



**Highways England Company Limited  
Lower Thames Crossing  
Integration Partner**

**NEC4 Professional Service Contract  
(June 2017 with amendments January 2019)**

**Volume 1C**

**Conditions of Contract**

**CONTENTS AMENDMENT SHEET**

<b>Amend No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>

## Z CLAUSES

### Clause Z1 Additional definitions and amendments to core and Secondary Option clauses

#### 11 Identified and defined terms

11.2(8) Delete and insert "Not used"

11.2(13) Insert an additional bullet point after "and is either"

- in a Task Order.

11.2 Add the following defined terms

- (24) Agreement means the agreement signed by the parties to which these *conditions of contract* are attached.
- (25) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client* or *Service Manager*.
- (26) 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.
- (27) Baseline Price Estimate is the estimated price for
  - the Mobilisation Activities and
  - each Task Order,set out in Annexes A to D of the Pricing Schedules, comprising time related and lump sum items. The Baseline Price Estimate excludes Profit and Mobilisation Profit. The Baseline Price Estimate may be adjusted in accordance with this contract and is used
  - to determine the amount of the Lump Sum and the Time Charge for the Mobilisation Activities and
  - by the *Service Manager* to assess a quotation for a Task Order in accordance with clause Z102.5 (whether based on a Target Cost or Lump Sum).
- (28) 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.

- (29) Consortium Member is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company.
- (30) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (31) 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.
- (32) Coronavirus means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) including any mutation thereof recognised by the World Health Organisation and Government as a mutation.
- (33) Cost Build-Up as the meaning given in clause 63.1.
- (34) COVID-19 means the official designation by the Government of the disease which can be caused by Coronavirus.
- (35) COVID-19 Related Action is any
- action taken,
  - restriction imposed,
  - restriction lifted or
  - change in any restriction
- by the Government or other government of another country after the Contract Date to control Coronavirus and COVID-19.
- (36) 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.
- (37) The Data Protection Legislation is
- the General Data Protection Regulation (EU 2016/679).[1](#)
  - the Law Enforcement Directive (LED) (Directive EU 2016/680).[1](#)
  - the Data Protection Act 2018 and
  - any other data protection laws and regulations applicable in England.
- (38) Integration Partner Risk and Opportunities Register has the meaning defined in Annex 01 to Volume 2B of the Scope.

- (39) Delivery Phase has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (40) Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (41) Documentation has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (42) 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).
- (43) Enforcement Action is enforcement action brought by a regulatory authority against the *Consultant* 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.
- (44) Extension Period is the *extension period* unless later changed in accordance with the contract.
- (45) EU Reference is any European Union
- regulation,
  - decision,
  - tertiary legislation or
  - provision of the European Economic Area agreement.
- (46) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (47) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the evaluation stage of the competition for the contract.
- (48) Not used.
- (49) 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.
- (50) Government is Her Majesty's Government of the United Kingdom.
- (51) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.

- (52) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (53) Health and Safety Plans are
- a completed Health and Safety Maturity Matrix (HAM) (as defined in Annex 15 to Volume 2B of the Scope) 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 HSMM,
  - 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 HSMM in order to improve the scores recorded in the HSMM 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.
- (54) IP Software has the meaning defined in Annex 01 to Volume 2B of the Scope
- (55) 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*.
- (56) Indemnified Claim is a matter for which the *Consultant* is liable under the contract.
- (57) Indemnified Person has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (58) 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.
- (59) Integrated Client Team has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (60) Integrated Project Programme has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (61) Intellectual Property Rights or IPRs are
- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks (and goodwill attaching to those trade marks), rights in internet domain names and

website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information (as defined in Annex 01 to Volume 2B of the Scope),

- applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction and
- all other rights having equivalent or similar effect in any country or jurisdiction.

(62) Licence is the document entitled “Highways England: Licence” dated April 2015 listed in Annex 03 to Volume 2B of the Scope.

(63) Lump Sum for

- the Mobilisation Activities, is the total of the lump sum items stated in the Baseline Price Estimate for those activities
- a potential Task Order, is the total of the lump sum items stated in the Baseline Price Estimate for that Task or
- an instructed Task Order, is the total of the lump sum items stated in the Task Order,

in each case as may be adjusted in accordance with this contract.

(64) Mobilisation Activities has the meaning defined in Annex 01 to Volume 2B of the Scope.

(65) Mobilisation Phase has the meaning defined in Annex 01 to Volume 2B of the Scope.

(66) Mobilisation Profit is the *mobilisation profit*.

(67) Mobilisation Resource Limit is the *mobilisation resource limit* set out in Contract Data Part One unless changed in accordance with the contract.

(68) Open Source Software has the meaning defined in Annex 01 to Volume 2B of the Scope.

(69) OSS has the meaning defined in Annex 01 to Volume 2B of the Scope.

(70) Parent Company Guarantee is a parent company guarantee of the *Consultant's* performance in the form set out in Annex 16 to Volume 2B of the Scope.

(71) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.

(72) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Legislation.

- (73) Pricing Parameters to be adjusted under clause 6 in respect of any compensation event are the Prices and one or more of the following
- Lump Sum for a Task or for the Mobilisation Activities (or part thereof),
  - Target Cost for a Task,
  - Mobilisation Resource Limit or
  - Baseline Price Estimate for a potential Task.
- as applicable to the relevant Mobilisation Activities, potential Task Order or instructed Task Order. There is no adjustment of the Mobilisation Profit for a compensation event.
- (74) Pricing Schedules are the schedules at Appendix B to the Agreement including the pricing spreadsheets tendered by the *Consultant* being
- Annex A: Mobilisation Baseline Price Estimate,
  - Annex B: Systems and Processes Baseline Price Estimate,
  - Annex C: Core Services Baseline Price Estimate,
  - Annex D: Phase Services Baseline Price Estimate and
  - Annex E: Staff Rates.
- (75) Profit for a Task Order is the Profit Percentage multiplied by the aggregate of the relevant
- Time Charge (if any) and
  - Lump Sum (if any)
- for that Task Order.
- (76) Profit Element has the meaning given in the Incentivisation Schedule.
- (77) Profit Percentage is the *profit percentage*.
- (78) Project Contract Completion has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (79) Quality Management Points are points accrued by the *Consultant* in accordance with the *quality table*.
- (80) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.
- (81) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.



- (82) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* or a Consortium Member is established in another jurisdiction, the tax authority in that jurisdiction.
- (83) RIDDOR Incident is an incident occurring under any contract between
- the *Consultant* or an Associated Company and
  - the *Client* or any other person
- which results in death or serious injury to any worker or non-worker and for which the *Consultant* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).
- (84) Secretary of State is the Secretary of State for Transport.
- (85) Service Plan is any service plan relating to the delivery of any Mobilisation Activities or any Core Service, Phase Service in any Phase in accordance with the relevant Scope (including any amendments thereto accepted by the *Service Manager* in accordance with the contract).
- (86) Services and Systems Schedules has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (87) Staff has the meaning defined in Annex 01 to Volume 2B of the Scope.
- (88) Target Cost for a Task Order is the amount stated in the Task Order as the target for the Time Charge (as adjusted in accordance with this contract).
- (89) Task is work within the *service* which the *Service Manager* may instruct the *Consultant* to carry out within a stated period of time.
- (90) Task Brief is a detailed description of the work required for a Task
- (91) Task Completion is when the *Consultant* 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 *Client* or Others from using the *service* and Others from doing their work.
- (92) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.
- (93) Task Order is the *Service Manager's* instruction to carry out a Task and may contain a Lump Sum or a Time Charge or both. A Task Order with a Time Charge contains a Target Cost in relation to the Time Charge, unless otherwise stated in the Task Order
- (94) Task Schedule is the *task schedule* set out in Contract Data Part Two unless later changed in accordance with the contract.
- (95) Task Starting Date is the date on which the *Consultant* is required to start the work required by a Task Order.

- (96) 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 Contract Date or to a civil penalty for fraud or evasion.
- (97) Tender Commitments Statement is the statement of that name set out in Appendix B to the Form of Agreement detailing the commitments made by the *Consultant* as part of its tender in respect of how it is to Provide the Service.
- (98) Time Charge is, in respect of any period and for any one of the following
- Mobilisation Activities,
  - Core Services,
  - Phase Services or
  - Systems and Processes,
- the amount determined by multiplying the relevant *staff rates* by the total number of days appropriate to that rate (or pro rata for any half day, rounded to nearest half day) for all Staff properly engaged on providing that activity or task in that period. A Time Charge may relate to a Baseline Price Estimate or a Task Order.
- (99) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (see link in Annex 02 in Volume 2B of the Scope).

## 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.”.

## **20 Providing the Service**

20.3 Delete ‘The’ at the beginning of clause 20.3 and insert “Except as provided in section S205 of the Scope”.

## **23 Subcontracting**

23.3 In clause 23.3, after “A reason for not accepting the subcontract documents is that”, insert an additional bullet point

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

## **25 Assignment**

Delete clause 25.

## **26 Disclosure**

Delete clause 26.

## **30 Starting, Completion and Key Dates**

30.2 Add at the end of the clause “The *Service Manager* decides the date of completion of Mobilisation Activities and certifies it within one week thereafter”.

## **31 The programme**

31.1 At the end of the clause insert “The *Consultant* incorporates the programme within each Integrated Project Programme to be developed and submitted for acceptance in accordance with the Scope. From the date on which the first Integrated Project Programme is accepted by the *Service Manager* in accordance with the Scope, the expressions ‘programme’ and ‘Accepted Programme’ mean the Integrated Project Programme accepted in accordance with the Scope.”.

- 31.2 In the first bullet point after “*starting date*” insert “, or Task Starting Date as applicable,” and after “Completion Date” insert “or Task Completion Date, as applicable”.
- In the second bullet point, after “Completion” insert “or Task Completion as applicable”.
- 32 Revising the programme**
- 32.2 Add a further bullet point
- “with any quotation for a Task submitted in accordance with clause Z102.2,”
- 35 Acceleration**
- 35.1 After “achieve Completion before the Completion Date” insert “or Task Completion before the relevant Task Completion Date”. In the second bullet point after “Completion Dates”, insert “, Task Completion Dates”.
- 35.2 After “Completion Date” insert “or Task Completion Date”.
- 35.3 After “Completion Date” insert “, Task Completion Date”.
- 50 Assessing the amount due**
- In each of
- clause 50.1 (line 1),
  - clause 50.2 (line 2) and
  - clause 50.4 (line 2 and bullet points 1 and 2)
- after “due at” insert “the last day of the calendar month before”.
- In clause 50.1, lines 2 and 3, delete “decided by ... *starting date*” and insert “stated in the Contract Data”.
- At the end of the first paragraph of clause 50.2 insert “The *Consultant* makes separate applications for payment in respect of the Mobilisation Activities and each Task and ensures that the Task Order reference is clearly identified in each application for payment relating to a Task.”.
- Delete the second bullet point to clause 50.3 and insert “not used,”
- 51 Payment**
- Delete “three weeks” in the second bullet point and insert “7 days (subject to clause Y(UK) 2.2)”.
- Delete in the second bullet point “, or, if a different period is stated in the Contract Data, within the period stated”.
- 52 Defined Cost**
- Delete and insert “not used”

### Compensation events

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

“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.”.

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

Insert new clause 60.1(21) as follows

“(21) The *Consultant* encounters COVID-19 Related Action which affects the *Consultant’s* ability to Provide the Service which results in

- delays in performing the *service* in accordance with the Accepted Programme,
- a change to the Time Charge for Mobilisation Activities or
- a change in Cost Build-Up for a Task Order’s Time Charge or Lump Sum.

Only the difference between the COVID-19 Related Action and those for which it would have been reasonable to have allowed for, including any best industry practice, is taken into account in assessing a compensation event.

If the COVID-19 Related Action is to reduce the cost of Providing the Service, the affected Pricing Parameters are reduced.”

In the second bullet point of clause 61.2 delete “Defined Cost” and insert “any component of the *Consultant’s* costs as set out in Annexes A to E of the Pricing Schedules” and after “Completion” insert “or Task Completion (as applicable), the Mobilisation Activities, ”.

In clause 61.3 delete “Prices” and insert “Pricing Parameters”. After “Completion Date” insert “or Task Completion Date (as applicable)”.

In both the sixth bullet point of clause 61.4 delete “Defined Cost” and insert “any component of the *Consultant’s* costs forming part of a Time Charge or Lump Sum as derived from the relevant Baseline Price Estimate” and after “Completion” insert “or Task Completion (as applicable), or the Mobilisation Activities”.

In the sentence immediately following the bullet points in clause 61.4

- delete "Prices" and insert "Pricing Parameters" and
- after "Completion Date" insert "or Task Completion Date (as applicable),".

Insert new clauses 61.8 to 61.12 as follows

- "61.8 Notwithstanding clauses 61.1 and 61.3, the *Consultant* notifies the *Service Manager* of a compensation event affecting the Baseline Price Estimate for any potential Task Order (including a compensation event arising from the *Service Manager* giving an instruction or notification or changing an earlier decision) no later than the date the *Consultant* submits its quotation for that potential Task Order.
- 61.9 A compensation event affecting the Baseline Price Estimate for a potential Task Order is not notified by the *Service Manager* or the *Consultant* after the date the *Consultant* submits its quotation for that potential Task Order.
- 61.9 A compensation event affecting the Baseline Price Estimate for a potential Task Order (whether or not notified before the date the *Consultant* submits its quotation for that potential Task Order) does not adjust the Prices for that Task Order when instructed.
- 61.10 Whilst a compensation event adjusting the Baseline Price Estimate for a potential Task Order is notified in accordance with clause 61.8, depending on the nature of that compensation event and the surrounding circumstances, an adjustment to the Baseline Price Estimate for that potential Task Order may not be capable of proper assessment
- at the time of notification or
  - until the *Service Manager* instructs the *Consultant* to submit a quotation for that potential Task Order and provides the Task Brief.
- 61.11 The *Consultant* undertakes such enquires, monitoring and reviews as it is entitled under the contract, and which an experienced consultant would undertake, to keep itself informed at all times of events affecting the service which may be a compensation event adjusting a Baseline Price Estimate for a potential Task Order and notifies the *Service Manager* accordingly in accordance with clause 61.8.
- 61.12 A compensation event for a potential Task Order which ought to have been notified in accordance with clauses 61.8 and 61.11, which is not so notified, is treated as having been taken into account in
- the *Consultant's* accepted quotation for that Task Order in accordance with clause Z102.2 or
  - by the *Service Manager's* assessment of the pricing for that Task Order in accordance with clause Z102.5

and no compensation event for a Task Order is notified before the Task Starting Date".

In clause 62.2, delete "Prices" and insert "Pricing Parameters."

Delete clause 63.1 insert " Subject to clause 63.15, the change to the Pricing Parameters for the

- Mobilisation Activities,
- potential Task Orders and
- instructed Task Orders

is assessed as the effect of the compensation event on the build-up of the relevant Time Charge and Lump Sum in the

- Baseline Price Estimate for the Mobilisation Activities and potential Task Orders and
- instructed Task Orders,

(referred to as the "Cost Build-Up") as follows

- for Time Charges
  - the actual Time Charge for the work already done and
  - the forecast of the Time Charge of the work not yet to be done

If the compensation event arose from the *Service Manager* giving an instruction changing an earlier decision or correcting an assumption, the date which divides the work already done from the work yet to be done is the date of that communication. In all other cases the date is the date of the notification of the compensation event.

If the effect of the compensation event is to reduce the total Time Charge the Pricing Parameters are reduced and

- for Lump Sums
  - for cost elements within the Cost Build-Up which are applicable in assessing the effects of the compensation event relate to people costs, then the effect is assessed as if it was Time Charge and
  - for other cost elements within the Cost Build-Up which are applicable in assessing the effects of the compensation event are used in that assessment at the values in the Cost Build-Up without adjustment or indexation and
- only if a compensation event
  - affects any cost element, that cost element is adjusted in the Cost Build-Up,
  - requires a new cost element not included or allowed for in the Cost Build-Up, that new cost element is added to the Cost Build-Up and

- requires any cost element to be omitted, that cost element is omitted from the Cost Build-Up.

If the effect of the compensation event is to reduce the total sum of cost elements, the Pricing Parameters are reduced.

Any such adjusted or new cost element under this clause 63.1 is evaluated on an open book basis using current prices at the date of the compensation event and is then deflated in accordance with indexation under clause Z100 to obtain the equivalent prices at the Contract Date.

The relevant (if any and as applicable)

- existing unadjusted cost elements,
- deflated adjusted or new cost elements and
- omitted cost elements

are then used to change the Pricing Parameters (as applicable) under this clause 63.1.”.

In clause 63.2 delete "Prices" and insert "Pricing Parameters”.

Delete clause 63.3.

In clause 63.4 delete “Defined Cost and the event is” in line 1 and insert “the Pricing Parameters” and delete the two bullet points. Delete in the last line "Prices" and insert "Pricing Parameters.”.

At the end of the first paragraph of clause 63.5 insert the following additional paragraph

“A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, the planned Task Completion is later than the planned Task Completion as shown on the Accepted Programme current at the dividing date.”.

In clause 63.6 delete "Prices" and insert "Pricing Parameters” and after “Completion Date” insert “, any Task Completion Date”.

In line 2 of clause 63.9 delete “Defined Cost and time” and insert “*staff rates, lump sums*”.

In clause 63.10, delete "Prices" and insert "Pricing Parameters”, and after “Completion Date” insert “or Task Completion Date”.

Insert the following new clause

“63.15            Assessments for changed Pricing Parameters for compensation events are in the form of changes to the Mobilisation Resource Limit, Time Charge and Lump Sum in the Baseline Price Estimate or Task Order (as applicable).”.



In line 1 of clause 66.2 delete "Prices" and insert "Pricing Parameters". After "Completion Date" insert ", the Task Completion Date, the programme for the Task".

**83 Insurance cover**

Delete clause 83 and insert

"83.1 The *Consultant* provides the insurances at the levels stated in the Contract Data and to comply with the requirements set out in Annex 03 to Volume 2B of the Scope."

**87 Limitation of liability**

At the end of clause 87.1, insert the following additional excluded matters

- any amount due from or paid by the *Consultant* to the *Client* under clause X20.4
- loss of or damage to the *Client's* property,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Consultant* to insure (but only excluded up to the required level for each type of insurance stated in the Contract Data),
- loss or damage due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Consultant's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Insert the following new clause:

"87.2 The *Consultant* is not liable to the *Client* for any delay in Completion of the work by the Completion Date or any Task Completion Date, save to the extent the *Consultant* is required to pay the *Client* an amount under clause X20.4."

**90 Termination**

In the first line of the table in clause 90.2, delete "or R22" and insert ", R22 or R23".

**91 Reasons for termination**

Insert new clause 91.9 "The *Client* may terminate in accordance with clause Z9.6 (R23).".

## 93

### **Payment on termination**

In the second bullet point of clause 93.1, delete "Defined Cost" and insert "the Time Charges and Lump Sums (or parts thereof)".

In the fifth line of clause 93.2 delete "*fee percentage*" and insert "Profit Percentage"

Delete both bullet points and insert new bullet points and an additional paragraph as follows

- for the Mobilisation Activities, any excess any excess of the total of the Prices at the Contract Date over the Price for Service Provided to Date for the Mobilisation Activities and
- for each Task Order instructed at the date of termination, any excess of the total of the Prices at the Task Order Starting Date over the Price for Service Provided to Date for that Task Order,

"less any amounts which would have been payable by the *Consultant* in respect of any failure to meet any Key Performance Indicator applicable to the relevant service, in accordance with clause X20, assessed by the *Service Manager*".

## **Option E**

### **Cost reimbursable contract**

Delete clauses 11.2(17) and 11.2(18).

Delete the definition of the Price for Service Provided to Date in clause 11.2(21) and insert

"The Price for Service Provided to Date for the Mobilisation Activities is the total of the

- Time Charge for work which has been completed on time based items for since the *starting date* for those activities,
- proportion of the Lump Sum stated in the Baseline Price Estimate (as adjusted in accordance with the contract) for those activities, assessed using the proportion of work completed since the *starting date* for each lump sum item stated in that Baseline Price Estimate and
- proportion of the Mobilisation Profit, assessed using the lesser of the
  - Mobilisation Profit and
  - proportion that the total of the amounts in the first and second bullet points above bears to the total of the Time Charge and Lump Sum stated in the Baseline Price Estimate for those activities (as adjusted in accordance with the contract),

excluding any Time Charge for Staff

- engaged on the Mobilisation Activities in excess of the Mobilisation Resource Limit,
- engaged on the Mobilisation Activities after the Key Date for completion of the Mobilisation Activities,
- prevented from Providing the Service in accordance with paragraph 1.16 of Annex 15 to the Scope or
- not permitted access under paragraph 1.22 of Annex 15 to the Scope,

and any such amounts are excluded from the Price for Service Provided to Date.

The Price for Service Provided to Date for a Task Order is the total of the

- Time Charge for work which has been completed on time based items since the Task Starting Date for that Task (if any),
- proportion of the Lump Sum stated in the Task Order (as adjusted in accordance with the contract), assessed using the proportion of work completed since the Task Starting Date for that Task for each lump sum item stated in the Task Order (if any) and
- Profit, being the Profit Percentage multiplied by the total of the amounts in the first and second bullet points above,

excluding any Time Charge for Staff

- prevented from Providing the Service in accordance with paragraph 1.16 of Annex 15 to the Scope or
- not permitted access under paragraph 1.22 of Annex 15 to the Scope,

and any such amounts are excluded from the Price for Service Provided to Date. Some Task Orders have no Time Charge or no Lump Sum, and some Task Orders have both."

Delete the definition of the Prices in clause 11.2(23) and insert

"The Prices for the Mobilisation Activities is the forecast of the total of the

- Time Charge for items described as time based in the Baseline Price Estimate for those activities,
- Lump Sum for items described as lump sum in the Baseline Price Estimate for those activities and
- Mobilisation Profit.

The Prices for a Task Order is the forecast of the total of the

- Time Charge for items described as time based in that Task Order (if any),

- Lump Sum for items described as lump sum in that Task Order (if any) and
- Profit for that Task Order.”.

In line 1 of clause 20.5 delete “Defined Cost and *expenses*” and insert “Time Charges and Lump Sums”. At the end of the clause insert. “Forecasts are provided in relation to each Task Order and clearly identify the Task Order to which each forecast relates”.

In line 1 of clause 50.8 delete “of Defined Cost” and after “*Consultant*” insert “for Staff whose *staff rate* or items whose Lump Sums are stated in the Task Order”.

Delete the second sentence of clause 50.8.

In clause 50.9

- delete “Defined Cost” where it appears (four instances) and in each case insert “the Time Charge” and
- delete “the cost” in the fourth bullet point and insert “(as appropriate) the *Consultant’s* original or corrected assessment”.

In the first bullet point of clause 52.3 delete “Defined Cost” and insert “the Time Charge or Lump Sum”. Delete “and *expenses*”.

Add new clause

#### **“55 Task Schedule**

55.1 Information in the Task Schedule is not Scope. If any items in the Task Schedule do not relate to the Scope, the *Consultant* corrects the Task Schedule.

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

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

### **Option X20 Key Performance Indicators**

Delete clause X20.4 and insert

“X20.4 Save as set out in this clause X20.4, in respect of the *Consultant’s* performance during the period to which a report relates, the amount calculated in accordance with the Incentive Schedule to be

- paid to the *Consultant* if the target stated for a Key Performance Indicator is improved upon or
- paid by the *Consultant* to the *Client* if the target stated for a Key Performance Indicator is not met

is included in the assessment of the amount due at the next assessment date following submission of such report, subject to and in accordance with the provisions of the Incentive Schedule.

Any amounts due in respect of the *Consultant's* performance against Key Performance Indicators during the Mobilisation Phase are included in the assessment of the amount due at the next assessment following the end of the Mobilisation Phase.”.

Delete clause X20.5 and insert

“X20.5 The *Client* and the *Consultant* may agree amendments to the Incentive Schedule, including by adding, removing or altering a Key Performance Indicator or its associated weighting and metrics, as part of a Task Order issued in accordance with clause Z102.”

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

After the second sentence of clause Y1.6 insert

“The *Client* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”.

In clause Y1.9, delete the final sentence and replace with

“The *Client* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Consultant* submits it to the *project bank*. A reason for not accepting the Authorisation is that it does not match the application for payment or it does not comply with the requirements of the contract.”.

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

Insert new clause Y2.6 to Y2.9 in Option Y(UK)2 as follows

“Y2.6 Following each *assessment date*, the *Consultant* submits separate invoices for the Mobilisation Activities detailing the amount due in respect of the

- Time Charge for time based Mobilisation Activities,
- Lump Sum for the lump sum items for the Mobilisation Activities (identifying the parts of the Mobilisation Activities to which it relates) and
- Mobilisation Profit.

Y2.7 Following each *assessment date*, the *Consultant* submits separate invoices for each Task Order detailing the amount due in respect of the

- Time Charge for time based items for that Task Order (identifying

the Task Order to which it relates)(if any),

- Lump Sum for the lump sum items for that Task Order (identifying the parts of the Task Order to which it relates) (if any) and
- Profit for that Task Order.

Y2.8 Invoices are in the format and contain all the details specified in the Scope or required by the *Service Manager*.

Y2.9 The *Consultant* submits such information as the *Service Manager* requires to show that the amount stated as due in each invoice has been correctly assessed.”.

### **Schedule of Cost Components**

Delete

### **Short Schedule of Cost Components**

Delete.

## **Z2 Interpretation**

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

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

## **Z3 Recovery of sums due from *Consultant***

Z3.1 Where, under the contract, any 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 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 the *Client* with all such information as the *Client* may require in order to make its decision. If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in Annex 14 to Volume 2B of the Scope or such other form as the *Client* may reasonably require.

Z4.3 If requested by the *Service Manager*, the *Consultant* executes a novation agreement transferring the benefit and burden of the contract to

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

The novation agreement is in the form set out in Annex 13 to Volume 2B of the Scope or such other form as the *Client* may reasonably require.

## **Z5 Not used**

## **Z6 Adjudication**

Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017 including January 2019 amendments) the following additional condition of contract

“Any information concerning the *contract between the parties* obtained by either the *Dispute Resolver* or any person advising or aiding him is confidential, and is not used or disclosed by the *Dispute Resolver* or any such person except for the purposes of this contract. The *Dispute Resolver* 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 which are substantially the same as or are connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator* .

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

- Z7.1** The *Client* may terminate the *Consultant's* obligation to Provide the Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.
- Z7.2** The *Client* may terminate the *Consultant's* obligation to Provide the Service if
- the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 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** The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Consultant*,
  - R19 if the modification or infringement was due to a default by the *Client* and
  - R20 if the modification or infringement was due to any other reason.

## **Z8 Subcontracting**

- Z8.1** The *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 Time Charge of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z8.3** The *Service Manager* may, having stated its reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.
- 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 *Service Manager* for acceptance

- either
  - a European 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 and
- details of any RIDDOR Incident under any contract for which the proposed subcontractor or sub-subcontractor is responsible and of any Enforcement Action brought against 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 *Service Manager* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or sub-subcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Service Manager* is not satisfied that the proposed subcontractor or sub-subcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to the Enforcement Action will not reoccur.

Z8.7 If requested by the *Service Manager*, 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 subcontractor or sub-subcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to the Enforcement Action will not reoccur

the *Service Manager* may instruct the *Consultant* to

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

- Z9 Merger, takeover, Change of Control and financial distress**
- Z9.1 The *Consultant* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.
- Z9.2 If a Change of Control occurs without the *Service Manager's* prior consent or will not allow the *Consultant* 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 and P2 and the amounts due on termination are A1 and A2.
- Z9.3 The *Consultant* notifies the *Service Manager* 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 the contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contract Regulations 2015.
- Z9.4 The *Consultant* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member.
- Z9.5 The *Consultant* notifies the *Service Manager* 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 or

- any Parent Company Guarantee or any Alternative Guarantee becomes invalid or unenforceable for any reason.

Z9.6 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *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 and P2 and the amounts due on termination are A1 and A2.

Z9.7 If a Change of Control occurs, the *Consultant* provides to the *Service Manager*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of the board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
- 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 *Consultant* remains in a position to Provide the Service.

Z9.8 If a Change of Control or any of the events listed in clauses Z9.3 to Z9.5 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) a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor proposed by the *Consultant* and accepted by the *Client*.

The *Consultant* provides the *Service Manager* with the information listed in clause Z9.7 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Service Manager*) and any further information requested by the *Service Manager* concerning the alternative guarantor and the form of any Alternative Guarantee.

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 *Service Manager*, the *Consultant* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Service Manager* for the *Consultant* or relevant Consortium Member the notification refers to.

Z9.11      The *Service Manager* may accept a

- Parent Company Guarantee from the Controller or
- a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor

proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Service Manager'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 *Service Manager* that it will meet the Financial Standing Test by the end of that period.

Z9.12      If

- the *Consultant* fails to notify the *Service Manager* that an event listed in clause Z9.5 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 Z9.10 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
  - a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Service Manager*

within four weeks of a request from the *Service Manager* to do so or
- the *Consultant* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will meet the Financial Standing Test within eighteen (18) months of the *Service Manager'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 proposed by the *Consultant* (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
- agreed by the *Service Manager*.

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 or Alternative Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

Z9.14 If accepted by the *Service Manager*, the alternative guarantor becomes the Guarantor for the *Consultant* or the relevant Consortium Member and the credit ratings become the credit rating for the Guarantor.

Z9.15 A failure to comply with this clause Z9 is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **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 the 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 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 *Consultant* to comply with its obligations.

Z10.7 Where two or more Consortium Members comprise the *Consultant*, 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 *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 or Alternative Guarantee. If a Parent Company Guarantee or Alternative Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Service Manager’s* request, whichever is later.

Parent Company Guarantees are given for

- a standalone company – from its Controller or
- a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member.

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

Alternative Guarantees are given for

- a standalone company – from its alternative guarantor or
- a joint venture (whether incorporated or unincorporated) – from the Guarantor of each Consortium Member.

In all cases it is for the *Client* to decide whether it will accept a Parent Company Guarantee from a company other than the Controller or an Alternative Guarantee from any alternative guarantor.

Z11.2 A failure to comply with this clause Z11 is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **Z12 Discrimination, bullying and harassment**

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 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 general damages as prescribed by law 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 to the *Client* that
- the IP Software does not contain any Open Source Software other than OSS,
  - the OSS is licensed upon terms which permit the use of such Open Source Software by the *Consultant*, the *Client* and the *Client's* end users for all purposes contemplated by the contract and
  - all components of the IP 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, before, during and after 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**

Z14.1 The *Client* may at any time notify the *Consultant* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Consultant* 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 *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the 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 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

then the *Consultant* is treated as having substantially hindered the *Client* or Others in accordance with clause 91.3.

**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.



- Z16.2 The provisions in clauses Z16.3 to Z16.6 only apply if and when the *law of the project* brings into force the statutory provisions relating to VAT charge back referred to in clause Z16.3.
- Z16.3 Reference in this clause Z16 to "applying the reverse charge" (or similar) refers to an arrangement where the recipient of a supply for the purposes of value added tax (VAT), or a member of any tax group of which the recipient of a supply is a member, is responsible for identifying whether it is accountable to Her Majesty's Revenue and Customs for the VAT that is chargeable in respect of the supply.
- Z16.4 In relation to each payment made to the *Consultant* for any supply under the contract
- following issue of the *Service Manager's* certificate under clause 51.1, the *Consultant* within two days issues an appropriate VAT invoice for the supply, confirming whether the reverse charge applies to that supply and
  - unless the reverse charge applies, the *Client* pays to the *Consultant* the amount of any VAT properly chargeable in relation to the supply.
- Z16.5 The *Consultant* includes within each application for payment a request for the *Service Manager* to provide the *Client's* confirmation as to whether the reverse charge applies to the supply that is the subject of the application. The *Service Manager* provides such *Client's* confirmation on or before the issue of the relevant *Service Manager's* certificate relating to the supply.
- Z16.6 If the paying party for the final assessment under clause 53 is the *Client*, the *Consultant*, not later than the due date in accordance with clause 53.1, requests the *Service Manager* for the *Client's* confirmation as to whether the reverse charge applies to the supply that is the subject of the final assessment. The *Service Manager* provides such *Client* confirmation on or before the issue of the payment certificate for the final payment.
- Z17 Termination and removal of part of the service**
- Z17.1 The *Service Manager* may instruct the *Consultant* that
- part of the *service* is to be permanently removed from the contract or
  - for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the contract.

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-R15, R18 or R22 or R23, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*.

Z17.3 If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant*, if instructed by the *Service Manager*,

- 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 so as to ensure a smooth transfer of functions.

Z17.4 Not used

Z17.5 If

- the *Consultant* substantially or repeatedly breaks a requirement of environmental legislation,
- the *Consultant* persistently or materially fails to comply with the Tender Commitments Statement or to meet any of the Performance Requirements or
- a key resource needed by the *Consultant* to Provide the Service is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Service Manager*

then the *Consultant* is treated as having substantially hindered the *Client* or Others in accordance with clause 91.3.

## **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 *Service Manager* and

- the *Service Manager* may instruct the *Consultant* to restore the data in accordance with the *Service Manager's* requirements (and any cost incurred by the *Consultant* in so doing is Disallowed 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 The taking of any steps in accordance with section S508 in the Scope is not a compensation event.
- Z19.2 A failure to comply with section S508 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**
- Z50.1 The *Client* may terminate if the *Consultant* has not produced all the Health and Safety Plans in the form which the contract requires within 45 working days after the *starting date*. This is treated as a termination because of a substantial failure of the *Consultant* 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 *Service Manager* and the *Consultant* agree to the extension before the Health and Safety Plans are due. The *Client* notifies the extension that has been agreed to the *Consultant*.
- Z50.3 If the *Client* does not terminate, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Consultant* has produced all the Health and Safety Plans in the form which the contract requires.
- Z51 Changes to lump sum and target cost prices**
- Z51.1 The Parties may at any time agree a reduction to any of the lump sum prices in the Task Schedule or the target cost of any Task Order.
- Z51.2 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*.
- Z51.3 The lump sum price of each lump sum item on the Task Schedule is reduced at the conclusion of each Review Stage to reflect the changes agreed between the Parties in accordance with section S205.24 of the Scope. The reduced prices apply from the commencement of the next Delivery Phase.
- Z52 Transfer of Undertakings (Protection of Employment) Regulations (TUPE)**
- Z52.1 The inclusion of this clause Z52 does not indicate or confirm that the *Client* considers or anticipates that TUPE will apply at the termination or expiry of the contract.

Z52.2 The *Consultant* represents, warrants and undertakes to the *Client* that no member of Staff is assigned to the *service* to the extent that his or her employment (or any Employment Liabilities in respect of his or her employment) will or is likely to transfer to the *Client* or an Incoming Contractor under TUPE in respect of the termination or expiry of the contract. For the purposes of this clause Z52.2, "Employment Liabilities" include any costs, claims, demands or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred as a result of an indemnity or warranty given or to be given by the *Client*, the *Consultant*, or an Incoming Consultant).

Z52.3 The *Consultant* provides to the *Client* within 10 days of the *Client's* request such information in connection with TUPE as the *Client* may require. The *Consultant* promptly notifies the *Client* of any later change to information provided by it.

Z52.4 The *Consultant* acknowledges that the *Client* may disclose information provided by the *Consultant* to

- any replacement provider of service similar to the *service* and
- any person tendering to become a replacement provider.

The *Client* 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).

Z52.5 During the 8 months period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Client* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of the contract,
- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the contract or
- move or deploy any key person away from the performance of the service.

The *Client* may withhold acceptance if the proposal would increase the cost to the *Client* of this or any future contract for the *service*.

Z52.6 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *service*.

Z52.7

## **Z53            Audit of staff rates**

- Z53.1 Every three months from the *starting date* until Completion of the whole of the *service*, the *Consultant* (or, if the *Consultant* comprises a Consortium, each Consortium Member) provides a report of all Staff used to Provide the Service during the preceding three months, their respective grade and *staff rate* and evidence that their salary base (as described in the Staff Rates Annex E) is appropriate for their staff grade (the “Quarterly Salary Report”).
- Z53.2 On each anniversary of the *starting date*, the chief financial officer or director of finance (or equivalent senior officer agreed with the *Service Manager*) of the *Consultant* (or, if the *Consultant* comprises a Consortium, of each Consortium Member) certifies that all Quarterly Salary Reports provided during the preceding year
- are accurate and not misleading,
  - have been prepared in conformity with generally accepted accounting principles within the United Kingdom,
  - are a true and fair reflection of the information included within the *Consultant’s*
    - books,
    - management and statutory accounts and
    - other documents and records and
  - comply with the contract
- Z53.3 If any Staff used to Provide the Service are Staff of a subcontractor (at any stage of remoteness from the *Client*), and the *Consultant* considers that, in order to comply with any law, the relevant subcontractor should submit its own Quarterly Salary Report directly to the *Client*, the *Consultant* submits a request to that effect to the *Service Manager* for acceptance. A reason for not accepting the *Consultant’s* request is that the law does not require the subcontractor to submit its proposal directly to the *Client*. If the *Service Manager* accepts the *Consultant’s* request, the *Consultant* directs the relevant subcontractor to submit its Quarterly Salary Report directly to the *Client*.
- Z53.4 Where, in order to verify an invoice submitted by the *Consultant*, the *Client* requires a subcontractor (at any stage of remoteness from the *Client*) or Consortium Member to provide
- records of any Time Charge incurred by it or
  - a certificate that its invoice and records of any Time Charge incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the relevant subcontractor or Consortium Member should submit its records or certificate (as applicable) directly to the *Client*, the *Consultant* submits a request to that effect to the *Service Manager* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the relevant subcontractor or Consortium Member to submit its records or certificate (as applicable) directly to the *Client*. If the *Service Manager* accepts the *Consultant's* request, the *Consultant* directs the relevant subcontractor or Consortium Member to submit its records or certificate (as applicable) directly to the *Client*.

Z53.5 The *Consultant* includes in the conditions of contract for each subcontractor

- provisions substantially similar to those set out in clause Z53,
- a right for the *Client* to audit any records and certificates provided by the subcontractor under this clause Z53,
- an obligation on the subcontractor to discuss directly with the *Client* any concerns that the *Client* may have as to the accuracy of any records and certificates provided by the subcontractor,
- a right for the *Consultant* to recover from the subcontractor (or to deduct from any amount that would otherwise be due to the subcontractor) the amount of any overpayment identified by the *Client* as a result of its audits and discussions with the subcontractor and
- an acknowledgment from the subcontractor that the *Client* may enforce these provisions directly against the subcontractor under the Contracts (Rights of Third Parties) Act 1999.

## **Z54 Extension to the Completion Date**

Z54.1 The *Client* may notify the *Consultant* that the Completion Date is to be extended by the Extension Period or such lesser period as the *Client* may specify.

Z54.2 If the Completion Date is extended by less than the Extension Period, the *Client* may further extend the Completion Date so that the total period of extension does not exceed the Extension Period.

Z54.3 The *Client* does not notify the *Consultant* of any extension or further extension to the Completion Date later than 9 months before the Completion Date.

## **Z55 Not used**

<b>Z56</b>	<b>Not used</b>
<b>Z57</b>	<b>Infrastructure Act 2015</b>
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"> <li>• the Licence and</li> <li>• 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>).</li> </ul>
Z57.2	<p>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.</p>
<b>Z58</b>	<b>Revisions to the Tender Commitments Statement</b>
Z58.1	<p>The <i>Consultant</i> may submit to the <i>Service Manager</i> proposed revisions to the Tender Commitments 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"> <li>• it will not enable the <i>Consultant</i> to meet a Performance Requirement,</li> <li>• it will unacceptably increase the risk of failure to meet a Performance Requirement,</li> <li>• it will not enable the <i>Consultant</i> to achieve the level of performance specified in the Tender Commitments Statement or</li> <li>• it will unacceptably increase the risk of failure to achieve the level of performance specified in the Tender Commitments Statement.</li> </ul>
Z58.2	<p>A revision to the Tender Commitments Statement accepted by the <i>Service Manager</i> is not a compensation event.</p>
<b>Z59</b>	<b>Indemnified Claims</b>
Z59.1	<p>The <i>Client</i> notifies the <i>Consultant</i> as soon as practicable of any notice or demand which it receives in respect of a matter for which the <i>Consultant</i> is liable under the contract (an Indemnified Claim).</p>
Z59.2	<p>The <i>Consultant</i> may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the <i>Client</i>. The <i>Client</i> co-operates with and gives reasonable assistance to the <i>Consultant</i> in defending the Indemnified Claim.</p>

- Z59.3 The *Consultant* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Consultant* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Consultant*.
- Z59.5 The *Consultant* bears the costs which it incurs in defending an Indemnified Claim. The *Consultant* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Consultant's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Consultant* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Consultant*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Client* in respect of it.
- Z60 Tax arrangements of Staff**
- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the 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 the 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 the 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 his 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 and Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

**Z61 – Z99 Not used**

**Z100 Indexation**

Z100.1 On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor, equal to  $(L-B)/B$ , where

- L is the last published value of the *index* and
- B is the last value of the *index* published before the Contract Date.

If an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The price adjustment factor calculated at the Completion Date for the whole of the *service* is used for calculating adjustments after this date.

Z100.2 On each anniversary of the Contract Date, each *staff rate* is adjusted by the price adjustment factor

- the adjusted *staff rate* = *staff rate* x (1 + price adjustment factor)

- Z100.3 Each amount due after the anniversary includes an amount for price adjustment which is the sum of
- for the lump sum items on the Task Schedule, the change in the lump sums included in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary before the assessment and
  - the amount for price adjustment included in the previous amount due.
- Z100.4 The Time Charge for compensation events relating to lump sum items on the Task Schedule is assessed using the adjusted *staff rates* current at the time of assessing the compensation event adjusted to the Contract Date by dividing by (1+PAF), where PAF is the price adjustment factor calculated at the last anniversary.
- Z100.5 On each anniversary of the Contract Date, each Baseline Price Estimate is adjusted by the price adjustment factor
- the adjusted Baseline Price Estimate = Baseline Price Estimate x (1 + price adjustment factor)
- Z100.6 On each anniversary of the Contract Date, each target cost in a Task Order is adjusted by the price adjustment factor
- the adjusted target cost = target cost x (1 + price adjustment factor)
- Z100.7 On each anniversary of the Contract Date, each lump sum in a Task Order or for the Mobilisation Activities is adjusted by the price adjustment factor
- the adjusted lump sum = lump sum x (1 + price adjustment factor)
- Z100.8 Notwithstanding clause Z100.1 to Z100.7, there is no adjustment under this clause Z100 to any lump sum item, Time Charge or Mobilisation Profit (including where arising out of any compensation event) in respect of the Mobilisation Activities.
- Z101 The final accounting assessments**
- Z101.1 Within thirteen weeks after the date on which any Task Completion is achieved (or, in the case of Mobilisation Activities, within thirteen weeks of the end of the Mobilisation Phase) the *Service Manager*
- makes an assessment of the final amount due for the relevant Task or Mobilisation Activities (as applicable) and
  - notifies the *Consultant* of that assessment and provides details of how

the assessment has been made.

Z101.2 The *Service Manager* gives the *Consultant* details of how the amount due has been assessed. The Party to whom payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager's* notification. The final payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date.

Z101.3 The *Service Manager's* assessments are conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable) unless a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

Z101.4 The assessment of the final amount due is changed to include

- any agreement the Parties reach and
- a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable).

## **Z102 Tasks**

Z102.1 The *Service Manager* may issue a Task Order to the *Consultant*. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The instruction includes

- a Task Brief,
- a job description for any new Highways England Role,
- a requirement to assess the pricing for the Task in accordance with the Baseline Price Estimate (as adjusted in accordance with this clause Z102.1)

- a requirement to take into account any relevant Service Plan (including any amendments thereto accepted by the *Service Manager*) and
- the Task Starting Date and Task Completion Date.

For this purpose, the relevant Baseline Price Estimate is adjusted to take into account any relevant

- compensation event under clause 6
- indexation under clause Z100 and
- amendment to the relevant Service Plan accepted by the *Service Manager* in accordance with the contract, and any such adjustment is deemed to be assessed as a compensation event under clause 6.

- Z102.1A The *Consultant* provides the staff rates for the new Highways England Role using the template in the Annex E of the Pricing Documents. The business overhead and the office overhead percentages are not changed.
- Z102.2 The *Consultant* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Consultant* submits details of its assessment with the quotation. If the quotation is not the same as the relevant Baseline Price Estimate (as adjusted under clause Z102.1), the *Consultant* includes details of the reasons for the difference between the quotation and the relevant Baseline Price Estimate (as adjusted under clause Z102.1) including the effects of any COVID-19 Related Action. The *Service Manager* replies within two weeks of the submission. The reply is
- acceptance of the quotation and the issue of the Task Order,
  - an instruction to submit a revised quotation,
  - that the *Service Manager* will be making the assessment or
  - a notification that the Task will not be instructed.
- Z102.3 The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three weeks of being instructed to do so.
- Z102.4 The *Service Manager* extends the time allowed for
- the *Consultant* to submit quotations for a Task or
  - the *Service Manager* to reply to a quotation
- if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.
- Z102.5 The *Service Manager* assesses the pricing for the Task if

- the *Consultant* has not submitted a quotation and details of its assessment within the time allowed or
- the *Service Manager* decides that the *Consultant* has not assessed the Task correctly in a quotation and has not instructed the *Consultant* to submit a revised quotation or
- the quotation is not in accordance with the relevant Baseline Price Estimate (as adjusted under clause Z102.1).

The *Service Manager* notifies the *Consultant* 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 *Consultant's* submission of its quotation for the same Task. This period starts when the need for the *Service Manager's* assessment becomes apparent. The *Service Manager* may assess the pricing for a Task by reference to the relevant Baseline Price Estimate (as adjusted under clause Z102.1). The *Service Manager* may issue a Task Order notwithstanding that there is a dispute on the assessment of the pricing for the Task. The *Client* pays the *Consultant* in accordance with the *Service Manager's* assessment pending resolution of the dispute.

Z102.6 The pricing of each Task as agreed or determined in accordance with this clause Z102 is set out in Task price list.

Z102.7 When a Task Order is issued

- the Task price list is inserted in the Task Schedule,
- the staff rates for the new Highways England Role become *staff* rates and
- the work involved is added to the Scope.

The issue of a Task Order is not a compensation event.

Z102.8 The *Consultant* does not start any work included in the Task until the Task Starting Date or (if no Task Starting Date is specified) the date on which it receives 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.

Z102.9 The *Service Manager* decides the date of Task Completion and certifies it within one week thereafter.

Z102.10 The *Service Manager* may instruct the *Consultant* 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

- the *Service Manager* provides any of the matters listed in clause Z102.1 which it has not provided and

- the *Consultant* submits its quotation for the Task as soon as practical after the Task Order is issued.
- Z102.11 The *Consultant* provides information which shows how each item included in a Task and in the Task Schedule relates to the operations on each programme which it submits for acceptance.
- Z103 Audit, Quality Management Points and Nonconformities**
- Z103.1 Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less, the *Service Manager* does not issue any further Task Orders to the *Consultant* and the *Client* may appoint Others to perform these Tasks.
- Z104 Basis of contract and compensation events**
- Z104.1 The *Consultant* is deemed to have satisfied itself before entering into the contract
- as to the scope and nature of the *service* and its obligations under the contract
  - as to the basis of payment for the *service* and
  - that it has all the information necessary to enable it to Provide the Service in accordance with the contract.
- Z105 Title to equipment and other items to be supplied under the contract (“Equipment”)**
- Z105.1 Whatever title the *Consultant* has to any Equipment passes to the *Client* at the earlier of
- the Equipment being brought into an ICT Location, into a Project Site Office or Compound, onto the *Client’s* premises or to such other location as is identified in a Task Order and
  - the *Service Manager* marking it as for the contract.
- Z105.2 Title to the Equipment passes back to the *Consultant* if the same is removed from the relevant ICT Location, Project Site Office or Compound, *Client’s* premises or other location identified in a Task Order (as applicable) with the *Service Manager’s* permission.
- Z105.3 The *Service Manager* marks Equipment as for the contract if
- the contract identifies it for payment and
  - the *Consultant* has prepared it for marking as the Scope requires.

Z105.4      The *Consultant* removes the Equipment from the relevant ICT Location, Project Site Office or Compound, *Client's* premises or other location identified in a Task Order as applicable (with the *Service Manager's* permission) when it is no longer needed to Provide the Service or to be retained by the *Client*.