documents, then a Tender Query should be raised via the Sourcing Portal.
- 4.7.3 All documents and information issued to Tenderers remain the property of National Highways and may only be used for the purpose of tendering, they must not be disclosed to persons unconnected with the Tender and must be destroyed on completion of the procurement.

## 5 TENDER COMMUNICATIONS

### 5.1 Tender Queries

- 5.1.1 If Tenderers have any queries or require any clarification concerning any aspect of these Instructions, then they should submit a Tender Query to National Highways through the Sourcing Portal not later than the date shown in Table 2.
- 5.1.2 Tender Queries will only be permitted until the date shown in Table 2. This deadline is designed to permit National Highways to consider and respond to all Tender Queries within sufficient time to enable Tenderers to take account of National Highways' response ahead of the Tender return date.
- 5.1.3 National Highways reserves the right not to provide a response to any Tender Query raised by a Tenderer received after the date shown in Table 2.
- 5.1.4 All Tender Queries and responses will be published openly to all Tenderers unless specifically marked "Commercially Sensitive" or "Confidential" by the Tenderer at the time of submission. If so marked Tenderers must explain why they consider that the Tender Query is commercially sensitive or confidential. These Tender Queries and National Highways' responses will, subject to paragraph 5.1.5, not be circulated to other Tenderers.
- 5.1.5 If a Tenderer states that a Tender Query is in their opinion commercially sensitive or confidential, but National Highways does not agree, National Highways reserves the right to notify the Tenderer of its decision and reserves the right to offer the Tenderer an opportunity to withdraw the relevant Tender Query. If the Tenderer does not elect to withdraw the relevant Tender Query within the specified timeframe or within three working days (whichever is the later), the relevant Tender Query and response is circulated to all Tenderers.
- 5.1.6 Where, in response to a Tender Query or otherwise, National Highways makes available further information that is relevant to the Tender then such information will be made available to all Tenderers.
- 5.1.7 It shall be National Highways' decision whether and how to answer a Tender Query. National Highways accepts no liability arising from the provision of clarification or further information or a decision not to provide further clarification or information.

### 5.2 Tender Amendments

- 5.2.1 The Procurement Officer may make amendments to these Instructions and/or the documents in **Appendix A** and shall issue them to all Tenderers via the Sourcing

Portal. Only in exceptional circumstances will amendments be issued after the closing date for submission of Tenders in the form of a post Tender amendment. Exceptional circumstances include where National Highways wishes to correct an error in these Instructions and/or the documents in **Appendix A**.

- 5.2.2 National Highways' officers or consultants do not have the authority to make any amendment to these Instructions except through an amendment issued by the Procurement Officer. If a purported amendment is made by anybody except the Procurement Officer, this is not to be considered valid and the Tenderer must refer the matter to the Procurement Officer immediately.

## **6 TENDER SUBMISSION REQUIREMENTS**

### **6.1 General**

- 6.1.1 National Highways reserves the right to exclude Tenders not received by the Tender return date and time shown in Table 2 (subject to any amendments to that date or time issued by National Highways). If a Tender is submitted after this deadline the Tenderer may be asked to explain and/ or evidence any system or material issue that prevented it from submitting its Tender by the deadline.
- 6.1.2 Tenders must be submitted using the Sourcing Portal and in accordance with these Instructions. Tenders must be complete and documents which are provided for Tenderers to fill in and return shall not be altered. Tenders shall not be qualified or accompanied by statements or a covering letter that might be construed as rendering the Tender equivocal. National Highways reserves the right to exclude any Tenders which do not comply with the Instructions in this paragraph.
- 6.1.3 Before a Tender can be submitted the Tenderer must answer the confirmation statements within the Sourcing Portal, confirming that the person confirming is empowered to submit the Tender on behalf of their organisation, that the Tenderer accepts these Instructions (and any amendments or answers to Tender Queries), and that their tender is valid for 180 days.
- 6.1.4 Tenders will remain open for acceptance by National Highways for a period of 90 days from the closing date for the submission of Tenders after which period the validity of a Tender will be subject to confirmation by the Tenderer.
- 6.1.5 Tenderers must identify prime or subcontractors (i.e. those being relied on to deliver the Contract) in their supply chain with Russian/Belarussian companies/Government as part of their Tender submission.

### **6.2 Document Control**

- 6.2.1 A checklist of the documents to be returned with the Tender is set out in **Appendix B**. Each Tender including those documents must be submitted in two online envelopes as follows, further detail is given in **Appendix B**:
- Technical Envelope; and
  - Commercial Envelope.
- 6.2.2 Tenders and supporting documents must be written in English and priced in Pounds Sterling.

### 6.2.3 Tenders must comply with the following document restrictions:

- The page limits as identified in **Appendix E** must be adhered to, all parts of the submission including title pages, drawings, diagrams, organograms, flow charts, and annexes, shall be counted. Tenderers may use A3 in lieu of A4, but each A3 sheet will be counted as two A4 sheets.
- The pages of any document with a page limit must be numbered. Page numbers and other header or footer information may be included in the margin space; and
- Text must be presented in “Arial” font and be no smaller than 11-point, single-spaced. All margins are to be set at no less than 2.54 centimetres. Text no smaller than 10-point can be used for drawings, diagrams and flow charts.

6.2.4 If the Quality Submission or any part of it exceeds the page limits, the content of the pages after the limit is reached will be disregarded and not distributed to the members of the Quality Assessment Panel for assessment.

6.2.5 Documents are to be clearly referenced, sequenced and provided in Microsoft 2016 Word and Excel formats, with the exception of templates forming part of the documents requiring completion by the Tenderer which shall retain their original format.

6.2.6 Where the response to a question requires multiple files to be uploaded these can be combined in a single zip file. No single file is to be larger than 20Mbytes. Tenderers should label each file using the naming convention.

- i) Tenderer initials
- ii) Name of document given in **Appendix A**.

Example Format - “ABC – Conflict of Interest Statement.”

## 6.3 Variant Bids

6.3.1 National Highways will not accept any variant bids in response to these Instructions and any variant bid received will be excluded.

## 6.4 Tender Submission

6.4.1 Tenderers are required to submit the following three submissions:

- Contract Policy and Compliance Submission
- Quality Submission

- Commercial Submission

## 6.5 Contract Policy and Compliance Submission

6.5.1 Tenderers are required to complete and return in the Technical Envelope (Section 1) on the Sourcing Portal the Contract Policy and Compliance Submission, comprising:

- the executed Form of Tender;
- the Contract Data Part Two; and
- the completed non-collusion declaration template, which can be found at **Appendix J**.
- the policy compliance statements described in **Table 3** confirming that they will adhere to National Highways' relevant policies in the event that they are successful in this procurement.

**Table 3 Policy and Compliance Documents Requirements**

Policy	Mandatory requirement?	Refer to	Response Required via
Confirmation that the Tenderer will enter into the parent company guarantee	Yes, if applicable	Section C1 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)
Legal Opinion for Tenderers that are non-UK Registered Companies	If the Tenderer is a non-UK registered company	Section C2 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)
Statement that Tenderer will support use of SMEs as its sub-contractors	Yes	Section C3 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)
Information Assurance Statement	Yes	Section C4 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)
Data Protection Statement (GDPR)	Yes	Section C5 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)
Statement of Tenderer's registration for Construction Industry Scheme	Yes	Section C6 of Appendix C	E-Tendering Portal (Technical Envelope Section 1)

Policy	Mandatory requirement?	Refer to	Response Required via
Non-Collusion Compliance	Yes	Appendix J	E-Tendering Portal (Technical Envelope Section 1)
Conflict of Interest	Yes	Appendix K	E-Tendering Portal (Technical Envelope Section 1)
Fair Payment Charter Compliance	Yes	Appendix L	E-Tendering Portal (Technical Envelope Section 1)
Supplier Counter Fraud Bribery and Corruption Code of Conduct	Yes	Appendix L	E-Tendering Portal (Technical Envelope Section 1)
Armed Forces Covenant Compliance	Yes	Appendix L	E-Tendering Portal (Technical Envelope Section 1)

6.5.2 All the documents detailed in **Appendix B** must be submitted as part of the Tender. National Highways reserves the right to exclude a Tenderer that fails to provide compliance statements.

6.5.3 Tenderers should refer to **Appendix C** and **Appendix L** for further details regarding each policy requirement.

## 6.6 Quality Submission Instructions

6.6.1 Tenderers are required to complete and return in the Technical Envelope (Section 2) on the Sourcing Portal their Quality Submission, comprising responses to the Quality Questions in **Appendix E**.

6.6.2 Each Quality Question sets out the following:

- **Ambition** – the outcome National Highways is seeking to obtain;
- **Question** – the question that Tenderers must respond to; and
- **Requirements** – the minimum requirements National Highways considers essential to deliver the Ambition.



- 6.6.3 A Tenderer's response to each Quality Question must include the following components:
- a) Methodology: describing the methods to be used, which must as a minimum address all the requirements;
  - b) Evidence: showing how the methodology has been previously used, tested or piloted; and
- 6.6.4 The requirements in each of the Quality Questions are the areas National Highways believe essential to enable the Ambition to be achieved. Each requirement must be clearly addressed, detailing the specific methodology that will deliver the requirement. Each requirement will be given equal importance by the Quality Assessment Panel.
- 6.6.5 Tenderers must provide evidence to support their methodology. Tenderers must provide evidence to demonstrate they have successfully delivered the methodology previously, or that the methodology has been successfully used by others, or that it has been tested for example by trials, pilot schemes or research. The evidence is not required to be from delivery in a roads environment. For example, evidence for customer service could come from a different sector.

## **6.7 Commercial Submission Instructions**

- 6.7.1 Tenderers are required to submit in the Commercial Envelope on the E-Sourcing Portal a completed Commercial Workbook. The Commercial Workbook can be found in the Bravo e-tendering Portal in the folder entitled Commercial Documents and in the sub-folder entitled Commercial Workbook.
- 6.7.2 Tenderers complete the Commercial Workbook in accordance with these instructions and the guidance notes provided within the Commercial Workbook.
- 6.7.3 Tenderers raise any issues with the Commercial Workbook as a Tender Query via the E-Sourcing Portal.
- 6.7.4 The Commercial Workbook is in the form of an excel file with separate worksheets for each of the Motorway Service Area (MSA) locations where it has been identified that the MSA will benefit from the installation of Energy Storage Systems (ESS).
- 6.7.5 The items in the individual MSA worksheets are presented in two sections.
- 6.7.6 Section A includes work activities for the supply, installation and commissioning of the ESS.
- 6.7.7 Section B includes operation and maintenance and decommissioning work activities.