

Our ref: itt_4843
Your ref: itt_4843

Highways England
The Cube
199 Wharfside Street
Birmingham B1 1RN

Up and Under Ltd
Coppice House, Quakers Coppice
Crewe
Cheshire
CW1 6FA

27th March 2020

Via Bravo

OFFICIAL SENSITIVE

NOTIFICATION OF CONTRACT AWARD

East Region Structures Inspections Contract
OJEU Reference: 2019-042206

Dear Mr Hulse

I write further to our letter dated 3rd March to confirm that the standstill period has now expired, and I am directed by Highways England Company Limited to inform you that your offer submitted on 30 October 2019, for carrying out the above named Contract, is accepted.

A Form of Agreement is enclosed with this letter for you to sign and complete, which we will return a signed and sealed copy of in due course. Owing to the current operational difficulties posed by the COVID-19 outbreak, please note that some delay will be experienced and digital signatures can be accepted.

In accordance with the conditions of contract, the starting date and commencement of the mobilisation is Friday 27th March 2020, therefore please liaise with [REDACTED] in connection with the operational activity associated with the contract as soon as possible on [REDACTED] or [REDACTED].

A BPA (Blanket Purchase Agreement) number, under Highways England's financial system will be created in due course. You must quote this number on each and every application for payment. Further details on the payment process will be forwarded in due course.

You must treat this letter in confidence until Highways England makes any public announcement. I should also remind you at this time, of the requirements of paragraph 1.2 Information Management of the Instructions for Tenderers, as they relate to Confidentiality, the relevant extracts are reproduced below. In the light of recent cases where there has been press reporting in advance of contract award or announcement it is especially important that these conditions are adhered to and that full confidentiality is maintained.

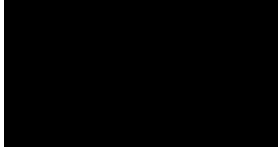
- 1.2.1 *Under the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 2004 (“EIR”), and the Public Contracts Regulations 2015, Highways England may be obliged (subject to the application of any relevant exemptions and, where applicable, the public interest test) to disclose information relating to the procurement exercise, including any Requests to Participate received.*
- 1.2.2 *Tenderers must be aware that Highways England could receive requests for any information relating to this procurement exercise. Highways England is under a legal obligation to disclose such information if validly requested, unless an exemption applies. Highways England may also be obliged to make disclosures under other legislation or applicable codes of practice or otherwise as required by law, including by order of a court of competent jurisdiction. Without prejudice to Highway’s England’s obligation to disclose information in accordance with the FOIA and EIR, Highways England 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 as genuinely commercially sensitive or any other relevant exemption.*
- 1.2.3 *Tenderers are therefore invited to state which information should not be disclosed or published if to do so would prejudice their legitimate commercial interests or is otherwise exempt from disclosure under the Freedom of Information Act 2000 using Appendix C. Requests for non-disclosure under the Freedom of Information Act 2000 must be submitted in your tender and include:*
- a) *Clear and substantive justification; and*
 - b) *A time limit when any confidential information could be disclosed.*
- 1.2.4 *Highways England will endeavour to consult with the Tenderer and have regard to comments or any objections raised by the Tenderer before it releases any information in response to a request made under FOIA and/or EIR. However, Highways England 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 FOIA and/or EIR, or is to be disclosed in response to a request for information.*
- 1.2.5 *The terms of any confidentiality agreement (referred to in paragraph 3.7) would, if requested, be available for disclosure. Any request by the Tenderer in accordance with paragraph 1.2.3 is for information only and will not be taken into account in the assessment of tenders, nor will it form part of any contract between Highways England and the Tenderer.*
- 1.2.6 *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.*
- 1.2.7 *For these purposes, Highways England may disclose within government any of the Tenderers’ documents and information (including any that the Tenderer considers to*

be confidential and/or commercially sensitive, such as specific information within the Request to Participate) submitted by the Tenderer to Highways England during this procurement exercise to the extent that they are so required. The information will not be disclosed outside government. Tenderers submitting a Request to Participate in response to the Invitation to Submit Requests to Participate consent to these terms as part of the procurement exercise.

- 1.2.8 Highways England confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contracts Regulations 2015, or pursuant to an order of the court or demand made by any competent authority or body where Highways England is under a legal or regulatory obligation to make such a disclosure.*
- 1.2.9 Tenderers must note that Highways England may be required to publish the names of the winning tenders and tenderers.*

Finally, congratulations on your appointment and we look forward to working with you.

Yours sincerely



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Procurement Delivery Partner, Commercial and Procurement



Highways England
Z Clauses
East Region
Structural Inspections Contract (SIC)

CONTENTS AMENDMENT SHEET

Amend No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SOS	Sept 2019

Z Clause Numbers

Number	Title
Z1	Changes to Core and Secondary Option clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Consultant</i> .
Z4	Assignment and transfer
Z5	Confidentiality
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Merger, take - over, Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
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Z16	Value Added Tax Recovery
Z17	Removal of <i>services</i> from the Scope
Z18	Corruption or loss of data
Z19 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Not Used
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z53	Pensions
Z54	Extension to the Completion Date
Z55	Not Used
Z56	Not Used
Z57	Infrastructure Act 2015

Z58	Revisions to Promises Statement
Z59	Not Used
Z60	Tax Arrangements of Public Appointees
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Z102	Tasks
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Z104	Not Used
Z105	Not Used
Z106	Not Used
Z107	Not Used
Z108	Enhancements

Z: Additional conditions of contract	
Z1	Changes to core & Secondary Option clauses
11	Identified and defined terms
11.2	<p>Add the following defined terms:</p> <p>(15) Affected Property is property of the <i>Client</i> or Others which is affected by the work of the <i>Consultant</i> or used by the <i>Consultant</i> in Providing the Service and which is identified in the Contract Data.</p> <p>(16) Associated Company is any of</p> <ul style="list-style-type: none"> • 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 <i>Consultant</i> or a Consortium Member. <p>(17) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the <i>Consultant</i> or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the <i>Consultant</i> 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 <i>Consultant</i> or a Consortium Member.</p> <p>(18) Community Partner is an organization (other than the <i>Consultant</i>) engaged by the <i>Client</i> to provide <i>services</i> in relation to the maintenance, repair, renewal or improvement of the Affected Property.</p> <p>(19) Consortium Member is an organisation which is a member of the group of economic operators comprising the <i>Consultant</i>, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.</p> <p>(20) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.</p> <p>(21) Controller is the single person (or group of persons acting in concert) that</p> <ul style="list-style-type: none"> • has Control of the <i>Consultant</i> or a Consortium Member or • holds or controls the largest direct or indirect interest in the relevant share capital of the <i>Consultant</i> or a Consortium Member. <p>(22) Credit Rating is the <i>credit rating</i>, or any revised long-term credit rating issued by a rating agency accepted by the Client in respect of the Consultant, a Consortium Member or any Guarantor.</p> <p>(23) Data Protection Legislation is the General Data Protection Regulation (EU 2016/679), the LED (Law Enforcement Directive (Directive (EU) 2016/680)); the Data Protection Act 2018 and any other data protection laws and regulations applicable in England and Wales</p> <p>(24) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.</p> <p>(25) 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).</p> <p>(26) Enforcement Action is enforcement action brought by a regulatory authority against the <i>Consultant</i> 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.</p> <p>(27) 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 <i>Consultant</i> or a Community Partner which has not previously been adopted by the <i>Client</i> in the Affected Property</p>

	<p>or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the <i>Client</i>) is expected to provide a significant long-term benefit to the <i>Client</i> in terms of</p> <ul style="list-style-type: none"> • reducing the cost to the <i>Client</i> of the <i>service</i> or of maintaining, operating, renewing and improving the Affected Property, • improving the quality or effectiveness of delivery of the <i>service</i> or • otherwise enhancing the achievement of the <i>Client</i>'s vision, outcomes and key objectives, <p>but excludes design solutions proposed by the <i>Consultant</i> in the course of developing the design for <i>services</i> relating to the Affected Property intended to be carried out by any Community Partners.</p> <p>(28) Financial Standing Test is the financial test for the <i>Consultant</i>, a Consortium Member or a proposed guarantor used in the tender stage of the competition for this contract.</p> <p>(29) General Anti-Abuse Rule is</p> <ul style="list-style-type: none"> • 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. <p>(30) Guarantor is a person who gives a Parent Company Guarantee to the <i>Client</i>.</p> <p>(31) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.</p> <p>(32) Health and Safety Plans are</p> <ul style="list-style-type: none"> • A completed Supply Chain Health and Safety Maturity Matrix (SCMM) for the <i>Consultant</i> or each Consortium Member in the form required by the <i>Client</i>, recording the level of safety maturity within the organisation at the date of the SCMM, • An implementation plan, setting out the actions to be taken by the <i>Consultant</i> or each Consortium Member over a period of 12 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 <i>Client</i>, including the timescale for each action and • An action plan, setting out the specific actions to be taken under this contract by the <i>Consultant</i> and its subcontractors (at any stage of remoteness from the <i>Client</i>) in order to support delivery of the improvements identified in the implementation plans for the <i>Consultant</i> or each Consortium Member. <p>(33) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the <i>Consultant</i> (either alone or shared with one or more Community Partners) if an Enhancement is successfully implemented.</p> <p>(34) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the <i>service</i> or any revised systems introduced by the <i>Client</i> from time to time.</p> <p>(35) 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.</p> <p>(36) Licence is the document entitled "Highways England: Licence" dated April 2015 listed in Annex 3 to the Scope.</p> <p>(37) Outgoing Consultant is any agent or consultant appointed by the <i>Client</i> or Others to carry out works or provide services similar to the <i>service</i> in relation to the Affected Property during the period immediately prior to the <i>go live date</i>.</p> <p>(38) Parent Company Guarantee is a guarantee of the <i>Consultant</i>'s performance in the form set out in the Scope</p> <p>(39) The Parties are the <i>Client</i> and the <i>Consultant</i>.</p> <p>(40) People means any person directly employed by the <i>Consultant</i> and who is providing part of the <i>service</i>.</p> <p>(41) Performance Requirement is the required standard for performance of each element of the <i>service</i> as specified in the Scope.</p> <p>(42) Personal Data are any data relating to an identified or identifiable individual that are within the</p>
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	<p>scope of protection as “personal data” under the Data Protection Acts.</p> <p>(52) Promises Statement is the statement of that name set out in Annex A to the Form of Agreement detailing the commitments made by the <i>Consultant</i> as part of its tender in respect of how it is to Provide the Service.</p> <p>(43) Quality Management Points are points accrued by the <i>Consultant</i> in accordance with the quality table in the Scope.</p> <p>(44) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to this contract.</p> <p>(45) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.</p> <p>(46) Relevant Tax Authority is HM Revenue & Customs or, if the <i>Consultant</i> is established in another jurisdiction, the tax authority in that jurisdiction.</p> <p>(47) RIDDOR Incident is an incident occurring under any contract between</p> <ul style="list-style-type: none"> • The <i>Consultant</i> or an Associated Company and • The <i>Client</i> or any other person <p>Which results in death or serious injury to any worker or non-worker and for which the <i>Consultant</i> is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).</p> <p>(48) The Secretary of State is the Secretary of State for Transport.</p> <p>(49) The Schedule of Cost Components is the Highways England's Schedule of Cost Components referred to in the Contract Data.</p> <p>(50) People are employees employed by the <i>Consultant</i> or an Associated Company or any Subcontractor to Provide the Service at any time.</p> <p>(51) A Task is work within the <i>service</i> which the <i>Service Manager</i> may instruct the <i>Consultant</i> to carry out.</p> <p>(52) Task Completion is when the <i>Consultant</i> has done all the work which the Task Order requires it to do by the Task Completion Date, and corrected Defects which would have prevented the <i>Client</i> or Others from using the <i>service</i> and Others from doing their work.</p> <p>(53) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.</p> <p>(54) A Task Order is the <i>Service Manager's</i> instruction to carry out a Task.</p> <p>(55) The Task Schedule is the <i>task schedule</i> unless later changed in accordance with the contract.</p> <p>(56) Tax Non-Compliance is where a tax return submitted by the <i>Consultant</i> or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012</p> <ul style="list-style-type: none"> • Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the <i>Consultant</i> 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 <i>Consultant</i> or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or • Gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion. <p>(57) Threshold Level is the threshold level of Quality Management Points stated in the Scope.58) Transferring Employees are employees of an Outgoing Consultant (or of a subcontractor of an Outgoing Consultant) employed for the carrying out of work or the provision of services similar to the <i>service</i> in relation to the Affected Property during the period immediately prior to the <i>go live date</i>, other than employees who object to being transferred to the <i>Consultant</i>.</p> <p>(59) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.</p> <p>(60) 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</p>
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	<p>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.</p> <p>(61) Offshore is a location outside the United kingdom of Great Britain and Northern Ireland.</p>
	<p>Amend the following terms</p> <p>23 Subcontracting</p> <p>In clause 23.3, insert an additional bullet point after “A reason for not accepting the subcontract documents is that”</p> <ul style="list-style-type: none"> • they do not include all the provisions specified in the Scope. <p>25 Assignment</p> <p>Delete clause 25</p> <p>26 Disclosure</p> <p>Delete clause 26</p> <p>51 Payment</p> <p>Delete the first sentence of clause 51.2, including the two bullet points.</p> <p>60 Compensation events</p> <p>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</p> <p>or</p> <ul style="list-style-type: none"> • 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 <i>conditions of contract</i> not to be a compensation event. <p>60.1 (4) Insert at the end (before the full stop)</p> <p>“unless the instruction relates to a notification from the <i>Consultant</i> that a conflict of interest may exist or arise”.t the end of the first paragraph of clause 63.5 insert the following additional paragraph</p> <p>A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the Accepted Programme current at the dividing date.”.</p> <p>After clause 63.11 insert the following clause</p> <p>63.12 Assessments for changed Prices for compensation events are in the form of changes to the Task Schedule.</p> <p>In line 1 of clause 66.2 after “Completion Date” insert “, the total of the Prices for the Task, the Task Completion Date, the programme for the Task”.</p> <p>87 Limitation of liability</p> <p>In line 2 of clause 87.1 delete “the contract” and insert “each Task”.</p> <p>At the end of clause 87.1, insert the following additional excluded matters</p> <ul style="list-style-type: none"> • loss of or damage to the <i>Client’s</i> property, • fraud or fraudulent misrepresentation, • events for which the contract requires the <i>Consultant</i> to insure but only up to the required level for each type of insurance stated in the Scope, • loss or damage due to pollution, • loss arising from breach of <ul style="list-style-type: none"> • confidentiality or data protection obligations or

	<ul style="list-style-type: none"> • anti-bribery or anti-corruption obligations, • interest on debt and • losses caused by the <i>Consultant's</i> illegal acts, deliberate default, deliberate abandonment or reckless misconduct.
	<p>Option E: Cost reimbursable contract Delete the definition of the Price for Service Provided to Date in clause 11.2(21) and insert</p> <p>"11.2(21) The Price for Service Provided to Date is the total of</p> <ul style="list-style-type: none"> • the lump sum prices for the related items included in the Task Schedule for each Task Order (Task Schedule items 3,4 &9) and • the Defined Cost plus the <i>fee percentage</i> for related items in the Task Schedule provided under each Task Order (Task Schedule items 5 & 10) and • The lump sum prices for the related items included in the Task that do not require a Task Order (Task Schedule items 1, 2 & 11) <p>Delete the definition of the Prices in clause 11.2(23) and insert</p> <p>11.2(23) The Prices are</p> <ul style="list-style-type: none"> • the lump sum price for each item included in the Task Schedule and • the Defined Cost plus the fee percentage for other services. <p>".</p>
	<p>Option Y(UK)1 Project Bank Account</p> <p>Clause Y1.6 is amended by inserting the following after the second sentence. "The <i>Client</i> may propose that a Supplier is added to the Named Suppliers. The <i>Consultant</i> accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.</p> <p>Option Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996</p> <p>Y2.2 Delete the first two sentences (including the three bullet points) and insert</p> <p>"The <i>Consultant</i> submits an invoice on or before each <i>invoice date</i> for:</p> <ul style="list-style-type: none"> • lump sums duties and • other work under the contract. <p>Invoices are in the format and contain all the details specified in the Scope or required by the <i>Service Manager</i>. The <i>Consultant</i> submits such information as the <i>Service Manager</i> requires to show that the amount stated as due in each invoice has been correctly assessed.</p> <p>The date on which a payment becomes due is the next invoice date after the date when the <i>Consultant</i> submits an invoice for the amount due (as certified by the <i>Service Manager</i>) and certifies the relevant details in accordance with the <i>Client's</i> electronic invoicing system (or the invoice date, if the <i>Consultant</i> submits its invoice and certifies the details on that date)."</p> <p>Schedule of Cost Components</p> <p>Delete and insert Highways England's Schedule of Cost Components referred to in the Contract Data.</p> <p>Short Schedule of Cost Components</p> <p>Delete</p>
Z2	Interpretation
Z2.1	<p>In the contract, except where the context shows otherwise:</p> <ul style="list-style-type: none"> • 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;

	<ul style="list-style-type: none"> 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 Consultant.
Z3.1	Where, under the contract a sum of money is recoverable from or payable by the <i>Consultant</i> , 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 <i>Consultant</i> under the contract or any other contract with the <i>Client</i> .
Z4	Assignment and transfer
Z4.1	The <i>Consultant</i> 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 <i>Client</i> .
Z4.2	<p>If requested by the <i>Client</i>, the <i>Consultant</i> executes a novation agreement in the form specified in the Scope (or such other form as the <i>Client</i> may reasonably require) transferring the benefit and burden of the contract to</p> <ul style="list-style-type: none"> an organisation established to take over the <i>Client</i>'s functions or part of them, another public body exercising similar functions, a Department or Office of Her Majesty's Government or a local authority
Z4.3	If the <i>Consultant</i> requests to novate the contract and the <i>Client</i> agrees to such novation (which agreement is in the <i>Client</i> 's sole discretion), the novation agreement to effect the novation is in the form specified in the Scope (or such other form as the <i>Client</i> may reasonably require). The <i>Consultant</i> provides to the <i>Client</i> such information as the <i>Client</i> requests in relation to any proposed novation.
Z5	Confidentiality
Z5.1	<p>The <i>Consultant</i> keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person</p> <ul style="list-style-type: none"> the terms of this contract and any confidential or proprietary information (including Personal Data) provided to or acquired by the <i>Consultant</i> in the course of Providing the Service <p>except that the <i>Consultant</i> may disclose information</p> <ul style="list-style-type: none"> to its legal or other professional advisers, to anyone employed by it or acting on its behalf as needed to enable the <i>Consultant</i> to Provide the Service 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 <i>Consultant</i> consults the <i>Client</i> and takes full account of the <i>Client</i>'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 <i>Consultant</i> or with the consent of the <i>Client</i>
Z5.2	The <i>Consultant</i> does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

Z6	Adjudication
Z6.1	<p>The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:</p> <p>Any information concerning the contract obtained by either the <i>Adjudicator</i> or any person advising or aiding him is confidential, and is not used or disclosed by the <i>Adjudicator</i> or any such person except for the purposes of this Agreement. The <i>Adjudicator</i> complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Acts 1911 to 1989.</p>
Z6.2	<p>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 <i>Adjudicator</i>.</p>
Z7	Termination - Public Contract Regulations 2015
Z7.1	<p>The <i>Client</i> 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 <i>Consultant</i> at the Contract Date.</p>
Z7.2	<p>The <i>Client</i> may terminate the contract if</p> <ul style="list-style-type: none"> 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 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.
Z7.3	<p>The procedure and amount due on termination are the same as for</p> <ul style="list-style-type: none"> R18 if the modification or infringement was due to a default by the <i>Consultant</i>, R19 if the modification or infringement was due to a default by the <i>Client</i> and R20 if the modification or infringement was due to any other reason.
Z8	Subcontracting
Z8.1	<p>The <i>Consultant</i> assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.</p>
Z8.2	<p>If the <i>Consultant</i> 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 <i>Client</i>.</p>
Z8.3	<p>The <i>Client</i> may, having stated the reasons, instruct the <i>Consultant</i> to remove a Subcontractor. The <i>Consultant</i> then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.</p>
Z8.4	<p>The <i>Client</i> may terminate if a key Subcontractor or another key resource needed for the <i>service</i> is no longer available and the <i>Consultant</i> is unable to propose an alternative resource acceptable to the <i>Service Manager</i>. 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.</p>
Z8.5	<p>Before</p> <ul style="list-style-type: none"> appointing a proposed Subcontractor or allowing a Subcontractor to appoint a proposed subsubcontractor

	<p>the <i>Consultant</i> submits to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> • either <ul style="list-style-type: none"> • a European 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 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 • 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	<p>The <i>Consultant</i> does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the <i>Service Manager</i> has accepted the submission. A reason for not accepting the submission is that</p> <ul style="list-style-type: none"> • it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 • the <i>Service Manager</i> is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur.
Z8.6	<p>If requested by the <i>Service Manager</i>, the <i>Consultant</i> provides further information to support, update or clarify a submission under clause Z8.5.</p>
Z8.7	<p>If, following the acceptance of a submission under clause Z8.6, it is found that</p> <ul style="list-style-type: none"> • 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 the RIDDOR Incident or Enforcement Action will not recur. <p>the <i>Service Manager</i> may instruct the <i>Consultant</i> to</p> <ul style="list-style-type: none"> • replace the Subcontractor or • require the Subcontractor to replace the subsubcontractor.
Z9	Change of Control and financial distress
Z9.1	<p>The <i>Consultant</i> notifies the <i>Client</i> immediately if a Change of Control has occurred or is expected to occur.</p>
Z9.2	<p>If a Change of Control occurs the <i>Client</i> may terminate the <i>Consultant's</i> obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.</p>
Z9.3	<p>The <i>Consultant</i> notifies the <i>Client</i> immediately of any material change in</p> <ul style="list-style-type: none"> • the direct or indirect legal or beneficial ownership of any shareholding in the <i>Consultant</i> (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 <i>Consultant</i> (or a Consortium Member), or • the composition of the <i>Consultant</i> or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the <i>Consultant</i> or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
Z9.4	<p>The <i>Consultant</i> notifies the <i>Client</i> immediately of any change or proposed change in the name or status of the <i>Consultant</i> or a Consortium Member.</p>

Z9.5	<p>The <i>Consultant</i> notifies the <i>Client</i> immediately if any of the following events occurs in relation to the <i>Consultant</i>, a Consortium Member or a Guarantor</p> <ul style="list-style-type: none"> its Credit Rating falls below the relevant <i>credit rating</i>, there is a further fall in its Credit Rating below the relevant <i>credit rating</i>, 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.
Z9.6	<p>If a Change of Control occurs, or is likely to occur, and is likely to give rise to an actual or potential conflict of interest, the <i>Consultant</i> and the <i>Service Manager</i> 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 <i>Client</i> may terminate the <i>Consultant's</i> obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.</p>
Z9.7	<p>If as a result of a Change of Control</p> <ul style="list-style-type: none"> a person or organisation with which the <i>Client</i> does not wish to be associated for ethical or reputational reasons is an Associated Company or the <i>Client</i> decides (having reviewed any information provided by the <i>Consultant</i> and made appropriate inquiries) that the <i>Consultant</i> is no longer in a position to Provide the Service <p>the <i>Client</i> may terminate the <i>Consultant's</i> obligation to Provide the Service 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.</p>
Z9.8	<p>If a Change of Control occurs, the <i>Consultant</i> provides to the <i>Client</i>:</p> <ul style="list-style-type: none"> 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 <i>Client</i> a Parent Company Guarantee if so required by the <i>Client</i> and any other information required by the <i>Client</i> in order to determine whether the Controller meets the Financial Standing Test and has a Credit Rating at least equal to the <i>credit rating</i> for the original Guarantor (if there is one) or the <i>Consultant</i> (if there is not), and any other information requested by the <i>Client</i> in order to satisfy itself that the <i>Consultant</i> remains in a position to perform its obligations under this contract.
Z9.9	<p>If a Change of Control or any of the events listed in clauses Z9.2 to Z9.5 occurs, the <i>Client</i> may require the <i>Consultant</i> to give to the <i>Client</i> a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the <i>Consultant</i> and accepted by the <i>Client</i>.</p>
Z9.10	<p>A reason for not accepting an alternative guarantor proposed by the <i>Consultant</i> is that it does not</p> <ul style="list-style-type: none"> meet the Financial Standing Test, provide the legal opinion required in clause Z9.14 or <p>have a Credit Rating at least equal to the <i>credit rating</i> for the person to whom the event listed in clause Z9.4 has occurred.</p>
Z9.11	<p>If so required by the <i>Client</i>, the <i>Consultant</i> within four weeks after the <i>Client</i> notifies the requirement gives to the <i>Client</i> a Parent Company Guarantee from the Controller or an alternative guarantor</p>

	accepted by the <i>Client</i> .
Z9.12	The <i>Client</i> may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the <i>Consultant</i> who does not meet the Financial Standing Test if the <i>Consultant</i> gives to the <i>Client</i> an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the <i>Client</i> '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 <i>Client</i> that it will meet the Financial Standing Test by the end of that period.
Z9.13	<p>If</p> <ul style="list-style-type: none"> the <i>Consultant</i> fails to notify the <i>Client</i> that an event listed in clause Z9.5 has occurred, neither the Controller nor any alternative guarantor proposed by the <i>Consultant</i> complies with the Financial Standing Test within the timescale stated in clause Z9.12 or fails to provide the legal opinion required by clause Z9.14 the <i>Consultant</i> does not give to the <i>Client</i> a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the <i>Service Manager</i> within four weeks of a request from the <i>Service Manager</i> to do so or the <i>Consultant</i> fails to demonstrate to the <i>Service Manager</i> that the Controller or the alternative guarantor accepted by the <i>Service Manager</i> will meet the Financial Standing Test within 18 months of the <i>Service Manager</i>'s acceptance <p>the <i>Client</i> may treat such failure as a substantial failure by the <i>Consultant</i> to comply with its obligations.</p>
Z9.14	<p>If the <i>Consultant</i>, a Consortium Member, a Guarantor or an alternative guarantor proposed by the <i>Consultant</i> (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 <i>Consultant</i> provides a legal opinion from a lawyer or law firm which is</p> <ul style="list-style-type: none"> qualified and registered to practice in the jurisdiction in which the relevant entity is incorporated and accepted by the <i>Client</i>. <p>The legal opinion is addressed to the <i>Client</i> 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 <i>Client</i>.</p> <p>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.</p>
Z10	Joint ventures
Z10.1	This clause applies if the <i>Consultant</i> is an unincorporated joint venture.
Z10.2	Each Consortium Member is jointly and severally liable to the <i>Client</i> for the performance of the <i>Consultant</i> 's obligations under this contract.
Z10.3	The <i>Consultant</i> 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 <i>Consultant</i> acknowledges that receipt of a communication by the <i>Consultant</i> 's nominated representative constitutes receipt by all the Consortium Members. The <i>Consultant</i> notifies the <i>Client</i> in advance of any change to the identity of the <i>Consultant</i> 's nominated representative.
Z10.4	The <i>Consultant</i> acknowledges that any payment made by the <i>Client</i> to a Consortium Member under the contract to that extent discharges the <i>Client</i> 's liability to make payment to the <i>Consultant</i> .
Z10.5	A Consortium Member gives not less than four weeks' notice to the <i>Client</i> 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 <i>Consultant</i> to comply with its obligations.
Z10.7	Where two or more Consortium Members comprise the <i>Consultant</i> , 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 <i>Consultant</i> , any Consortium Member”.
Z11	Parent Company Guarantee
Z11.1	<p>If required by the <i>Client</i>, the <i>Consultant</i> gives to the <i>Client</i> a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the <i>Client</i> within four weeks of the Contract Date or of the <i>Client</i>’s request, whichever is later.</p> <p>Parent Company Guarantees are given for:</p> <ul style="list-style-type: none"> • a standalone company – from its Controller, or • a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member. <p>In all cases it is for the <i>Client</i> to decide whether it will accept a Parent Company Guarantee from a company other than the Controller.</p>
Z11.2	A failure to comply with this condition is treated as a substantial failure by the <i>Consultant</i> to comply with its obligations.
Z12	Discrimination, Bullying and Harassment
Z12.1	<p>The <i>Consultant</i> indemnifies the <i>Client</i> against all costs, charges, expenses (including legal and administrative expenses) and payments made by the <i>Client</i> arising out of or in connection with</p> <ul style="list-style-type: none"> • any investigation or proceedings under the Discrimination Acts or • an allegation of bullying or harassment <p>resulting from any act or omission of the <i>Consultant</i> in connection with the contract.</p>
Z13	Intellectual Property Rights (IPRs)
Z13.1	The <i>Client</i> owns (or will own) all IPRs in material prepared in connection with this contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the <i>Client</i> , the <i>Consultant</i> enters into such documents and does such acts as the <i>Client</i> requests to transfer the IPRs to the <i>Client</i> , and procures that its subcontractors (at any stage of remoteness from the <i>Client</i>) do the same. The <i>Consultant</i> provides to the <i>Client</i> the documents which transfer these IPRs to the <i>Client</i> .
Z13.2	The <i>Consultant</i> 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 <i>Client</i> 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 <i>Consultant</i> or its assignees or any third party. The <i>Consultant</i> provides to the <i>Client</i> the documents which license these IPRs to the <i>Client</i> .
Z13.3	The <i>Consultant</i> ensures that any subcontract (at any stage of remoteness from the <i>Client</i>) contains a right for the <i>Client</i> (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	Not Used
Z14.2	The <i>Client</i> may at any time notify the <i>Consultant</i> that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the <i>Client</i> ’s notice, the <i>Consultant</i> 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 their contracts.
Z15	Tax Non – Compliance
Z15.1	The <i>Consultant</i> warrants that it has notified the <i>Client</i> of any Tax Non-Compliance or any litigation in which the <i>Consultant</i> (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.
Z15.2	<p>The <i>Consultant</i> notifies the <i>Client</i> within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of</p> <ul style="list-style-type: none"> the steps the <i>Consultant</i> 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 <i>Client</i>.
Z15.3	<p>The <i>Consultant</i> is treated as having substantially failed to comply with its obligations if</p> <ul style="list-style-type: none"> the warranty given by the <i>Consultant</i> under clause Z15.1 is untrue, the <i>Consultant</i> fails to notify the <i>Client</i> of a Tax Non-Compliance or <p>the <i>Client</i> decides that any mitigating factors notified by the <i>Consultant</i> are unacceptable.</p>
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 part of the service
Z17.1	<p>The <i>Service Manager</i> may instruct the <i>Consultant</i> that</p> <ul style="list-style-type: none"> part of the <i>service</i> is to be permanently removed from the contract or for urgent reasons of health and safety, part of the <i>service</i> is to be temporarily removed from the contract. <p>In either case the <i>Consultant</i> acknowledges that the <i>Client</i> may itself, or may appoint another supplier in place of the <i>Consultant</i> to provide services similar to the removed <i>service</i> (or part of it).</p>
Z17.2	An instruction given under clause Z17.2 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 <i>Client</i> of completing the removed <i>service</i> .
Z17.3	<p>If the <i>Consultant's</i> obligation to Provide the Service is terminated for any reason, the <i>Consultant</i> if instructed by the <i>Service Manager</i></p> <ul style="list-style-type: none"> completes the performance of any part of the <i>service</i> started prior to the date of termination and co-operates with the <i>Client</i> or any Incoming <i>Consultant</i> so as to ensure a smooth transfer of functions.
Z17.4	<p>The <i>Service Manager</i> may give the <i>Consultant</i> an instruction to Provide the Service (or parts of the <i>service</i>) in relation to highway assets outside the Affected Property owned by the <i>Client</i> or a third party. The instruction states</p> <ul style="list-style-type: none"> the assets to which it relates, the parts of the <i>service</i> which the <i>Consultant</i> is to provide in relation to them, the expected duration of the instruction and

	<ul style="list-style-type: none"> any constraints on how the <i>Consultant</i> is to Provide the Service. <p>Before giving an instruction under this clause, the <i>Service Manager</i> consults with the <i>Consultant</i> and confirms that giving the instruction will not prejudice the <i>Consultant's</i> ability to comply with its obligations under the contract.</p>
Z18	Corruption or loss of data
Z18.1	<p>If any data of the <i>Client</i> is corrupted, lost, stolen or sufficiently degraded as a result of the <i>Consultant's</i> default so as to be unusable, the <i>Consultant</i> immediately reports this to the <i>Service Manager</i> and</p> <ul style="list-style-type: none"> the <i>Service Manager</i> may instruct the <i>Consultant</i> to restore the data in accordance with the <i>Service Manager's</i> requirements (and any cost incurred by the <i>Consultant</i> in so doing is Disallowed Cost) or the <i>Client</i> may itself restore the data (and the <i>Consultant</i> pays to the <i>Client</i> any reasonable expenses which the <i>Client</i> incurs in so doing).
Z19 – Z49	Not Used
Z50	Health and Safety Plan
Z50.1	The <i>Client</i> may terminate if the <i>Consultant</i> has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the Contract Date. This is treated as a termination because of a substantial failure of the <i>Consultant</i> to comply with his obligations.
Z50.2	The period for producing the Health and Safety Plans may be extended by not more than four weeks if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the Health and Safety Plans are due. The <i>Client</i> notifies the extension that has been agreed to the <i>Consultant</i> .
Z50.3	If the <i>Client</i> does not terminate, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the <i>Consultant</i> has produced all the Health and Safety Plans in the form which the contract requires.
Z51	Not Used
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z52.1	The <i>Consultant</i> provides to the <i>Client</i> within 10 days of the <i>Client's</i> request such information in connection with TUPE as the <i>Client</i> may require. The <i>Consultant</i> promptly notifies the <i>Client</i> of any later change to information provided by it.
Z52.2	<p>The <i>Consultant</i> acknowledges that the <i>Client</i> may disclose information provided by the <i>Consultant</i> to</p> <ul style="list-style-type: none"> any replacement provider of service similar to the service and any person tendering to become a replacement provider. <p>The <i>Client</i> obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).</p>
Z52.3	<p>During the 8-month period immediately prior to the Completion Date, the <i>Consultant</i> submits for the acceptance of the <i>Client</i> any proposals to</p> <ul style="list-style-type: none"> materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the Scope of this contract, materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or move or deploy any key person away from the performance of the service. <p>The <i>Client</i> may withhold acceptance if the proposal would increase the cost to the <i>Client</i> of this or</p>

	any future contract for the <i>service</i> .
Z52.4	The <i>Consultant</i> does not do anything which may adversely affect the orderly transfer of responsibility for provision of the <i>service</i> .
Z52.5	The <i>Consultant</i> complies with, and ensures that any Subcontractor complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's Government.
Z53	Pensions
Z53.1	<p>The <i>Consultant</i> indemnifies the <i>Client</i> and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which</p> <ul style="list-style-type: none"> relate to pension rights in respect of periods of employment on or after the Contract Date or arise out of the failure of the <i>Consultant</i>, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of the section headed "Pensions" in the Scope.
Z54	Extension to the Completion Date
Z54.1	The <i>Client</i> may notify the <i>Consultant</i> that the Completion Date is to be extended by the extension period or such lesser period as the <i>Client</i> may specify.
Z54.2	If the Completion Date is extended by less than the extension period, the <i>Client</i> may further extend the Completion Date so that the total period of extension does not exceed the extension period.
Z54.3	The <i>Client</i> does not notify the <i>Consultant</i> of any extension or further extension to the Completion Date later than 6 months before the expiry of the Completion Date.
Z55	Not Used
Z56	Not Used
Z57	Infrastructure Act 2015
Z57.1	<p>The <i>Consultant</i> Provides the Service in compliance with, and so as not to put the <i>Client</i> in breach of</p> <ul style="list-style-type: none"> the Licence and any other directions and guidance issued by The Secretary of State to the <i>Client</i> under section 6 of the Infrastructure Act 2015 (and notified by the <i>Service Manager</i> to the <i>Consultant</i>).
Z57.2	The <i>Service Manager</i> notifies the <i>Consultant</i> of any notice issued by the Office of Rail and Road to the <i>Client</i> under section 11(2)(a) of the Infrastructure Act 2015 that relates to the <i>service</i> . The <i>Consultant</i> complies with the terms of any such notice and indemnifies the <i>Client</i> against any associated fine imposed on the <i>Client</i> under section 11(2)(b) of that Act.
Z58	Revisions to Promises Statement
Z58.1	<p>The <i>Consultant</i> may submit to the <i>Service Manager</i> proposed revisions to the Promises Statement for acceptance within the <i>period for reply</i>. A reason for not accepting the proposed revision is that</p> <ul style="list-style-type: none"> it will not enable the <i>Consultant</i> to meet a Performance Requirement,

	<ul style="list-style-type: none"> it will unacceptably increase the risk of failure to meet a Performance Requirement, it will not enable the <i>Consultant</i> to achieve the level of performance specified in the Promises Statement or <p>it will unacceptably increase the risk of failure to achieve the level of performance specified in the Promises Statement.</p>
Z58.2	A revision to the Promises Statement accepted by the <i>Service Manager</i> is not a compensation event.
Z59	Not Used
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 this contract, the <i>Consultant</i> 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 this contract, the <i>Consultant</i> 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 <i>Client</i> may, at any time during the term of this contract, request the <i>Consultant</i> 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	<p>If the <i>Consultant</i> fails to provide information in response to a request under clause Z60.3</p> <ul style="list-style-type: none"> 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 <p>the <i>Client</i> may</p> <ul style="list-style-type: none"> treat such failure as a substantial failure by the <i>Consultant</i> to comply with his obligations or instruct the <i>Consultant</i> to replace the relevant member of Staff.
Z60.5	If the <i>Client</i> 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 <i>Client</i> may treat such non-compliance as a substantial failure by the <i>Consultant</i> to comply with its obligations.
Z60.6	<p>The <i>Consultant</i> acknowledges that the <i>Client</i> may</p> <ul style="list-style-type: none"> supply any information which it receives under clauses Z60.3 or Z60.5 or advise the non-supply of information <p>to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible.</p>
Z61 – Z99	Not Used
Z100	Indexation
Z100.1	On each anniversary of the Contract Date, the <i>Consultant</i> calculates a price adjustment factor (PAF) and price adjustment amount (PAA). The PAF is equal to $(L-B)/B$, where L is the last published firm value of the <i>index</i> at the <i>base date</i> .

Z100.2	Not Used
Z100.3	The PAA is calculated by multiplying the value of the Lump Sum items (Parts A & B) and the people rates at the <i>base date</i> by the PAF
Z100.4	The PAA is added to the values of the Lump Sum items (Parts A & B) and the people rates at the base date on each anniversary of the Contract Date.
Z100.5	The adjusted prices apply to <i>services</i> provided after the application of the PAA
Z101	The accounting periods
Z101.1	<p>Within thirteen weeks after the end of each <i>accounting period</i> the <i>Service Manager</i></p> <ul style="list-style-type: none"> • makes an assessment of the final amount due for the <i>service</i> provided during the <i>accounting period</i> and • notifies the <i>Consultant</i> of that assessment and provides details of how the assessment has been made.
Z101.2	<p>The <i>Service Manager's</i> assessments at the end of each <i>accounting period</i> are conclusive evidence of the final amount due for the <i>service</i> provided during the <i>accounting period</i> unless a Party</p> <ul style="list-style-type: none"> • refers a dispute about the assessment of the final amount due to the <i>Senior Representatives</i> or to the <i>Adjudicator</i> within four weeks of the assessment being issued, • refers any issues referred to but not agreed by the <i>Senior Representatives</i> to the <i>Adjudicator</i> within three weeks of the list of issues not agreed being produced or when it should have been produced and <p>refers to the <i>tribunal</i> its dissatisfaction with a decision of the <i>Adjudicator</i> as to the final assessment of the amount due within four weeks of the decision being made.</p>
Z102	Tasks
Z102.1	<p>The <i>Service Manager</i> may issue a Task Order to the <i>Consultant</i>. Before issuing a Task Order, the <i>Service Manager</i> instructs the <i>Consultant</i> to submit a quotation for the Task. The instruction includes</p> <ul style="list-style-type: none"> • a detailed description of the work in the Task and • the Task starting date and Task Completion Date.
Z102.2	<p>The <i>Consultant</i> submits a quotation for a Task within two weeks of being instructed to do so by the <i>Service Manager</i>. The <i>Consultant</i> submits details of its assessment with the quotation. The <i>Service Manager</i> replies within two weeks of the submission. The reply is</p> <ul style="list-style-type: none"> • acceptance of the quotation and the issue of the Task Order, • an instruction to submit a revised quotation, • that the <i>Service Manager</i> will be making the assessment or <p>a notification that the Task will not be instructed.</p>
Z102.3	<p>The <i>Service Manager</i> instructs the <i>Consultant</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Consultant</i>. The <i>Consultant</i> submits the revised quotation within three weeks of being instructed to do so.</p>
Z102.4	<p>The <i>Service Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"> • the <i>Consultant</i> to submit quotations for a Task or • the <i>Service Manager</i> to reply to a quotation <p>if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the submission or reply is due. The <i>Service Manager</i> informs the <i>Consultant</i> of the extension which has been agreed.</p>

Z102.5	<p>The <i>Service Manager</i> assesses the pricing for the Task if</p> <ul style="list-style-type: none"> the <i>Consultant</i> has not submitted a quotation and details of its assessment within the time allowed or the <i>Service Manager</i> decides that the <i>Consultant</i> has not assessed the Task correctly in a quotation and has not instructed the <i>Consultant</i> to submit a revised quotation. <p>The <i>Service Manager</i> notifies the <i>Consultant</i> of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the <i>Consultant's</i> submission of its quotation for the same Task. This period starts when the need for the <i>Service Manager's</i> assessment becomes apparent.</p>
Z102.6	<p>The assessment of a Task is in the form of a Task price list. Where items of work in the Task price list are covered by rates in the Task Schedule, the items are priced using those rates. The prices for items in the Task price list which are not taken from the Task Schedule are assessed in the same way as a compensation event is assessed.</p>
Z102.7	<p>When a Task Order is issued</p> <ul style="list-style-type: none"> the Task price list is inserted in the Task Schedule and the work involved is added to the Scope. <p>The issue of a Task is not a compensation event.</p>
Z102.8	<p>The <i>Consultant</i> does not start any work included in the Task until it has received the Task Order, and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.</p>
Z102.9	<p>The <i>Service Manager</i> may instruct the <i>Consultant</i> to carry out a Task in an emergency before the requirements of clauses Z102.1 to Z102.5 have been fully complied with. If so</p> <ul style="list-style-type: none"> the <i>Service Manager</i> provides any of the matters listed in clause Z102.1 which it has not provided and <p>the <i>Consultant</i> submits its quotation for the Task as soon as practical after the Task Order is issued.</p>
Z102.10	<p>The <i>Consultant</i> provides information which shows how each item included in a Task relates to the operations on each programme which it submits for acceptance.</p>
Z102.11	<p>Clause X10 applies to a Task if the Task Order states or if the <i>Service Manager</i> issues an instruction to the <i>Consultant</i> to use information modelling for the Task. The <i>Service Manager's</i> instruction is a compensation event.</p>
Z103	Not Used
Z104	Not Used
Z105	Not Used
Z106	Not Used
Z107	Not Used
Z108	Enhancements
Z108.1	<p>The <i>Consultant</i> may at any time submit to the <i>Service Manager</i> a proposal for an Enhancement.</p>
Z108.2	<p>Before developing a proposed Enhancement, the <i>Consultant</i> prepares and submits to the <i>Service Manager</i> an outline business case setting out brief details of</p> <ul style="list-style-type: none"> the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements,

	<ul style="list-style-type: none"> the expected long-term benefit to the <i>Client</i> if the proposed Enhancement is implemented, any significant risks to the successful development and implementation of the proposed Enhancement, any resulting change to the Prices or the <i>Client's</i> other costs and <p>any incentive payment which the <i>Consultant</i> proposes should be paid to it if the proposed Enhancement is successfully implemented.</p>
Z108.3	The Parties jointly review the <i>Consultant's</i> outline business case. The <i>Service Manager</i> assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the <i>Consultant</i> whether the <i>Client</i> is likely to accept the proposed Enhancement.
Z108.4	The <i>Consultant</i> continually monitors the development of a proposed Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.
Z108.5	The <i>Consultant</i> may propose to the <i>Service Manager</i> that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the <i>Service Manager</i> agrees, it may instruct the <i>Consultant</i> to develop a detailed specification for and/or to carry out the trials, testing or pilot project.
Z108.6	<p>The <i>Consultant</i> may prepare and submit to the <i>Service Manager</i> a detailed business case for the proposed Enhancement. A detailed business case includes</p> <ul style="list-style-type: none"> 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 <i>Client</i> if the Enhancement is implemented and the period over which the benefit is to be assessed, how any risks associated with the implementation of the Enhancement are to be allocated, a cost benefit analysis, any resulting change to the Prices, any expected change to the <i>Client's</i> other costs and the timescale over which the change will occur and <p>the proposed Incentive Amount and a proposal as to how it is to be paid to the <i>Consultant</i> if the Enhancement is successfully implemented.</p>
Z108.7	The <i>Client</i> decides whether (and if so on what terms) to implement the proposed Enhancement. The <i>Service Manager</i> instructs the implementation of an agreed Enhancement as a change to the Scope.
Z108.8	If the <i>Consultant</i> decides not to pursue a proposed Enhancement, the <i>Client</i> may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the <i>Client</i> may use or adapt any material submitted by the <i>Consultant</i> as part of its proposal and outline business case.
Z108.9	Other than where instructed by the <i>Service Manager</i> to carry out trials, testing or a pilot project under clause Z108.5, the <i>Consultant</i> 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 <i>Client</i> of the <i>Consultant's</i> proposal and outline business case under clause Z108.8.
Z108.10	A change to the Scope instructed by the <i>Service Manager</i> under clause Z108.7 following the submission of a detailed business case by the <i>Consultant</i> is not a compensation event.
Z108.11	If an Enhancement instructed by the <i>Service Manager</i> under clause Z108.7 following the submission of a detailed business case by the <i>Consultant</i> delivers the benefits described in the <i>Consultant's</i> detailed business case before the <i>defects date</i> , the <i>Client</i> pays to the <i>Consultant</i> the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the <i>Client</i>

	pays to the <i>Consultant</i> a proportionate part (as assessed by the <i>Service Manager</i>) of the Incentive Amount.
Z108.12	The Incentive Amount (or the proportionate part assessed by the <i>Service Manager</i>) is included in the final amount due under the contract, except that the Parties may agree to include it in an earlier amount due if the <i>Client</i> has actually received the full benefit of the Enhancement by an earlier date.
Z108.13	In consideration of the <i>Client's</i> agreement to pay the Incentive Amount (or a proportionate part) to the <i>Consultant</i> , the <i>Consultant</i> assigns to the <i>Client</i> the Intellectual Property Rights in the Enhancement.
Z108.14	<p>Where an Enhancement is proposed jointly by the <i>Consultant</i> and one or more Community Partners, clause Z108 applies except that</p> <ul style="list-style-type: none"> the outline and detailed business case are prepared jointly by the <i>Consultant</i> and the relevant Community Partners, the detailed business case includes a proposal for how the Incentive Amount is to be shared between the <i>Consultant</i> and the relevant Community Partners, the <i>Client</i> may instruct the <i>Consultant</i> 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 Z108.5 and <p>if the Enhancement delivers the benefits (or part of the benefits) described in the detailed business case before the <i>defects date</i>, the Incentive Amount (or the proportionate part of it) is shared among the <i>Consultant</i> and the relevant Community Partners in the proportions stated in the detailed business case.</p>

Highways England
Contract Data Part One
East Region
Structural Inspections Contract
September 2019

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SOS	Sept 19
1	1	Reference to Time Charge in Optional Statements removed	MS	14/10/19

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

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

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017

Main Option

E

Option for resolving and
avoiding disputes

W2

Secondary Options

X11, X18,
Y(UK)1, Y(UK)2, Y(UK)3

The *service* is

The provision of structural inspection services in relation to the Strategic Road Network in Highways England East Region

The Affected Property is

Highways England East Region, more particularly described in the Scope

The *Client* is

Name

Highways England Company Limited
Registered number 09346363

Address for communications

Highways England Company Limited
Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4LZ

Address for electronic communications

[REDACTED]

The *Service Manager* is

Name

[REDACTED]

Address for communications

Woodlands
Manton Lane
Bedford
MK41 7LW

Address for electronic communications

The Scope is in

the document entitled SIC East Scope

The *language of the contract* is

English

The *law of the contract* is the law ofEngland, subject to the jurisdiction of the
Courts of EnglandThe *period for reply* is

two weeks

The *period for retention* is

6 years

year(s) following Completion
or earlier termination

The following matters will be included in the Early Warning Register

- Provision of inspectors certified under the Bridge Inspector Certification Scheme (BICS)
- Co-ordination with others to obtain access to the Affected Property
- Use and interface with the Client's Information Systems, including any new systems introduced by the Client

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

Monthly

2 The Consultant's main responsibilitiesThe *key dates* and *conditions* to be met areIf the *Client*
has identified
work which is
set to meeta stated
condition by a
*key date**condition* to be met*key date*

(1)

(2)

(3)

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and expenses at intervals no longer than

4 weeks

3 TimeThe *starting date* is

21 January 2020

The *go live date* is

27 March 2020

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

one month

The *completion date* for the whole of the *service* is26 March
2023The *extension period* is

4 years

4 Quality managementThe period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan isAs defined in
the ScopeThe period between Completion of the whole of the *service* and the *defects date* is

52 weeks

5 PaymentThe *currency of the contract* is the

Pound sterling (£)

The first assessment date is the

7 March 2020

The *assessment interval* is

One calendar month

If the *Client*
states any
expensesThe *expenses* stated by the *Client* are

Item

amount

N/A

N/A

The *interest rate* is, (unless the provisions of

3

% per annum (not less than 2)

the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require) is

above the

base

rate of the

Bank of England

in force from time to time

The *people* rates are

As detailed in the Task Schedule

The index is

EARN03: Average Weekly Earnings by Industry "Not Seasonally Adjusted Average Weekly Earnings – Index figures including Bonuses, including Arrears" Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY published by the Office for National Statistics

6 Compensation events

These are additional compensation events

If there are additional compensation events

The *Service Manager* issues an instruction changing a Task Order.

- The *Consultant* receives the Task Order after the starting date stated in the Task Order.
- A Task Completion Date is later than the Completion Date.
- The *Service Manager* gives an instruction correcting a mistake in the Task Schedule which arises from an ambiguity or inconsistency in or between the documents which are part of the contract.
- The *Service Manager* agrees to the appointment by the *Consultant* of a specialist with recognised expertise in a particular technical discipline or area of competence to perform an identified part of the *service*

8 Liabilities and insurance

These are additional *Client's* liabilities

(1) N/A

If there are additional *Client's* liabilities

(2)

(3)

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
-------	-------------------------	---

<p>The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i></p>	<p>A limit of indemnity of not less than</p> <div data-bbox="614 271 975 338"> <p>Five million pounds (£5,000,000)</p> </div> <p>in respect of any one claim without limit to the number of claims in any annual policy period, but</p> <div data-bbox="614 472 975 539"> <p>Five million pounds (£5,000,000)</p> </div> <p>any one claim and in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and</p> <div data-bbox="614 674 914 763"> <p>One million pounds (£1,000,000)</p> </div> <p>any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant policy).</p>	<p>From the starting date until six (6) years following completion of the whole of the <i>service</i> of earlier termination.</p>
<p>Death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></p>	<p>A limit of indemnity of not less than</p> <div data-bbox="614 965 914 1055"> <p>Ten million pounds (£10,000,000)</p> </div> <p>in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but</p> <div data-bbox="614 1189 914 1279"> <p>Ten million pounds (£10,000,000)</p> </div> <p>any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy)</p> <p>In respect of use of motor vehicles a limit of indemnity as required by statute.</p>	<p>from the <i>starting date</i> until all notified Defects have been corrected or earlier termination</p>
<p>Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract</p>	<p>Employers Liability Insurance with a limit of indemnity of</p> <div data-bbox="614 1615 914 1704"> <p>Ten million pounds (£10,000,000)</p> </div> <p>any one occurrence the number of occurrences being unlimited in any annual policy period or as required by statute whichever is the higher..</p>	<p>from the <i>starting date</i> until all notified Defects have been corrected or earlier termination</p>

The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the contract, other

than the excluded matters is

- | |
|--|
| (1) £10,000,000 (ten million pounds),
(2) |
|--|

Resolving and avoiding disputesThe *tribunal* is

arbitration

The *arbitration procedure* isThe 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)

Address for communications

The Cube
199 Wharfside Street
Birmingham
B1 1RN

Address for electronic communications

Name (2)

Address for communications

Piccadilly Gate
Store Street
Manchester
M1 2WD

Address for electronic communications

The *Adjudicator* is

Name

The person chosen by the Parties from the list
of adjudicators published by the Institution of
Civil Engineers

Address for communications

TBC

Address for electronic communications

TBC

The *Adjudicator nominating body* is

The Institution of Civil Engineers

Optional statementsThe *Consultant* prepares forecasts of the total Defined Costs and *expenses* at intervals no longer than

one month

X18: Limitation of liabilityThe *Consultant's* liability to the *Client* for indirect or consequential loss is limited to

Ten million pounds (£10,000,000)

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to

Ten million pounds (£10,000,000)

The *end of liability date* is

6

years after the Completion of the whole of the *service***Y(UK)1: Project Bank Account**Charges made and interest paid by the *project bank*The *Consultant* is to pay any charges made and to be paid any interest paid by the *project bank*.**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3

Term

The provisions of Options Y(UK)1

beneficiary

Named Suppliers

Z: Additional conditions of contractThe *additional conditions of contract* are SIC East Z Clauses.