

# **Pavement Framework**

## **Z clauses**

### **(Framework Contract)**

**CONTENTS AMENDMENT SHEET**

<b>Amend. No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>
1	V2	Amendment to Clause Z1 11. (13)		12/10/2017
2	V2	Clause Z1 11. (41) deleted and marked ' Not Used'		12/10/2017
3	V2	Clause Z12.1 deleted and marked 'Not Used'		12/10/2017
4	V3	Clause Z4.1 deleted and marked 'Not Used'		10/11/2017
5	V4	Title of clause Z27 amended. Clause Z27.4 added		29/03/2018

## MANDATORY Z CLAUSES (Framework Contract)

### Clause Z1 Changes to Core Clauses

#### 11 Identified and defined terms

In clause 11.2(3) delete the definition of “Work Package” and insert

Work Package is work which is to be carried out under either

- a standalone Works Contract or
- a bundle of Works Contracts procured together under a Package Order.

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

- (1) Affected Property is property of the *Employer* or Others which is affected by the work of the *Supplier* or used by the *Supplier* in performing its obligations under the framework contract or any Package Contract and which is identified in the Contract Data.
- (2) Associated Company is
  - a Consortium Member or
  - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Supplier* or a Consortium Member.
- (3) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Supplier* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Supplier* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Supplier* or a Consortium Member.
- (4) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Supplier*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (5) Contract Dispute is a dispute between the Parties under or in connection with the framework agreement or any Package Contract.
- (6) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (7) Controller is the single person (or group of persons acting in concert) that
  - has Control of the *Supplier* or a Consortium Member or

- holds or controls the largest direct or indirect interest in the relevant share capital of the *Supplier* or a Consortium Member.
- (8) Credit Rating is the *credit rating* or any revised long term credit rating issued by a rating agency accepted by the *Employer* in respect of the *Supplier*, a Consortium Member or any Guarantor.
- (9) The Data Protection Acts are the Data Protection Act 1998 and any other laws or regulations relating to privacy or personal data.
- (10) Death is a human casualty who dies due to injuries received in the RIDDOR Incident.
- (11) The Discrimination Acts are the Equality Act 2010 and any predecessor statutes.
- (12) 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).
- (13) Employment Costs are all costs and emoluments arising under the terms and conditions of employment of the Staff, including basic pay, shift allowances, bonus payments, on call payments, overtime, car costs, telephone rental, travel and subsistence payments, maternity pay, sick pay, pension contributions and income tax and national insurance contributions.
- (14) Enforcement Action is enforcement action brought by a regulatory authority against the *Supplier* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.
- (15) Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property which has not previously been adopted by the *Employer* in the Affected Property or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the *Employer*) is expected to provide a significant long-term benefit to the *Employer* in terms of
- reducing the cost to the *Employer* of the *service* or of maintaining, renewing and improving the Affected Property,
  - improving the quality or effectiveness of delivery of the *service* or
  - otherwise enhancing the achievement of the *Employer's* vision, outcomes and key objectives.
- (16) Financial Standing Test is the financial test for the *Supplier*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the framework contract.

- (17) 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.
- (18) Guarantor is a person who has given a Parent Company Guarantee to the *Employer*.
- (19) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (20) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable by the *Employer* if an Enhancement is successfully implemented.
- (21) Incoming Contractor is any contractor appointed by the *Employer* to provide works or services under any Package Contract or part of them (or similar services or part of them) in relation to the Affected Property (or part of it) in place of the *Supplier*.
- (22) 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.
- (23) Others are people or organisations who are not the *Employer*, the *Supplier* or any employee or Subcontractor of the *Supplier*.
- (24) Outgoing Contractor is any agent or contractor appointed by the *Employer* or Others to carry out works or provide services similar to the works or services under any Package Contract in relation to the Affected Property during the period immediately prior to the date of award of the framework contract.
- (25) Package Contract is a contract for works or services to be carried out pursuant to a Time Charge Order or a Works Contract.
- (26) Package Information is the scope or works information (as applicable) for any Package Contract.
- (27) Parent Company Guarantee is a parent company guarantee of the *Supplier's* performance in the form set out in the Framework Information.
- (28) Performance Requirement is the required standard for performance of each element of the *Supplier's* obligations under any Package Contract as specified in the Package Information.
- (29) Personal Data is information collected by the *Supplier* on behalf of the *Employer* in relation to the framework contract or any Package

Contract, which relates to living individuals who can be identified

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

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

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

(32) Quality Statement is the statement of that name referred to in the Contract Data detailing the *Supplier's* management and resourcing proposals for how he is to meet the *Employer's* objectives for the framework contract.

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

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

(35) Relevant Tax Authority is HM Revenue & Customs or, if the *Supplier* is established in another jurisdiction, the tax authority in that jurisdiction.

(36) RIDDOR Incident is an incident occurring under any contract between

- the *Supplier* or an Associated Company and
- the *Employer* or any other person

which results in Death or Serious Injury to any worker or non-worker and for which the *Supplier* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).

(37) Serious Injury is an injury which results in a person being admitted to hospital or receiving professional medical treatment from a qualified doctor, but which does not result in Death.

(38) Staff are employees employed by the *Supplier* or an Associated Company or any Subcontractor to provide works or services under any Package Contract at any time.

(39) Subcontractor is a person or organisation who has a contract with the *Supplier* to provide works or services or to supply plant, materials or equipment necessary for performance of the *Supplier's* obligations under any Package Contract.

(40) Tax Non-Compliance is where a tax return submitted by the *Supplier* to a Relevant Tax Authority on or after 1 October 2012

- is found on or after 1 April 2013 to be incorrect as a result of
  - a Relevant Tax Authority successfully challenging the

*Supplier* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or

- the failure of an avoidance scheme in which the *Supplier* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or

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

(41) Not Used

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

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

(44) Works Contract is a contract for works instructed by, or procured under, a Package Order.

## **20 The Parties' obligations**

In clauses 20.1 and 20.2 delete "the *Employer*" and insert "a *Contracting Body*".

## **21 Time Charge Order**

In clause 21.1 delete "the *Employer*" and insert "a *Contracting Body*".

## **22 Quotation**

In clause 22.1, line 1, delete "the *Employer*" and insert "a *Contracting Body*".

Delete all other references in clauses 22.1 and 22.2 to "*Employer*" and insert "*Contracting Body*".

## **30 Completion**

In the first bullet of clause 30.1 delete "the *Employer*" and insert "a *Contracting Body*".

## **90 Termination**

In the first bullet of clause 90.2 delete "the *Employer*" and insert "a *Contracting Body*".

## **Clause Z2 Corrupt practices**

**Z2.1** The *Supplier* does not

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

**Z2.2** If the *Supplier* breaches clause Z2.1, the *Employer* may

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

**Clause Z3** [Not used]**Clause Z4** [Not used]**Clause Z5** **Assignment**

**Z5.1** The *Supplier* does not assign, transfer or charge the benefit of any Package Contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.

**Z5.2** If requested by the *Employer*, the *Supplier* executes a novation agreement transferring the benefit and burden of the framework contract or any Package Contract to

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

The novation agreement is in the form set out in the Framework Information or such other form as the *Employer* may reasonably require.

**Clause Z6** **Discrimination**

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



resulting from any act or omission of the *Supplier*.

**Clause Z7 Confidentiality and disclosure of information**

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

- the terms of the framework contract or any Package Contract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Supplier* in the course of performing its obligations under the framework contract or any Package Contract

except that the *Supplier* may disclose information

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

Z7.2 The *Supplier* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to perform its obligations under the framework contract or any Package Contract.

Z7.3 The *Supplier* acknowledges that the *Employer* is obliged to publish information relating to the framework contract and all Package Contracts in accordance with Procurement Policy Note 01/17 entitled "The Transparency of Suppliers and Government to the Public" dated 16 February 2017 (or any later revision) (the "**PPN**"), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Supplier* before deciding whether information is exempt, but the *Supplier* acknowledges that the *Employer* has the final decision.

Z7.4 The *Supplier*

- co-operates with and assists the *Employer* to comply with its

obligation under clause Z7.3,

- agrees with the *Employer* a schedule for the release to the public of information relating to the framework contract and all Package Contracts in accordance with the terms of the PPN,
- provides information to assist the *Employer* in responding to queries from the public as required by the PPN and
- supplies the *Employer* with financial data relating to the framework contract and all Package Contracts in the form and at the times specified in the PPN.

**Clause Z8** [Not used]

**Clause Z9** [Not used]

**Clause Z10** [Not used]

**Clause Z11** [Not used]

**Clause Z12** TUPE

Z12.1 Not Used

Z12.2 The *Supplier* complies with and ensures that any Subcontractor complies with its obligations under TUPE, including compliance with any request by the Outgoing Contractor under regulation 13(4) of TUPE before the date of award of the framework contract.

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

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

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

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

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

## TUPE Information

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

- Z12.6 So far as reasonably practicable, the *Supplier* does not and ensures that any Subcontractor does not make or promise to make any changes affecting the TUPE Information which would increase the Employment Costs of the Staff in the six months before or at any time after the *end date* without the prior consent of the *Employer* (such consent not to be unreasonably withheld) unless such change is required by law. The *Supplier* supplies to the *Employer* full particulars of any proposed changes and the *Employer* responds within a reasonable time.
- Z12.7 The *Supplier* does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the works or services under any Package Contract more than five per cent of the Staff in the twelve months before the *end date* without the prior consent of the *Employer* (such consent not to be unreasonably withheld).
- Z12.8 Before the *end date*, the *Supplier* informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The *Employer* requests the Incoming Contractor to provide to the *Supplier* the information required under regulation 13 of TUPE.
- Z12.9 The *Supplier* indemnifies and keeps indemnified the *Employer* and any Incoming Contractor in respect of any claims, costs (including Employment Costs), expenses, payments and liabilities arising from
- any claim by any of the Staff or by a third party or trade union or body representing any of the Staff in relation to any act or omission which allegedly occurred before the *end date*,
  - any failure by the *Supplier* or any Subcontractor to comply with its obligations under regulations 11 and 13 of TUPE and
  - any claim by any employee or former employee of the *Supplier* or any Subcontractor who is not identified in the TUPE Information that his employment or any liability in respect of his employment or its termination has or should have transferred to the Incoming Contractor or the *Employer* pursuant to TUPE.

**Clause Z13      Merger, take-over or change of control**

- Z13.1 A Change of Control does not happen without the prior agreement of the *Employer*.
- Z13.2 The *Supplier* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z13.3 If a Change of Control occurs without the *Employer's* prior consent or will not allow the *Supplier* to perform its obligations under the framework contract or any Package Contract, the *Employer* may
- terminate the framework contract with immediate effect and

- treat the Change of Control as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract.
- Z13.4 The *Supplier* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier* or a Consortium Member. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Supplier* or a Consortium Member, or
  - the composition of the *Supplier* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the framework contract or any Package Contract by the *Supplier* or is considered substantial in accordance with Regulation 72(8) of the Public Contracts Regulations 2015.
- Z13.5 The *Supplier* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Supplier* or a Consortium Member.
- Z13.6 If a Change of Control occurs, the *Supplier* provides to the *Employer*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
  - a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and
  - any other information required by the *Employer* in order to determine whether the Controller meets the Financial Standing Test.
- Z13.7 If the Controller does not meet the Financial Standing Test or (if applicable) does not provide the legal opinion required in clause Z13.11, the *Supplier* may propose an alternative guarantor to the *Employer* for acceptance. The *Supplier* provides to the *Employer* the details set out in clause Z13.6 and (if applicable) the legal opinion required in clause Z13.11 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not meet the Financial Standing Test or (if applicable) does not provide the legal opinion required in clause Z13.11.
- Z13.8 If so required by the *Employer*, the *Supplier* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.
- Z13.9 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not meet the Financial Standing Test if the *Supplier* gives to the *Employer* an assurance that the Controller or the alternative guarantor

will so comply within 18 months of the *Employer'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 *Employer* that it will so comply by the end of that period.

Z13.10 If

- neither the Controller nor any alternative guarantor proposed by the *Supplier* meets the Financial Standing Test or provides the legal opinion required by clause Z13.11,
- the *Supplier* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Supplier* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will meet the Financial Standing Test within 18 months of the *Employer's* acceptance

the *Employer* may

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

Z13.11 If the Controller, or any alternative guarantor proposed by the *Supplier*, is not a company incorporated in and subject to the laws of England and Wales, the *Supplier* provides a legal opinion from a lawyer or law firm which is

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

The legal opinion is addressed to the *Employer* 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 *Employer*.

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

Z13.12 If the *Supplier* (or, where the *Supplier* is a joint venture, any Consortium Member) is taken over by, or merges with, another supplier (or an Associated Company of another supplier) appointed by the *Employer* under a category management framework contract to undertake pavement works in relation to the Affected Property, the *Employer* may require

- a Parent Company Guarantee from the new Controller (or an alternative guarantor) in respect of the *Supplier's* liabilities under

any subsisting or completed Package Contract and

- the novation of any subsisting or completed Package Contract from the *Supplier* to an Associated Company.

Z13.13 A failure by the *Supplier* to comply with a requirement under clause Z13.12 is treated as a substantial failure by the *Supplier* to comply with his obligations under the affected Package Contracts.

**Clause Z14**      **[Not used]**

**Clause Z15**      **Adjudication**

Z15.1 The NEC3 Adjudicator's Contract (April 2013) includes the following additional condition of contract:

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

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

**Clause Z16**      **Interpretation**

Z16.1 In the framework contract or any Package Contract, except where the context shows otherwise, references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it.

Z16.2 An amount due under any Package Contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment.

**Clause Z17**      **Quality management**

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

- it will not enable the *Supplier* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Supplier* to achieve the level of performance

specified in the Quality Statement,

- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement or
- it will constitute a substantial modification of the framework contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Z17.2 A revision to the Quality Statement accepted by the *Employer* is not a compensation event.

Z17.3 The *Employer* may give an instruction to the *Supplier* which offers the *Supplier* a financial or other incentive to exceed the Performance Requirements or the levels of performance specified in the Quality Statement. The Parties agree the terms of any such instruction (including the associated incentive mechanism) before it is issued.

#### **Clause Z18            Quality Management Points**

Z18.1 If at any time the *Supplier* has more than 75 Quality Management Points in force, the *Employer* may terminate the framework contract with immediate effect.

Z18.2 Following the issue of a quality warning notice to the *Supplier* under any Works Contract and until the number of Quality Management Points in effect under that Works Contract is reduced to 25 or less, the *Employer* procures that

- no Time Charge Orders are issued to the *Supplier* and
- no further Works Contracts are placed with the *Supplier*

and the relevant *Contracting Body* may appoint Others to perform these duties.

#### **Clause Z19            Parent Company Guarantee**

Z19.1 If required by the *Employer*, the *Supplier* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the date of award of the framework contract, it is given to the *Employer* within four weeks of the date of award of the framework contract or of the *Employer's* request, whichever is later. Parent Company Guarantees are given by

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

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

Z19.2 If the *Supplier* breaches clause Z19.1, the *Employer* may

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

**Clause Z20** [Not used]

**Clause Z21** [Not used]

**Clause Z22** **Intellectual Property Rights**

Z22.1 All Intellectual Property Rights in material created by or on behalf of the *Employer* in connection with the framework contract or any Package Contract are the property of the *Employer*.

Z22.2 The *Supplier* has the right to use materials provided by the *Employer* only for the purpose of performing its obligations under the framework contract or any Package Contract. The *Supplier* may make this right available to Subcontractors. On the *end date* the *Supplier* returns to the *Employer* all materials provided by the *Employer*.

Z22.3 The *Supplier* assigns to the *Employer* all present and future Intellectual Property Rights in all material created by the *Supplier* or any Subcontractor in performing its obligations under the framework contract or any Package Contract. The *Supplier* obtains from a Subcontractor equivalent rights over the material prepared by the Subcontractor.

**Clause Z23** [Not used]

**Clause Z24** **Tax Non-Compliance**

Z24.1 The *Supplier* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the date of award of the framework contract.

Z24.2 The *Supplier* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the date of award of the framework contract and provides details of

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

Z24.3 If

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



*Supplier* are unacceptable  
the *Employer* may

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

**Clause Z25**      **[Not used]**

**Clause Z26**      **[Not used]**

**Clause Z27**      **Termination**

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

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

- the framework contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

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

- comply (or to ensure that any person employed by him or acting on his behalf complies) with the *Employer's* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct,
- comply (or to ensure that any Subcontractor complies) with the *Employer's* policies relating to bullying and harassment,
- notify his employees and Subcontractors of their duties under the Official Secrets Act 1989,
- notify the *Employer* that a conflict of interest may exist or arise,
- process Personal Data in accordance with (or otherwise puts the *Employer* in breach of) the Data Protection Acts,
- comply with the requirements or instructions of the *Employer* in relation to Personal Data (including instructions relating to processing Personal Data outside the European Economic Area) or

- take actions to reduce the number of Quality Management Points in effect to 25 or less or comply with a corrective action plan that has been accepted by the *Employer*.

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

- an event listed in any of clauses Z27.1 to Z27.3 occurs (but the *Employer* has not terminated the framework contract) or
- an event listed in section 3.2 of the Framework Information occurs,

the *Employer* may elect not to award a Works Contract to the *Supplier* pursuant to the Package Order, remove the Works Contract from the Package Order, and appoint another supplier to undertake the Works Contract.

**Clause Z28** [Not used]

**Clause Z29** [Not used]

**Clause Z30** [Not used]

**Clause Z31** **Enhancements**

Z31.1 The *Supplier* may at any time submit to the *Employer* a proposal for an Enhancement.

Z31.2 Before developing a proposed Enhancement, the *Supplier* prepares and submits to the *Employer* an outline business case setting out brief details of

- the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property,
- the expected long-term benefit to the *Employer* if the proposed Enhancement is implemented,
- any significant risks to the successful development and implementation of the proposed Enhancement,
- any resulting change to the Prices under any Package Contract or the *Employer's* other costs and
- any incentive payment which the *Supplier* proposes should be paid to it if the proposed Enhancement is successfully implemented.

Z31.3 The Parties jointly review the *Supplier's* outline business case. The *Employer* assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the *Supplier* whether the *Employer* is likely to accept the proposed Enhancement.

Z31.4 The *Supplier* continually monitors the development of a proposed

Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.

Z31.5 The *Supplier* may propose to the *Employer* that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the *Employer* agrees, he may instruct the *Supplier* to develop a detailed specification for and/or to carry out the trials, testing or pilot project.

Z31.6 The *Supplier* may prepare and submit to the *Employer* a detailed business case for the proposed Enhancement. A detailed business case includes

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

Z31.7 The *Employer* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Employer* instructs the implementation of an agreed Enhancement as a change to the Package Information for any Package Contract.

Z31.8 If the *Supplier* decides not to pursue a proposed Enhancement, the *Employer* may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the *Employer* may use or adapt any material submitted by the *Supplier* as part of its proposal and outline business case.

Z31.9 Other than where instructed by the *Employer* to carry out trials, testing or a pilot project under clause Z31.5, the *Supplier* is not entitled to payment for the design or development of an Enhancement (including the preparation of business cases), nor for the use or adaptation by the *Employer* of the *Supplier's* proposal and outline business case under clause Z31.8.

Z31.10 A change to the Package Information for a Package Contract instructed by the *Employer* under clause Z31.7 following the

submission of a detailed business case by the *Supplier* is not a compensation event.

Z31.11 If an Enhancement instructed by the *Employer* under clause Z31.7 following the submission of a detailed business case by the *Supplier* delivers the benefits described in the *Supplier's* detailed business case before the *end date*, the *Employer* pays to the *Supplier* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Employer* pays to the *Supplier* a proportionate part (as assessed by the *Employer*) of the Incentive Amount.

Z31.12 The Incentive Amount (or the proportionate part assessed by the *Employer*) is included in the final amount due under the Package Order in force after the Enhancement has delivered the benefits (or part of the benefits) described in the *Supplier's* detailed business case, except that the Parties may agree to include it in an earlier amount due if the *Employer* has actually received the full benefit of the Enhancement by an earlier date.

Z31.13 In consideration of the *Employer's* agreement to pay the Incentive Amount (or a proportionate part) to the *Supplier*, the *Supplier* assigns to the *Employer* such Intellectual Property Rights as it holds in the Enhancement.

**Clause Z32**      **[Not used]**

**Clause Z33**      **Joint ventures**

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

- each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Supplier's* obligations under the framework agreement and any Package Contract,
- each Consortium Member gives not less than four weeks' notice to the *Employer* of any proposed termination of the joint venture arrangement,
- if the joint venture arrangement is terminated for any reason, the *Employer* may
  - terminate the framework contract with immediate effect and
  - treat such termination as a substantial failure by the *Supplier* to comply with his obligations under any Package Contract and
- the definition of "Tax Non-Compliance" is amended so that any Tax Non-Compliance by a Consortium Member is treated as a Tax Non-Compliance by the *Supplier*.

## OPTIONAL Z CLAUSES (Lots 1 to 6 only)

**Clause Z34 Financial Distress**

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

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

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

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

Z34.3 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not comply with clause Z34.2 if the *Supplier* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer'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 *Employer* that it will so comply by the end of that period.

Z34.4 If

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

with clause Z34.2 within 18 months of the *Employer's* acceptance  
the *Employer* may

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

## **Clause Z61      Asset Delivery Schemes**

Z61.1 In this clause Z61 Community Partner is an organisation (other than the *Supplier*) engaged by the *Employer* to provide works or services in relation to the maintenance, repair, renewal or improvement of the Affected Property.

Z61.2 Where an Enhancement is proposed jointly by the *Supplier* and one or more Community Partners, clause Z31 applies except that

- the outline and detailed business case are prepared jointly by the *Supplier* and the relevant Community Partners,
- the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Supplier* and the relevant Community Partners,
- the *Employer* may instruct the *Supplier* or any Community Partner (or a combination of them) to develop a detailed specification for and/or to carry out any trial, testing or pilot project under clause Z31.5,
- if the Enhancement delivers the benefits (or part of the benefits) described in the detailed business case before the *end date*, the Incentive Amount (or the proportionate part of it) is shared among the *Supplier* and the relevant Community Partners in the proportions stated in the detailed business case and
- the *Supplier* and the relevant Community Partners jointly assign to the *Employer* such Intellectual Property Rights as they hold in the Enhancement.