

**Area 4 Interim**

**Construction Works Framework**

**Z clauses**  
**(Framework Contract)**

**CONTENTS AMENDMENT SHEET**

<b>Issue No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>
1	0	Tender Issue	LP	01/05/20
1	1	<ul style="list-style-type: none"><li>• Clause Z1 amended to include TUPE definitions</li><li>• New Clause Z12 – TUPE</li></ul>	MK	27/05/20

## Z CLAUSES (Framework Contract)

### Clause Z1

#### Additional definitions

##### Z1.1 In the framework contract and in any Work Order

- (1) Affected Property is property of the *Client* or Others which is affected by the work of the *Supplier* or used by the *Supplier* in performing its obligations under the framework contract or any Work Order 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) Community Partner is an organisation (other than the *Supplier*) engaged by the *Client* to provide works or services in relation to the maintenance, repair, renewal or improvement of the Affected Property.
- (5) 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.
- (6) Contract Dispute is a dispute between the Parties under or in connection with the framework contract or any Work Order.
- (7) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (8) 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.
- (9) The Discrimination Acts are the Equality Act 2010 and any predecessor statutes.
- (10) 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).

- (11) Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property proposed by the *Supplier* or a Community Partner which has not previously been adopted by the *Client* in the Affected Property or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the *Client*) is expected to provide a significant long-term benefit to the *Client* in terms of
- reducing the cost to the *Client* of the *service* or of maintaining, operating, renewing and improving the Affected Property,
  - improving the quality or effectiveness of delivery of the *service* or
  - otherwise enhancing the achievement of the *Client's* vision, outcomes and key objectives.
- (12) 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.
- (13) 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.
- (14) Government is Her Majesty's Government of the United Kingdom.
- (15) Guarantor is a person who has given a Parent Company Guarantee to the *Client*.
- (16) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (17) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the *Supplier* (either alone or shared with one or more Community Partners) if an Enhancement is successfully implemented.
- (18) 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.

- (19) Parent Company Guarantee is a parent company guarantee of the *Supplier's* performance in the form set out in the Framework Information.
- (20) Performance Requirement is the required standard for performance of each element of the work to be carried out under any Work Order as specified in the Scope.
- (21) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the Data Protection Acts.
- (22) Procedure has the meaning given to it in ISO 9000.
- (23) Process has the meaning given to it in ISO 9000.
- (24) Promises Statement is the statement of that name set out in Annex A to the Form of Agreement detailing the commitments made by the *Supplier* as part of its tender in respect of how it is to perform its obligations under the framework contract or any Work Order.
- (25) Quality Management Points are points accrued by the *Supplier* in accordance with the *quality table*.
- (26) Quality Plan is the quality plan prepared by the *Supplier* for the framework contract in accordance with ISO 9001.
- (27) Quotation Information is the *quotation information* unless later changed in accordance with the contract.
- (28) Related Dispute is a dispute under or in connection with a contract with Others relating to the Affected Property.
- (29) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (30) Relevant Tax Authority is HM Revenue & Customs or, if the *Supplier* is established in another jurisdiction, the tax authority in that jurisdiction.
- (31) 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 Work Order.
- (32) Transferring Employees are employees of an Outgoing Contractor (or of a subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of services similar to the *service* in relation to the Affected Property during the period prior to 2 November 2020, other than employees who object to being transferred to the *Contractor*.
- (33) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (34) 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.

- (35) 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.

**Clause Z2****Changes to Framework Information**

Z2.1 The *Client's Representative* may give an instruction to the *Supplier* which changes the Framework Information. The *Client's Representative* consults with the *Supplier* before instructing a change.

Z2.2 If the *Client's Representative* instructs a change to the Framework Information, the *Supplier* within two weeks submits their assessment of the resulting changes to the Quotation Information. The changes are assessed as the effect of the instruction on the forecast cost of carrying out the work to which the instruction relates.

Z2.3 The *Client's Representative* and the *Supplier* agree the resulting changes to the Quotation Information based on the *Supplier's* assessment.

Z2.4 The change to the Framework Information is implemented when the changes to the Quotation Information have been agreed.

**Clause Z3****[Not used]****Clause Z4****Recovery of sums due from *Supplier***

Z4.1 Where, under the framework contract or any Work Order, any sum of money is recoverable from or payable by the *Supplier*, 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 *Supplier* under the framework contract, any Work Order or any other contract with the *Client*.

**Clause Z5      Assignment**

- Z5.1 The Supplier does not assign, transfer or charge the benefit of any Work Order or any part of it or any benefit or interest under it without the prior agreement of the Client.
- Z5.2 If the Supplier wishes to transfer the benefit and burden of the framework contract and all Work Orders issued under it to a new supplier, it seeks the Client's agreement to do so. The Supplier explains the reasons for the proposed transfer and provides the Client with all such information as the Client may require in order to make its decision. If the Client (in its absolute discretion) agrees to the proposed transfer, the Parties and the new supplier execute a novation agreement in the relevant form set out in the Framework Information or such other form as the Client may reasonably require.
- Z5.3 If requested by the Client, the Supplier executes a novation agreement transferring the benefit and burden of the framework contract or any Work Order to
- a Department or Office of Government,
  - a local authority,
  - an organisation established to take over the Client'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 Client may reasonably require.

**Clause Z6      Discrimination**

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

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 *Client* and takes full account of the *Client*'s views about whether (and if so to what extent) the information should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the *Supplier* or
- with the consent of the *Client*.

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 Work Order.

**Clause Z8            [Not used]**

**Clause Z9            [Not used]**

**Clause Z10          [Not used]**

**Clause Z11** [Not used]

**Clause Z12** TUPE

Z12.1 The Parties acknowledge that TUPE is likely to apply to the contract so that the Transferring Employees become the employees of the Contractor or a Subcontractor on the go live date.

Z12.2 The Contractor 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 go live date.

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

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

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

Z12.5 After the TUPE Information has been provided, the Contractor

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

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

Z12.6 So far as reasonably practicable, the Contractor 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 Completion Date without the prior consent of the Client (such consent not to be unreasonably withheld) unless such change is required by law. The Contractor supplies to the Client full particulars of any proposed changes and the Client responds within a reasonable time.

Z12.7 The Contractor does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the service more than five per cent of the Staff in the twelve months before the *end date* without the prior consent of the Client

Z12.8 Before the *end date*, the Contractor informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The Client requests the Incoming Contractor to provide to the Contractor the information required under regulation 13 of TUPE.

Z12.9 The Contractor indemnifies and keeps indemnified the Client and any Incoming Contractor in respect of any claims, costs (including Employment Costs), expenses, payments and liabilities arising from

- any claim by any of the Staff or by a third party or trade union or body representing any of the Staff in relation to any act or omission which allegedly occurred before the *end date*,
- any failure by the Contractor 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 Contractor or any Subcontractor who is not identified in the TUPE Information that their employment or any liability in respect of their employment or its termination has or should have transferred to the Incoming Contractor or the Client pursuant to TUPE.

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

Z13.1 A Change of Control does not happen without the prior agreement of the *Client*.

Z13.2 The *Supplier* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.

Z13.3 If a Change of Control occurs without the *Client's* prior consent or will not allow the *Supplier* to perform its obligations under the framework contract or any Work Order, the *Client* may

- terminate the framework contract with immediate effect and
- treat the Change of Control as a substantial failure by the *Supplier* to comply with its obligations under any Work Order.

Z13.4 The *Supplier* notifies the *Client* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier* or a Consortium Member. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Supplier* or a Consortium Member, or
- the composition of the *Supplier* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the framework contract or any Work Order 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 *Client* 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 *Client*

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

Z13.7 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 *Client* for acceptance. The *Supplier* provides to the *Client* 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 it 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 *Client*, the *Supplier* within four weeks gives to the

*Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.

Z13.9 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not meet the Financial Standing Test if the *Supplier* gives to the *Client* an assurance that the Controller or the alternative guarantor will so comply 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 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 *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
- the *Supplier* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will meet the Financial Standing Test within 18 months of the *Client's* acceptance

the *Client* may

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

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, the *Supplier* provides a legal opinion from a lawyer or law firm which is

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

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

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

**Clause Z15      Adjudication**

Z15.1 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 them 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 them 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 Work Order, 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.

**Clause Z17      Revisions to Promises Statement**

Z17.1 The *Supplier* may submit to the *Client* proposed revisions to the Promises 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 Promises Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Promises Statement.

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

**Clause Z18      Audit, Quality Management Points and Nonconformities**

Z18.1 Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less, the *Client*

- does not issue any Work Orders and
- procures that the *Service Manager* does not issue any Task Orders under a Work Order

and the *Client* may appoint Others to perform these duties.

**Clause Z19      Parent Company Guarantee**

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

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

**Clause Z20      [Not used]**

**Clause Z21      [Not used]**

**Clause Z22      Intellectual Property Rights**

Z22.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the framework contract or any Work Order, except as stated otherwise in the Framework Information. To the extent that these IPRs do not automatically belong to the *Client*, the *Supplier* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Supplier* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z22.2 The *Supplier* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Framework Information. Any licence granted under this clause survives the termination or expiry of the framework contract or the relevant Work Order and cannot be terminated by the *Supplier* or its assignees or any third party. The *Supplier* provides to the *Client* the documents which license these IPRs to the *Client*.

Z22.3 The *Supplier* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

**Clause Z23** [Not used]

**Clause Z24** Tax Non-Compliance

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

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

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

Z24.3 If

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

the *Client* may

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

**Clause Z25** [Not used]

**Clause Z26** [Not used]

**Clause Z27** **Termination – PCRs, Regulation 73**

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

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

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

**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 *Client* a proposal for an Enhancement.

Z31.2 Before developing a proposed Enhancement, the *Supplier* prepares and submits to the *Client* 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 *Client* if the proposed Enhancement is implemented,
- any significant risks to the successful development and implementation of the proposed Enhancement,
- any resulting change to the Prices under any Work Order or the *Client'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 *Client* assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the *Supplier* whether the *Client* 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 *Client* that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the *Client* agrees, it 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 *Client* 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 *Client* if the Enhancement is implemented and the period over which the benefit is to be assessed,
- how any risks associated with the implementation of the Enhancement are to be allocated,

- a cost benefit analysis,
- any resulting change to the Prices under any Work Order,
- any expected change to the *Client's* other costs and the timescale over which the change will occur and
- the proposed Incentive Amount and a proposal as to how it is to be paid to the *Supplier* if the Enhancement is successfully implemented.

Z31.7 The *Client* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Service Manager* instructs the implementation of an agreed Enhancement as a change to the Scope for any Work Order.

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

Z31.9 Other than where instructed by the Client 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 Client of the Supplier's proposal and outline business case under clause Z31.8.

Z31.10A change to the Scope for a Work Order instructed by the *Service Manager* under clause Z31.7 following the submission of a detailed business case by the *Supplier* is not a compensation event.

Z31.11If an Enhancement instructed by the *Service Manager* 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 *Client* pays to the *Supplier* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Supplier* a proportionate part (as assessed by the *Service Manager*) of the Incentive Amount.

Z31.12The Incentive Amount (or the proportionate part assessed by the *Service Manager*) is included in the final amount due under the Work 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 *Client* has actually received the full benefit of the Enhancement by an earlier date.

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

Z31.14Where 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 *Client* 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 and
- 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.

**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 *Client* for the performance of the *Supplier's* obligations under the framework contract and any Work Order,
- a communication submitted to the address stated for the *Supplier* in the Contract Data (or to any other address notified by the *Supplier*) is treated as having been submitted to each Consortium Member,
- each Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement,
- if the joint venture arrangement is terminated for any reason, the *Client* may
  - terminate the framework contract with immediate effect and
  - treat such termination as a substantial failure by the *Supplier* to comply with its obligations under any Work Order 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*.