

National Highways Limited

NEC4 Professional Service Short Contract

June 2017 (with amendments January 2019 and October 2020)

Contract Data

in relation to a *service* for

Motorway Service Areas (MSAs) Access Guides 2023

Dated: 30th March 2023

Contract Data

The *Client's* Contract Data

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

The *Client* is

Name

National Highways Limited

Address for
communications

Bridge House,
1 Walnut Tree Close
Guildford
Surry GU1 4LZ
Registered number 09346363

Address for electronic
communications

ADProcurement@nationalhighways.co.uk

The *service* is

Provision of Access Surveys and Guides of 114 Motorway
Service Areas (MSAs) in England only.

The *Scope* is in

PSSC Scope - Motorway Service Areas (MSAs) Access Guides
2023

The *starting date* is

30th March 2023

The *completion date* is

29th March 2026

The *delay damages* are

nil

per day

The *law of the
contract* is

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

The *period for reply* is

2 weeks

The *defects date* is

Not applicable

weeks after Completion

The *assessment day* is the

7th day

of each month

Work not to be carried out on a time charge basis.

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does not apply.

The *Adjudicator* is

Name

The person chosen by the Parties from an agreed list of Adjudicators published by the Institution of Civil Engineers.

Address for communications

Address for electronic communications

The interest rate on late payments is

Not applicable

% per complete week of delay

The *Client* provides this insurance

Not applicable

The *Consultant* provides the insurances from the Insurance Table below and in accordance with the requirements in Annex 03 of the Scope.

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
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	A limit of indemnity of not less than £1,000,000 in respect of any one claim and in the aggregate per annum.	Six (6) years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	A limit of indemnity of not less than £1,000,000 in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but £1,000,000 in respect of any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).	None
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	Not less than ten million pounds (£10,000,000) (or such greater amount as is required by the applicable law for the duration of the contract) in respect of any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater period as is required by law	None

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 limited to

£1,000,000

The *Adjudicator nominating body* is

Chartered Institution of Arbitrators'
Arbitration Rules (2000)

The *tribunal* is

arbitration

The arbitration procedure is

Chartered Institution of Arbitrators'
Arbitration Rules (2000)

Z14 - Project Bank Account – NOT USED

Z54 - Extension to the Completion Date – NOT USED

The extension period is

Not applicable

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 (with amendments January 2019 and October 2020) and the *additional conditions of contract* clauses Z1 to Z63.

The *Consultant's* Contract Data

Completion of the data in full is essential to create a complete contract.

The *Consultant* is

Name

Disabled Enabled Ltd (trading as AccessAble)

Address for communications

Unit 7 Arlington Court
Stevenage
Hertfordshire
SG1 2FS

Address for electronic communications

The Quality Statement is in

N/A

The *fee percentage* is

N/A

%

The *people rates* are

category of person

unit

rate

If the work is to be carried out on a time change basis the *Consultant* includes *people rates* for its own people and people provided by a subcontractor

The *key persons* are

Name (1) The people are the people listed in the key people schedule.

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The tendered total of the Prices is £212,023.50

Contract Data entry relating to Data Protection Legislation

The contact details of the *Consultant's* Data Protection Officer or Data Protection nominated lead are: TBC

Contract Data entries relating to Z Clauses

Z9 - Change of Control and financial distress

The *credit ratings* at the Contract Date and rating agencies issuing them are

party	rating agency	credit rating

<i>Consultant</i>		
Consortium Member		
Guarantor		

Z14 - Project Bank Account – NOT USED

Z Clause Contents	
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	Not Used
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying, Harassment and Modern Slavery
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account – NOT USED
Z15	Tax Non – Compliance
Z16	Value Added Tax (VAT) Recovery
Z17	Termination and removal of part of the <i>service</i>
Z18	Corruption or loss of data
Z19	Conflict of Interest
Z20 – Z49	NOT USED
Z50	Health and Safety Plans – NOT USED
Z51	Changes to the Prices
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE) – NOT USED
Z53	Pensions – NOT USED
Z54	Extension to the Completion Date – NOT USED
Z55	Payment of the <i>Consultant's</i> share – NOT USED
Z56	NOT USED
Z57	Infrastructure Act 2015 – NOT USED
Z58	Revisions to Promises Statement – NOT USED
Z59	NOT USED
Z60	Tax Arrangements of appointees
Z61	NOT USED
Z62	Third Party Rights
Z63	Limit of Liability

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms:

- (12) Affected Property is property of the *Client* or Others which is affected by the work of the *Consultant* or used by the *Consultant* in Providing the Service and which is identified in the Contract Data.
- (13) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client*.
- (14) Associated Company is any of
 - A Consortium Member or
 - Any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Consultant* or a Consortium Member.
- (15) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Consultant* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Consultant* 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 *Consultant* or a Consortium Member.
- (16) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Consultant*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (17) Contract Date is the date when the contract came into existence.
- (18) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (19) Controller is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member.
- (20) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Consultant*, a Consortium Member or any Guarantor.
- (21) The Data Protection Legislation is

- the General Data Protection Regulation (the retained EU law version of the General Data Protection Regulation (EU2016/679)),
 - the LED (Law Enforcement Directive (Directive (EU) 2016/680),
 - the Data Protection Act 2018,
 - the Privacy and Electronic Communications (EC Directive) Regulations 2003, and
 - any other laws or regulations relating to privacy or personal data.
- (22) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (23) 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).
- (24) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement
- (25) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (26) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the selection stage of the competition for the contract.
- (27) Form of Performance Security is a form of bond specified in the Scope (or such other form as the *Client* may reasonably require).
- (28) General Anti-Abuse Rule is
- the legislation in Part 5 of the Finance Act 2013 and
 - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (29) Guarantor is a person who gives a Parent Company Guarantee to the *Client*. Guarantor is the *guarantor* unless later changed in accordance with the contract.
- (30) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

- (31) Health and Safety Plans are
- a completed Health, Safety and Wellbeing Maturity Matrix (HS&WMM) for the *Consultant* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the HS&WMM,
 - an implementation plan, setting out the actions to be taken by the *Consultant* or each Consortium Member over a period of 12 months following the date of the HS&WMM in order to improve the scores recorded in the HS&WMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
 - an action plan, setting out the specific actions to be taken under the contract by the *Consultant* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Consultant* or each Consortium Member.
- (32) Incoming Consultant is any consultant appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it in place of the *Consultant*).
- (33) Not used
- (34) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the *service* or any revised systems introduced by the *Client* from time to time.
- (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.
- (36) Named Suppliers are named *suppliers* and other Suppliers who have signed the Joining Deed.
- (37) Parent Company Guarantee is a guarantee of the *Consultant's* performance in the form set out in the Scope.
- (38) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.
- (39) Personal Data is any data relating to an identified or identifiable natural individual that is within the scope of protection as “personal data” under the Data Protection Legislation.
- (40) Quality Management Points are points accrued by the *Consultant* in accordance with the quality table in the Scope.

- (41) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to this contract.
- (42) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (43) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.
- (44) The Secretary of State is the Secretary of State for Transport.
- (45) Staff are persons employed or engaged by the *Consultant* or an Associated Company or any subcontractor (at any stage of remoteness from the *Client*) to Provide the Service at any time.
- (46) Subcontractor is a person or organisation who has a contract with the Consultant to provide part of the service, except for the supply of people paid for by the Consultant according to the time they work.
- (47) Tax Non-Compliance is where a tax return submitted by the *Consultant* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012
- Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Consultant* 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 *Consultant* 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.

Amend the following terms

11.2 (5) Delete existing clause and replace it with

“(6) Defined Cost is the cost of the following components incurred by the *Consultant* in Providing the Service

- people employed directly or indirectly by the *Consultant*, calculated by multiplying each of the People Rates by the total time appropriate to that rate,
- work subcontracted by the *Consultant*, the amount paid by the *Consultant* to the subcontractor,

but excluding

- compliance with the *Client*’s behavioural attributes set out in section S518 of the Scope,
- implementation of any modifications or enhancements to the *Consultant*’s data collection systems (or those of a subcontractor, at any

stage of remoteness from the *Client*) to meet the *Client's* requirements as stated in the Scope,

- replacement of a person (and any associated costs),
- compliance with sections S545.16.3 (Searches etc. re substances) and S545.21.1 (Security) of the Scope and resulting costs and
- any other cost stated in the contract as being an excluded cost"

12 Interpretation and the law

12.2 Delete & replace clause with

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

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

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

23 Subcontracting

23.3 Insert an additional bullet point after "A reason for not accepting the subcontract documents is that"

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

51 Payment

In clause 51.1 of the conditions of contract, delete "three weeks" and insert "14 days".

60 Compensation events

In clause 60.1(1) at the end of the clause delete the full stop and insert
or

- a change to the Information Systems or the introduction of a new Information System,
- a change to the method of or requirements for performance measurement or
- a change which is stated elsewhere in these *conditions of contract* not to be a compensation event.

60.1 (3) Insert at the end (before the full stop)

"unless the instruction relates to a notification from the *Consultant* that a conflict

of interest may exist or arise”

83 Insurance Cover

83 Insurance cover

Delete clauses 83.2, 83.3 and the Insurance Table and insert

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

84 Limitation of Liability

Delete clause 84.1 of the *conditions of contract* and replace it with

“84.1 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 limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under *the law of the contract*.”

The excluded matters are amounts payable by the *Consultant* as stated in the contract for

- loss of or damage to the *Client’s* property,
- delay damages,
- fraud or fraudulent misrepresentation,
- infringement of an intellectual property right,
- loss or damage
 - to third party property or
 - due to pollution,
- loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations,
- interest on debt,
- losses caused by the *Consultant’s* illegal acts, deliberate default, deliberate abandonment, willful misconduct or reckless misconduct,
- death of or bodily injury to a person other than an employee of the *Consultant* and
- other events for which the contract requires the *Consultant* to insure (but excluded only up to the required level for each type of insurance stated in the Contract Data).”

Z2 Interpretation

Z2.1 In the contract, except where the context shows otherwise

- references to a document include any revision made to it in accordance with the contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it,
- references to a British, European or International standard include any current relevant standard that replaces it,
- references to persons or organisations include bodies corporate,

- 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 *Consultant*, 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 *Consultant* under the contract or any other contract with the *Client*.

Z4 Assignment and transfer

- Z4.1 The *Consultant* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.

- Z4.2 If requested by the *Client*, the *Consultant* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the contract to
- a replacement organisation established to take over the *Client*'s functions or part of it,
 - another public body exercising similar functions,
 - a Department or Office of Her Majesty's Government or
 - a local authority.

- Z4.3 If the *Consultant* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client*'s agreement to do so. The *Consultant*
- explains the reasons for the proposed transfer and
 - provides any further information requested by the *Client*.

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

Z6 Adjudication

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

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

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

Z7 Termination - Public Contract Regulations 2015

- Z7.1 The *Client* may terminate if the *Consultant's* obligation to Provide the Service if
- one of the mandatory grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date, or
 - one of the discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date and this information was not disclosed by the *Contractor* to the *Client* before the Contract Date.
- Z7.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service if
- if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 (9) of the Public Contracts Regulations 2015.
- Z7.3 In the event of a termination
- R18 if the modification or infringement was due to a default by the Contractor, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
 - R19 if the modification or infringement was due to a default by the Client, the termination procedures followed are P1 and P4 and the amounts due on termination are A1, A2 and A4.
 - R20 if the modification or infringement was due to any other reason, the termination procedures followed are P1 and P4 and the amounts due on termination are A1 and A2.

Z8 Subcontracting

- Z8.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Consultant* 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 *Client*.
- Z8.3 Not used
- Z8.4 Not Used.
- Z8.5 Before
- appointing a proposed subcontractor or
 - allowing a subcontractor to appoint a proposed sub-subcontractor
- the *Consultant* submits to the *Client* for acceptance
- either

- a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or sub-subcontractor or
- other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or sub-subcontractor

Z8.6 The *Consultant* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed sub-subcontractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or sub-subcontractor under regulation 57 of the Public Contracts Regulations 2015.

Z8.7 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z8.5.

Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that

- one of the grounds for excluding the subcontractor or sub-subcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or

the *Client* may instruct the *Consultant* to

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

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

- its appointment will not allow the *Consultant* to Provide the Service.

The *Consultant* does not appoint a proposed subcontractor until the *Client* has accepted it.

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

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

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

Z9 Change of Control and financial distress

Z9.1 The *Consultant* notifies the *Client* immediately if a Change of Control has

occurred or is expected to occur except only to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.

- Z9.2 The *Consultant* notifies the *Client* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* (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 *Consultant* (or a Consortium Member), or
 - the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z9.3 The *Consultant* notifies the *Client* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member.
- Z9.4 The *Consultant* notifies the *Client* immediately if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor
- its Credit Rating falls below the relevant *credit rating*,
 - there is a further fall in its Credit Rating below the relevant *credit rating*,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
- Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* 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.
- Z9.6 [If as a result of a Change of Control
- a person or organisation with which the *Client* does not wish to be associated for ethical or reputational reasons is an Associated Company or
 - the *Client* decides (having reviewed any information provided by the *Consultant* and made appropriate inquiries) that the *Consultant* is no longer in a position to Provide the Service

the *Client* may terminate the *Consultant's* 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.]

- Z9.7 If a Change of Control occurs, the *Consultant* provides to the *Client*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
 - any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
 - any other information requested by the *Client* in order to satisfy itself that the *Contractor* remains in a position to perform its obligations under this contract.
- Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Consultant* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the Contractor and accepted by the *Client*.
- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Consultant* is that it does not
- meet the Financial Standing Test,
 - provide the legal opinion required in clause Z9.13 or
 - have a Credit Rating at least equal to the credit rating for the person to whom the event listed in clause Z9.4 has occurred.
- Z9.10 If so required by the *Client*, the *Consultant* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.
- Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Client* an assurance that the *Controller* or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.
- Z9.12 If
- the *Consultant* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
- the *Consultant* 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 *Consultant* 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 treat such failure as a substantial failure by the *Consultant* to comply with its obligations.

- Z9.13 If the *Consultant*, a Consortium Member, a Guarantor or an alternative guarantor (including any bank or surety provider) proposed by the Contractor (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
 - accepted by the *Client*.

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

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

Z10 Joint ventures

- Z10.1 This clause applies if the *Consultant* is an unincorporated joint venture.
- Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant's* obligations under this contract.
- Z10.3 The *Consultant* 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 *Consultant* acknowledges that receipt of a communication by the *Consultant's* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Client* in advance of any change to the identity of the *Consultant's* nominated representative.
- Z10.4 The *Consultant* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Consultant*.
- Z10.5 A Consortium Member gives not less than four weeks' notice to the *Client* of any

- Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Consultant* to comply with its obligations.
- Z10.7 Where two or more Consortium Members comprise the *Consultant*, clause 90.2 of the conditions of contract are amended by inserting after “the other Party” the words “or in the case of the *Consultant*, any Consortium Member”.

Z11 Parent Company Guarantee

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

Parent Company Guarantees are given for:

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

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

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

Z12 Discrimination, Bullying & Harassment and Modern Slavery

- Z12.1 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

- any investigation or proceedings under the Discrimination Acts or
- an allegation of bullying or harassment

resulting from any act or omission of the *Consultant* in connection with the contract.

Z13 Intellectual Property Rights (IPRs)

- Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Consultant* 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 *Consultant* provides to the *Client*, the documents which transfer these IPRs to the *Client*.

- Z13.2 The *Consultant* 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 Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party. The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client*.

The *Consultant's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause, are damages and equitable relief.

Z13.3 The *Consultant* 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.

Z13.4 [The *Consultant* warrants that

- the Software does not contain any Open Source Software other than that set out in the Software Schedule,
- the Open Source Software is licensed upon terms which permit the use by the *Contractor*, the *Client* and the *Client's* end users for all purposes contemplated by the contract and
- all components of the Software are free from material design and programming errors,
 - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Statement,
 - the Documentation and
 - do not infringe any Intellectual Property Rights]

Z13.5 The *Consultant* at all times, during the *works* and after the Completion, indemnifies the *Client* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

Z14 Project Bank Account – NOT USED

Z15 Tax Non – Compliance

Z15.1 The *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Consultant* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z15.2 The *Consultant* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,

- any mitigating factors that it considers relevant and
- any other information requested by the *Client*.

- Z15.3 The *Consultant* is treated as having substantially failed to comply with its obligations if
- the warranty given by the *Consultant* under clause Z15.1 is untrue,
 - the *Consultant* fails to notify the *Client* of a Tax Non-Compliance or
 - the *Client* decides that any mitigating factors notified by the *Consultant* are unacceptable.

Z16 Value Added Tax (VAT) Recovery

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

Z17 Termination and removal of part of the service

- Z17.1 The *Client* may at any time instruct the *Consultant* that
- part of the *service* is to be permanently removed from the Scope or
 - for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the Scope.

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

- Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R4, R6 or R8, or the *Contractor* has a Quality Warning Notice the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*, and if all of the remaining *service* is to be permanently removed, the *Consultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another consultant to complete the *service* or any part of them.

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

- Z17.4 The *Client* may give the *Consultant* an instruction to Provide the Service (or parts of the *service*) in relation to highway assets outside the site owned by the *Client* or a third party. The instruction states
- the assets to which it relates,

- the parts of the *service* which the *Consultant* is to provide in relation to them,
- the expected duration of the instruction and
- any constraints on how the *Consultant* is to Provide the Service.

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

Z18 Corruption or loss of data

- Z18.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultants* default so as to be unusable, the *Consultant* immediately reports this to the *Client* and
- the *Client* may instruct the *Consultant* to restore the data in accordance with the *Client's* requirements (and any cost incurred by the *Consultant* in doing so is excluded from Defined Cost) or
 - the *Client* may itself restore the data (and the *Consultant* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

Z19 Conflict of Interest

- Z19.1 Any steps taken in accordance with paragraph S 508.1 in the Scope is not a compensation event.
- Z19.2 A failure to comply with paragraph S 508.1 in the Scope is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z20 – Z49 Not Used

Z50 Health and Safety Plans – NOT USED

Z51 Changes to Prices

- Z51.1 The Parties may at any time agree a reduction to the Prices.
- Z51.2 The reduced Prices apply to any service performed after the reduction is agreed.
- Z51.3 If the *Consultant* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Consultant's* obligation to Provide the Service by notifying the *Consultant*.]

Z52 NOT USED

Z53 NOT USED

Z54 NOT USED

Z55 NOT USED

Z56 NOT USED

Z57 NOT USED

Z58 NOT USED

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 *Consultant* 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 *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z60.3 The *Client* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.

Z60.4 If the *Consultant* fails to provide information in response to a request under clause Z60.3

- within the period for reply or
- which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not

apply to it

the *Client* may

- treat such failure as a substantial failure by the *Consultant* to comply with its obligations or
- instruct the *Consultant* to replace the relevant member of Staff.

Z60.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Consultant* to comply with its obligations.

Z60.6 The *Consultant* acknowledges that the *Client* may

- supply any information which it receives under clauses Z60.3 or Z60.5 or
- advise the non-supply of information

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

Z61 NOT USED

Z62 Third Party Rights

Z62.1 A subcontractor and sub-subcontractor have the right to enforce the terms of clause Z8 Subcontracting and Fair payment located in S 509 of the PSSC Scope - Motorway Service Areas (MSAs) Access Guides 2023 document.

Z62.2 Not used.

Z62.3 Otherwise, a person or organisation who is not a Party has no right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999.

Z63 Limit of Liability

Z63.1 The excluded matters are amounts payable by the Contractor, or for which the Contractor is liable to the Client, as stated in the contract or in law for:

- loss of or damage to the *Client's* property,
- delay damages if Option X7 applies,
- low performance damages if Option X17 applies,
- *Consultant's* share if Option C or D applies,
- loss or damage
 - to third part property or
 - due to pollution,
- loss arising from breach of
- interest on debt,
- losses caused by the Consultant's illegal acts, deliberate default, deliberate abandonment, wilful misconduct, or reckless misconduct,
- death of or personal bodily injury caused by negligence,
- fraud or fraudulent misrepresentation

- loss arising from breach of
 - confidentiality or data protection obligations or,
 - Anti-bribery or anti-corruption obligations,
- infringement of the rights of Others, and
- any other events which are not excluded above for which the Contractor is required to provide insurance against as stated in the contract, provided that only amounts up to the minimum levels of insurance required by the contract are excluded. Where the Contractor's liability for an insured event exceeds the minimum level of insurance required by the contract, the amount over the minimum level will not be an excluded matter and will be included in the Contractor's total liability to the Client which is limited to the amount stated in the Contract Data.