Highways England Company Limited

REGIONAL DELIVERY PARTNERSHIP

VOLUME 1c

Delivery Integration Partner (Lot [●])
Form of Agreement (Scheme Contract)

(June 2018)

Description of Scheme: [●]

Contents amendment sheet

Version. No.	Issue Date	Amendments	Initials	Date
1.0	23/04/18	Tender issue		23/04/18
1.1	23/05/18	Tender amendment No 1: • Delete 'Z8' in Z7.1 and replace with 'Z7'. • Annex Two, Z1, Y(UK)2 on page 12 and 13 - Delete 'Y1.2' paragraph number and replace with 'Y2.2' - In the final paragraph delete *'Contractor'* and replace with *'Supplier'*.	CS	09/05/18
1.2	31/05/18	Payment interval changed from quarterly to monthly in Contract Data Part One, Section 5. Payment	CS	31/05/18
1.3	13/06/18	Amendment to 5th bullet of X18.5	CS	13/06/18

THIS SCHEME CONTRACT is made the [.....] day of [.....] [20..]

PARTIES:

1. **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ ("the *Client*") and

2. [.....] a company incorporated in and in accordance with the laws of [.....] having as its registered number [.....] and its registered office at [.....] ("the *Supplier*").[1]

RECITALS

(A) The Parties have entered into a framework contract dated [●] (the "**Framework Contract**") for the delivery of a programme of schemes as part of the *Client*'s Regional Investment Programme.

(B) [Pursuant to the Framework Contract, the *Client* has allocated to the *Supplier* a package of schemes including the *works*, and the Parties have entered into a contract dated [●] recording that allocation (the "**Package Contract**").][2]

(C) Pursuant to the [Framework/Package][3] Contract, the *Supplier* has submitted proposals to the *Client* for the development and construction of the *works*. The *Client* has accepted those proposals and the Parties have agreed to enter into this Agreement in order to record the terms on which the *Supplier* will Provide the Works.

OPERATIVE PROVISIONS

1. DOCUMENTS AND INTERPRETATION

1.1 The documents forming this contract are

1. this Agreement,
2. the terms of the Framework Contract [and the Package Contract][4] so far as relevant to this contract, including in particular the terms governing pricing of the *works*,
3. the contract data at Annex One (the "**Scheme Contract Data**"),
4. the *conditions of contract* identified in the Scheme Contract Data, including the *additional conditions of contract* at Annex Two and

---

1 Amend as appropriate if the *Supplier* is an unincorporated joint venture.

2 Include only if the scheme forms part of a Package.

3 Delete as applicable.

4 Delete if not applicable.

5. the other documents referred to in the Scheme Contract Data.

1.2 In this contract (including the Recitals)

1. terms identified in the framework contract data or in the Scheme Contract Data are in italics and
2. terms defined in the Framework Contract [the Package Contract][5] or the *conditions of contract* have capital initials.

2. OBLIGATIONS OF THE PARTIES

2.1 The *Supplier* agrees to Provide the Works in accordance with this contract.

2.2 The *Client* agrees to pay the *Supplier* for the *works* in accordance with this contract.

Delivered as a deed on the date of this document.

Executed as a deed by the *Supplier*

by [ ]	(print name of Director)
……..	signature of Director
and [ ]	(print name of Director/Company Secretary)
……..	signature of Director/Company Secretary

OPTION 1a *[execution by Highways England under seal]* Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** by affixing its common seal in the presence of:	)))
	Director
	Director/Secretary
OPTION 1b *[execution by Highways England under seal]* Executed as a deed by **HIGHWAYS**	)))

[5] Delete if not applicable.

ENGLAND COMPANY LIMITED by affixing its common seal in the presence of:

Authorised Signatory

Authorised Signatory

OPTION 2a Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** acting by:)))

Director

Director/Secretary

OPTION 2b Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** acting by:)))

Authorised Signatory

Authorised Signatory

ANNEX ONE

Scheme Contract Data

[Note to compiler: This document has been populated with the entries that will apply to all Scheme Contracts. The entries marked @ should be populated when the Scheme Contract is entered into at the start of PCF Stage 3, and only the entries marked $ should be populated (or updated) when a notice to proceed to Stage Two is issued.]

Part one – Data provided by the *Client*

1. General

- The *conditions of contract* are the core clauses and the clauses for main Option C, Option W2 for avoiding and resolving disputes, secondary Options Y(UK)1, Y(UK)2 and Y(UK)3 and the following secondary (X) Options of the NEC4 Engineering and Construction Contract (June 2017):

  [Note: Compiler to select which secondary Options will apply, having regard to the guidance below and the framework guidance note dated [●]. None of the other secondary Options should be included.]

  - Option X2 *[optional clause – to be included only for Schemes of long duration (typically over 2 years) or, in exceptional cases, where Brexit-related changes are anticipated to be an issue]*
  - Option X5 *[optional clause – to be included where sectional completion is required]*
  - Option X7 *[to be included in all contracts]*
  - Option X8 *[to be included in all contracts]*
  - Option X10 *[to be included in all contracts]*
  - Option X11 *[to be included in all contracts]*
  - Option X15 *[to be included in all contracts]*
  - Option X18 *[to be included in all contracts]*
  - Option X20 *[to be included in all contracts]*
  - Option X22 *[to be included in all contracts]*

- The *works* are@ ……

- The *Project Manager* is@

  Name .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

- The *Supervisor* is$

  Name .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

- The Scope is in@ …….....

  .....

  .....

- The Site Information is in@.....

  .....

  .....

- The *boundaries of the site* are@ .....

- The *period for reply* is two weeks, except that@
  - the *period for reply* for …….. is ….. weeks and
  - the *period for reply* for …….. is ….. weeks.

- The following matters will be included in the Early Warning Register@

  .....

  .....

  .....

- Early warning meetings are to be held at intervals no longer than one month.

2. The *Supplier*'s main responsibilities

- The *key dates* and *conditions* to be met are

condition to be met@	*key date$*
1	.....
2	.....
3	.....

3. Time

- The *starting date* is@ .....
- The *access dates* are$

part of the Site	date
1.....	.....
2.....	.....
3.....	.....

- The *Supplier* submits revised programmes at intervals no longer than one month.
- The *completion date* for the whole of the *works* (excluding landscaping aftercare) is$ ….....
- The *Client* [is/is not]@ willing to take over the *works* before the Completion Date.
- The period after the Contract Date within which the *Supplier* is to submit a first programme for acceptance is two weeks.

  [Applies if no programme is identified in part two of the Contract Data]

4. Quality management

- The period after the Contract Date within which the *Supplier* is to submit a quality policy statement and quality plan is two weeks.
- The period between Completion of the whole of the *works* (other than landscaping aftercare) and the *defects date* is 52 weeks.
- The *defect correction period* is four weeks, except that@
  - the *defect correction period* for …….. is …….. weeks.

5. Payment

- The *currency of the contract* is the pound sterling (£).
- The *assessment interval* is monthly. {TA2}

- The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.

- The *Supplier's share percentages* and the *share ranges* are[6]

share range	*Supplier's share percentage*
less than 100%	0%
greater than 100%	0%

- The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Work Done to Date.

6. Compensation events

- The place where weather is to be recorded is@ .....

  .....

- The *weather measurements* to be recorded for each calendar month are

  the cumulative rainfall (mm)

  the number of days with rainfall more than 5 mm

  the number of days with minimum air temperature less than 0 degrees Celsius

  the number of days with snow lying at ..... hours GMT@

  and these measurements:

  .....

  .....

- The *weather measurements* are supplied by@ .....

  .....

- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at ..... and which are available from@ .....

  .....

[6] Note: if the percentages in this table are amended, optional clause Z15 must be included (see the entry relating to Option Z below).

- Where no recorded data are available, assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are@

  .....

  .....

8. Liabilities and insurance

- These are additional *Client's* liabilities@

  .....

  .....

[Only insert additional Client's liabilities following agreement from the Capital Planning and Major Projects Directors. If there are no additional liabilities, delete this section]

Option W2: Resolving and avoiding disputes

- The *tribunal* is arbitration.
- The *arbitration procedure* is the Institution of Civil Engineers Arbitration Procedure (April 2012).
- The place where arbitration is to be held is London.
- The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is the President for the time being of the Institution of Civil Engineers or their nominee.
- The *Senior Representatives* of the *Client* are@

  Name (1) .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

  Name (2) .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

- The *Adjudicator* is the person chosen by the Parties from the list of adjudicators published by the Institution of Civil Engineers.

- The *Adjudicator nominating body* is the Institution of Civil Engineers.

Option X5: Sectional Completion *[if used]*

- The *completion date* for each *section* of the *works* is

section	description@	*completion date$*
1	.....	……..
2	.....	……..
3	.....	……..
4	.....	……..

Option X7: Delay damages *[if used without X5]*

- Delay damages for Completion of the whole of the *works* are £nil per day.

Option X7: Delay damages *[if used with X5]*

- Delay damages for each *section* of the *works* are

section	description@	amount per day
1	.....	£nil
2	.....	£nil
3	.....	£nil
4	.....	£nil
Remainder of the *works*		£nil

Option X8: Undertakings to the *Client* or Others

- The *undertakings to Others* are provided to a person who takes over ownership of the *works* from the *Client*.
- The *Subcontractor undertaking to the Client* is provided by the *Supplier's lead design consultant*.

Option X10: Information modelling

- The period after the Contract Date within which the *Supplier* is to submit a first information execution plan for acceptance is two weeks.

  [Applies if no information execution plan is identified in part two of the Contract Data]

Option X15: The *Supplier*'s design

- The *period for retention* following Completion of the whole of the *works* or earlier termination is 12 years.

Option X18: Limitation of liability

- The *Supplier*'s liability to the *Client* for indirect and consequential loss is limited to@ ……
- For any one event, the *Supplier*'s liability to the *Client* for loss of or damage to the *Client*'s property is limited to@ ……
- The *Supplier*'s liability for Defects due to its design which are not listed on the Defects Certificate is limited to@ ……
- The *Supplier*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters listed in clause X18.5, is limited to@ …….

The *end of liability date* is 12 years after Completion of the whole of the *works*.

Option X20: Key Performance Indicators

- The *incentive schedule* for Key Performance Indicators is

KPI target	Amount paid if target achieved
Additional Opportunity 1 (interim payment)	2.5% of forecast Budget Saving, assessed under clause X22.8(2) (*see Note 1 below*)
Additional Opportunity 1	10% of Budget Saving or, if there is a Budget Overspend, one sixth of the Budget Overspend or of the Band 1 Limit (whichever is lower)
Additional Opportunity 2	10% of Budget Saving or, if there is a Budget Overspend, one sixth of the Budget Overspend or of the Band 1 Limit (whichever is lower)
Additional Opportunity 3	10% of Budget Saving or, if there is a Budget Overspend, one sixth of the Budget Overspend or of the Band 1 Limit (whichever is lower)

Notes to table above:

1 If achieved, the interim opportunity payment (line 1 of the table) is included in the amount due following the issue of a notice to proceed to Stage Two and is excluded from the final amount due, when it is replaced by the corresponding final opportunity payment (line 2 of the table).

2 Any final opportunity payments achieved by the *Supplier* (lines 2 to 4 of the table) are included in the final amount due.

- A report of performance against each Key Performance Indicator is provided at intervals of …….. months.@
- The *start of works date* is@ …….
- The *JTR target* is$ …….
- The *open for traffic date* is@ …….

Option X22: Early *Supplier* involvement

- The Budget (if fixed at the Contract Date) is @£……..
  - The Pricing Information is in Part 1 of the *quotation information* for the Framework Contract.
- The *Contractor* prepares forecasts of the total Defined Cost of the work to be done in Stage Two (in the format specified in the Scope) at intervals no longer than one month.
- The *Supplier* prepares forecasts of the total Project Cost (in the format specified in the Scope) at intervals no longer than one month.
- The *Supplier's budget share percentages* and the *budget share ranges* are

budget share range	*Supplier's budget share percentage*
less than 70%	0%
from 70% to 100%	20%

Option Y(UK)1: Project Bank Account

- The *Supplier* pays any charges made and is paid any interest paid by the *project bank*.

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

- The first *invoice date* is$ …… Later *invoice dates* occur on the same day of each calendar month after the first *invoice date* until all amounts due to the *Supplier* under the contract have been paid.

Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

term	**person or organization**
The provisions of Option Y(UK)1	Named Suppliers

Option Z: *Additional conditions of contract*

- The *additional conditions of contract* are the following clauses in the document entitled "Delivery Integration Partner Scheme Contract – Z clauses (Engineering and Construction Contract)"
  - mandatory clauses Z1 to Z12 and
  - optional clauses [Z13, Z 14 and Z15].@

Clause Z13: *Extended liability period* for Plant *[if used]*

- The *extended liability period* for ……. (state Plant) is …….. months following correction of a Defect or until the *defects date*, whichever is later.@

Clause Z14: Network Rail Possessions *[if used]*

- Indicate whether Z14.1a or b is used@ ……
- The Network Rail possession charge is$

  Type x £…… per possession

  Type y £…… per possession

Part two – Data provided by the *Supplier*

1. General

- The Development Phase OHP Amount is@ £……
- The *construction fee percentage* is@ …….%
- The Fee (if fixed at the Contract Date) is @£……..
- The *working areas* are@$ .....
- The *key persons* are@

  Name (1):

  Job:

  Responsibilities:

  Qualifications:

  Experience:

  Name (2):

  Job:

  Responsibilities:

  Qualifications:

  Experience:

- The following matters will be included in the Early Warning Register@

  .....

  .....

  .....

2. The *Supplier*'s main responsibilities

- The Scope provided by the *Supplier* for its design is in@

  .....

3. Time

- The programme identified in the Contract Data is in@

  ……...

[Applies if a programme is to be identified in the Contract Data]

5. Payment

- The *activity schedule* is in@ .....
- The lump sum for Development Phase Activities is@ ……..
- The *cash flow forecast* is in@ ……
- The total of the Prices at the date of issue of a notice to proceed to Stage Two is$ .....

  [To be completed prior to the issue of a notice to proceed to Stage Two]

Option W2: Resolving and avoiding disputes

- The *Senior Representatives* of the *Supplier* are@

  Name (1) .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

  Name (2) .....

  Address for communications …….....

  .....

  Address for electronic communications ….....

  .....

Option X10: Information modelling

- The *information execution plan* is in@

  ……...

  [Applies if an information execution plan is to be identified in the Contract Data]

Option X22: Early *Supplier* involvement

- The Stage One *key persons* are@

  Name (1):

  Job:

  Responsibilities:

  Qualifications:

  Experience:

  Name (2):

  Job:

  Responsibilities:

  Qualifications:

  Experience:

Option Y(UK)1: Project Bank Account

- The *project bank* is@ ……
- *named suppliers* are@$ ……..

  *[Note: **All** known Tier 2 and 3 suppliers must be listed as named suppliers]*

Clause Z14:[7] Network Rail Possessions *[if used]*

- The *Network Rail possessions* required to Provide the Works are$

  Type x ..... No

  Type y ..... No

Data for the Schedule of Cost Components

- The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	time period
……	……	……..
……	……	……..
……	……	……..

[7] See the footnote to the corresponding entry in Part One.

- The rates for special Equipment are

Equipment	rate
……	……
……	……
……	……

- The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Supplier* are

category of person	rate
……	……
……	……

ANNEX TWO

Z clauses (NEC4 Engineering and Construction Contract – June 2017 edition)

Clause Z1 Changes to Core and Secondary Option Clauses

General

All references in the *conditions of contract* to the *Contractor* are treated as references to the *Supplier*.

11 Identified and defined terms

11.2(10) Delete and insert

"The Fee is the lump sum

- stated in the Contract Data or
- calculated by applying the *construction fee percentage* to the forecast Defined Cost of the Construction Phase Activities at the date when the Parties agree the Budget

unless later changed in accordance with the contract."

11.2(26) In the definition of "Disallowed Cost"

(i) insert an additional sub-bullet under the third main bullet point as follows

- comply with a commitment set out in the Commitments Register or with the *Client's* Behavioural Maturity Framework described in the Scope,

(ii) after "and the cost of" insert the following additional bullet points

- implementing any modifications or enhancements to the *Supplier's* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client's* requirements as stated in the Scope,
- carrying out additional audits of the *Supplier's* quality management system during any period while the number of Quality Management Points in effect is above the Threshold Level,
- corrective action in relation to any Performance Metric for which a score of zero is in effect,
- replacing a *key person* (and any associated costs),

11.2(31) Delete and insert

"The Price for Work Done to Date is

- for Development Phase Activities, the total of the amounts stated in the Cash Flow Forecast to be due on or before the assessment date and
- for Construction Phase Activities (including any Construction Phase Activities which the *Project Manager* instructs the *Supplier* to perform during Stage One)
  - for the whole of the *works* (other than landscaping aftercare if it is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule), the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Supplier* before the next assessment date, plus
  - if landscaping aftercare is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule, the total of the Prices for each such completed activity, plus
  - prior to Completion of the whole of the *works*, an instalment of the Fee calculated by applying the *construction fee percentage* to the total Defined Cost (but such instalment does not exceed the Fee) or
  - after Completion of the whole of the *works*, the Fee."

11.2(32) Delete and insert

The Prices are

- for Development Phase Activities, the lump sum stated in the Contract Data and
- for Construction Phase Activities (including any Construction Phase Activities which the *Project Manager* instructs the *Supplier* to perform during Stage One), the lump sum prices for each of those activities stated in the Activity Schedule

unless later changed in accordance with the contract.

11.2 Add the following defined terms

(36) The Additional Opportunities are

- Additional Opportunity 1 – achieving Start of Works by the *start of works date*,
- Additional Opportunity 2 – achieving Journey Time Reliability during Stage Two equal to or better than the *JTR target* and

- Additional Opportunity 3 – achieving Open for Traffic by the *open for traffic date*.

The detailed metrics for each Additional Opportunity are set out in the Scope.

(37) The Band 1 Limit is

- if clause X22.2B does not apply, an amount calculated as the sum of the Fee and the Development Phase OHP Amount or
- if clause X22.2B applies, twice that amount.

(38) The BCR is the benefit-cost ratio for the *works*, calculated in accordance with the process set out in the Scope.

(39) Budget Overspend is the amount (if any) by which the final Project Cost is more than the final Budget.

(40) Budget Saving is the amount (if any) by which the final Project Cost is less than the final Budget.

(41) The Cash Flow Forecast is the *cash flow forecast* unless later changed in accordance with the contract.

(42) Construction Phase Activities are the activities listed in the Scope as being intended to be performed during Stage Two.

(43) Development Phase Activities are the activities listed in the Scope as being intended to be performed during Stage One.

(44) The Development Phase OHP Amount is the amount so stated in the Contract Data, comprising the head office overhead and profit components of the lump sum for Development Phase Activities.

(45) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.

(46) Enforcement Action is enforcement action brought by a regulatory authority against the *Supplier* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.

(47) The Final BCR is the BCR assessed at Completion of the whole of the *works*.

(48) The Framework Contract is the framework contract between the Parties for the delivery of schemes forming part of the *Client's* Regional Investment Programme within Lot [●].

(49) The High Level Requirements are the *Client's* requirements for the *works* set out in Part 2A of the Scope.

(50) The Investment Baseline is the BCR assessed at the *starting date*.

(51) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the Site and the *works* or any revised systems introduced by the *Client* from time to time.

(52) Package Contract is a contract entered into between the Parties for delivery of a package of schemes of which the *works* form part.

(53) PCF Stage 3 and PCF Stage 5 are the stages of progress of the *works* defined as such in the Project Control Framework.

(54) The Commitments Register is the list of commitments given by the *Supplier* and set out in the Scheme quality plan in relation to delivery of the *works*.

(55) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the Regional Investment Programme.

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

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

- the *Supplier* 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 *Supplier* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).

(58) SGAR3 is the date on which the *Client*'s senior responsible officer notifies the *Supplier* that PCF Stage 3 has been satisfactorily completed.

11.3 Terms defined in the Framework Contract or (where the *works* form part of a Package Contract) in the Package Contract have the same meaning when used in the contract.

20 Providing the Works

20.4 Delete this sub-clause.

21 The *Supplier's* design

21.2 In line 3 after “applicable law” insert “or enable delivery of the vision, objectives and approach described in the Framework Contract”.

26 Subcontracting

26.2 In line 3 after “Works” insert “or that the Subcontractor is not a Named Supplier, unless the Subcontractor has signed a formal waiver expressly confirming that it does not wish to be a Named Supplier”.

26.3 Insert an additional bullet point before the third bullet point

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

28 Assignment

Delete clause 28.

29 Disclosure

Delete clause 29.

44 Correcting Defects

44.3 In the first bullet point after “*defect correction period*” insert “(other than any such period relating to landscaping aftercare)”; in the second bullet point after “Defects” insert “(other than any Defects relating to landscaping aftercare)”.

51 Payment

51.2 Delete the first sentence.

60 Compensation events

60.1(1) Insert additional bullet points before the first main bullet point

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

In the second main bullet point, after “design” insert “or for which the *Supplier* is responsible under clause Z8.1”.

Insert an additional sub-bullet after the second main bullet point

- “in order to rectify a Defect in the design of the *works,*”.

60.1(4) Insert at the end (before the full stop)

“, unless the instruction relates to a notification from the *Supplier* that a conflict of interest may exist or arise”.

60.1(21) Delete this sub-clause.

80 *Client's* liabilities

80.1 Insert at the end of the second main bullet point (before the full stop)

"(excluding a fault in any design for which the *Supplier* has responsibility under the contract)".

Delete the third main bullet point.

83 Insurance cover

Delete clause 83 and insert

"83.1 The *Supplier* provides the insurances stated in, and to comply with the requirements set out in, Annex B to the Scope."

91 Reasons for termination

After 91.8 Insert new clauses

"91.9 The *Client* may terminate if the *Supplier* receives a score of

- zero for the same Performance Metric in two consecutive quarters or twice within a period of four consecutive quarters or
- 4 or below for the same Performance Metric in four consecutive quarters.

In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.

91.10 The *Client* may terminate if

- an event listed in any of clauses 90.2, 90.3 or 90.4 of the Framework Contract occurs,
- the *Supplier* does not take action to reduce the total number of Quality Management Points in effect to below the Threshold Level following the issue of a quality warning notice or
- the *Supplier's lead design consultant*, a key Subcontractor or another key resource needed for the *works* is no longer available and the *Supplier* is unable to propose an alternative resource acceptable to the *Project Manager*.

In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.

91.11 The *Client* may terminate if an event listed in clause 90.5 of the Framework Contract occurs and the Parties have not agreed and implemented the actions needed to overcome or mitigate any resulting conflict of interest. In the event of a termination under this clause, the termination procedures followed are P1 and P3 and the amounts due on termination are A1 and A2.

91.12 The *Client* may terminate if it fails to obtain all statutory and other consents needed for the *works* on terms that will enable the *works* to be delivered within the Budget and in accordance with the Accepted Programme. In the event of a termination under this clause

- if the failure is due to a fault of the *Supplier* in managing the consenting process, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3, including any additional costs incurred by the *Client* in securing the relevant consents or
- if the failure is for any other reason, the termination procedures followed are P1 and P3 and the amounts due on termination are A1 and A2.

91.13 The *Client* may terminate if the *Project Manager* and the *Supplier* have not agreed the Budget prior to the start of PCF Stage 5 and the *Project Manager* has not notified the Budget to the *Supplier*. In the event of a termination under this clause, the termination procedures followed are P1 and P3 and the amounts due on termination are A1 and A2.

91.14 The *Project Manager* may at any time issue an instruction removing part of the *works* from the Scope. Following the issue of an instruction under this clause, the *Client* may appoint another supplier to complete the *works*. The instruction is assessed as a compensation event, except that if the instruction is given for one of reasons R1-R15, R18 or R22 or following the occurrence of an event listed in clauses 91.9, 91.10 or 91.12 (where the failure is due to a fault of the *Supplier*) the assessment includes amount A3."

93 Payment on termination

93.2 In amount A4, line 1, after "The" insert "*construction*".

After 93.6 Insert new clause

"93.7 Where a termination happens during Stage One, amount A1 is amended to read

- the Price for Work Done to Date using the date of termination as the assessment date and
- any other Defined Cost reasonably incurred by the *Supplier* in expectation of completing the Development Phase Activities."

Option X2 Changes in the law *[if used]*

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

Option X10 Information modelling

X10.7(3) Delete this sub-clause.

Option X11 Termination by the *Client*

X11.2 In line 2 delete "A1, A2 and A4" and insert "A1 and A2".

Option X15 The *Supplier*'s design

X15.1 Delete this sub-clause.

X15.2 Delete this sub-clause.

X15.3 Delete this sub-clause.

X15.5 Delete this sub-clause.

Option X18 Limitation of liability

X18.5 Delete the bullet points and insert in their place

- loss of or damage to the *Client's* property,
- delay damages,
- Supplier's share,

- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Supplier* to insure (but only up to the required level for each type of insurance stated in the Scope).
- infringement of the rights of Others,
- loss or damage
- to third party property or
- due to pollution,
- loss arising from breach of
- confidentiality or data protection obligations or
- anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Supplier*'s illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Option X20 Key Performance Indicators

X20.4 Delete the second sentence.

Option X22 Early *Supplier* involvement

X22.1(1) Amend the definition of "Budget" to read:

"Budget is the forecast of the Project Cost

- stated in the Contract Data or
- if not so stated, to be agreed between the Parties using the Pricing Information at SGAR3 or later if the Parties agree (but in any event not later than the start of PCF Stage 5)

unless later changed in accordance with the contract. The Budget includes all the items listed in the "Cost Heads" table in Appendix A to the Pricing Information."

X22.1(4) In the definition of "Pricing Information", line 2, after "assessment" insert "of the Budget and".

X22.2(1) In line 2 delete "One" and insert "Two".

In line 3 delete "the *starting date* until".

In line 4 after "Two" insert "until Completion of the whole of the *works*. Each forecast includes a detailed breakdown of the Defined Cost expected to be incurred in each of the next 12 months and an explanation to justify any changes made since the previous forecast".

Delete the second bullet point and insert "it does not represent a realistic forecast of the Defined Cost expected to be incurred or of when it is to be incurred."

After X22.2 Insert new clauses:

"X22.2A The *Project Manager* may instruct the *Supplier* to perform Construction Phase Activities during Stage One.

X22.2B If the *Project Manager* and the *Supplier* have not agreed the Budget prior to the start of PCF Stage 5, the *Project Manager* may assess the Budget and notify the *Supplier* of the assessment. In that event the *Supplier* is not entitled to a share of any Budget Saving."

X22.3(5) In line 2 delete "stated in the Contract Data".

X22.3(9) Delete the last sentence and insert:

"The Activity Schedule includes only Construction Phase Activities, including any Construction Phase Activities which the *Project Manager* instructs the *Supplier* to perform during Stage One."

After X22.5(3) Insert new sub-clause:

"(4) If a notice to proceed to Stage Two is issued, the *Project Manager* notifies the *Supplier* of the changes needed to the Contract Data to incorporate the details agreed or assessed during Stage One. The Parties sign a memorandum adopting the updated Contract Data."

X22.6 Delete and insert:

"(1) If the *Project Manager* gives an instruction changing the High Level Requirements, the *Project Manager* and the *Supplier* discuss different ways of dealing with changes to the Budget, the Prices for Development Phase Activities, the Cash Flow Forecast and the Fee which are practicable.

(2) The *Project Manager* and the *Supplier* agree changes to the Budget, the Prices for Development Phase Activities, the Cash Flow Forecast and the Fee within four weeks of the event arising. If the *Project Manager* and the *Supplier* cannot agree the changes, the *Project Manager* assesses the changes and notifies the *Supplier* of the assessment.

(3) The *Project Manager* and the *Supplier* take into account in agreeing changes to

- the Prices for Development Phase Activities and the Cash Flow Forecast, the effect of the event on the forecast Defined Cost of the Development Phase Activities and
- the Fee, the *construction fee percentage* applied to the effect of the event on the forecast Defined Cost of the Construction Phase Activities.

(4) The Budget, the Prices for Development Phase Activities, the Cash Flow Forecast and the Fee are not changed for any other reason."

X22.7 Delete and insert:

"(1) If there is a Budget Saving, clause X22.8 applies.

(2) If there is a Budget Overspend and the *works* do not form part of a Package Contract, the *Supplier* pays the Budget Overspend or the Band 1 Limit, whichever is lower. This amount is included in the final amount due.

(3) If there is a Budget Overspend and the *works* form part of a Package Contract, clause 15 of the Package Contract applies.

(4) If there is a termination for any reason prior to Completion of the whole of the *works*, the *Supplier* is not entitled to a share of any Budget Saving and clause X22.9 does not apply.

(5) If, prior to Completion of the whole of the *works*, the *Client* terminates for one of reasons R1 to R15, R18 or R22 or following the occurrence of an event listed in clauses 91.9, 91.10 or 91.12 (where the failure is due to a fault of the *Supplier*), clause X22.7(2) or (if the *works* form part of a Package Contract) clause 15 of the Package Contract applies based on the *Project Manager*'s current forecasts of the final Budget and the final Project Cost. Clause X20.4 does not apply and any interim amount paid for the achievement of Additional Opportunity 1 is excluded from the amount due on termination."

After X22.7 Insert new clause X22.8 headed "**Budget Saving**":

"(1) The *Project Manager* assesses the *Supplier's* share of the difference between the Budget and the final Project Cost. The difference is divided into increments falling within each of the *budget share ranges*. The limits of a *budget share range* are the final Project Cost divided by the Budget

expressed as a percentage. The *Supplier's* budget share equals the sum of the products of the increment within each *budget share range* and the corresponding *Supplier's budget share percentage*.

(2) The *Project Manager* makes a preliminary assessment of the *Supplier's* budget share at the completion of PCF Stage 5 using the current Budget and the forecast final Project Cost. 25% of this share is included in the amount due following the issue of a notice to proceed to Stage Two.

(3) The *Project Manager* makes a further preliminary assessment of the *Supplier's* budget share at Completion of the whole of the *works* (other than the Section comprising landscaping aftercare) using forecasts of the final Budget and the final Project Cost. This share is included in the amount due following Completion of the whole of the *works* (other than the Section comprising landscaping aftercare).

(4) The *Project Manager* makes a final assessment of the *Supplier's* budget share using the final Budget and the final Project Cost. This share is included in the final amount due."

After X22.8 Insert new clause X22.9 headed "**BCR improvement – *works* not part of Package Contract**":

"If

- the *works* do not form part of a Package Contract,
- there is a Budget Saving and
- the Final BCR is equal to or higher than the Investment Baseline

the *Supplier* is paid an amount equal to

- 20% of the *Client*'s share of the Budget Saving plus
- an additional 4% of the *Client*'s share of the Budget Saving for each increment of 0.1 by which the Final BCR is higher than the Investment Baseline

up to a maximum of 100% of the *Client*'s share of the Budget Saving in total.

This amount is included in the final amount due."

Option Y(UK)1 Project Bank Account

Y1.2 In line 1 delete “three” and insert “six”.

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

Y2.2 Delete the first two sentences (including the three bullet points) and insert

“The *Supplier* submits an invoice on or before each *invoice date.* Invoices are in the format and contain all the details specified in the Scope or required by the *Project Manager*. The *Supplier* submits such information as the *Project Manager* requires to show that the amount stated as due in each invoice has been correctly assessed.

The date on which a payment becomes due is the next *invoice date* after the date when the *Supplier* submits an invoice for the amount due (as certified by the *Project Manager*) and certifies the relevant details in accordance with the *Client’*s electronic invoicing system (or the *invoice date*, if the *Supplier* submits its invoice and certifies the details on that date).”

Schedule of Cost Components

Delete and replace with the document entitled “Schedule of Cost Components” at Annex Three.

Clause Z2 Discrimination

Z2.1 The *Supplier* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

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

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

Clause Z3 Subcontracting

Z3.1 The *Supplier* assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.

Z3.2 If the *Supplier* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.

Z3.3 The *Client* may, having stated the reasons, instruct the *Supplier* to remove a Subcontractor. The *Supplier* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.

Z3.4 Before

- appointing a proposed Subcontractor or
- allowing a Subcontractor to appoint a proposed subsubcontractor

the *Supplier* submits to the *Project 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 subsubcontractor 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 subsubcontractor and
- details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor.

Z3.5 The *Supplier* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Project 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 subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Project Manager* is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

Z3.6 If requested by the *Project Manager*, the *Supplier* provides further information to support, update or clarify a submission under clause Z3.4.

Z3.7 If, following the acceptance of a submission under clause Z3.5, it is found that

- one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

the *Project Manager* may instruct the *Supplier* to

- replace the Subcontractor or
- require the Subcontractor to replace the subsubcontractor.

Clause Z4 Adjudication

Z4.1 The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:

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

Z4.2 If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Clause Z5 Assignment and transfer

Z5.1 The *Supplier* 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*.

Z5.2 If requested by the *Client*, the *Supplier* executes a novation agreement (in the form set out in the Scope or such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to

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

Clause Z6 Joint ventures

Z6.1 Where two or more Consortium Members comprise the *Supplier*, clause 91.1 is amended by inserting after "the other Party" wherever it appears (three places) the words "(or, in the case of the *Supplier*, any Consortium Member)".

Clause Z7 Construction Industry Scheme

Z7.1 In this clause Z7 (but not otherwise)

- the Act is the Finance Act 2004 and
- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z7.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z7.3 The *Supplier* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Supplier* under the Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z7.4 If the *Supplier* is registered for payment under deduction or is neither registered nor exempt from registration

- the *Supplier* submits an application for payment which separately identifies the cost of labour and
- the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z8 Single point design responsibility

Z8.1 The *Supplier* accepts sole responsibility for the design of the whole of the *works*, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Client*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of the contract as having been carried out by the *Supplier*.

Clause Z9 Indemnified claims

Z9.1 The *Client* notifies the *Supplier* as soon as practicable of any notice or demand which it receives in respect of a claim made by a third party against the *Client* in respect of a matter for which the *Supplier* is liable under the contract (an Indemnified Claim).

Z9.2 The *Supplier* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Supplier* in defending the Indemnified Claim.

Z9.3 The *Supplier* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.

Z9.4 Where the *Supplier* 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 *Supplier*.

Z9.5 The *Supplier* bears the costs which it incurs in defending an Indemnified Claim. The *Supplier* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Supplier's* defence of the Indemnified Claim.

Z9.6 The *Client* may at any time prior to the settlement of an Indemnified Claim give the *Supplier* notice that the *Client* is taking over the conduct of the Indemnified Claim. On receipt of the *Client*'s notice the *Supplier*

- 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.

Z9.7 Where the reason for the *Client's* notice is not due to the fault of the *Supplier* in conducting the Indemnified Claim, the *Supplier* is released from its indemnity to the *Client* in respect of it.

Clause Z10 Project Bank Account

Z10.1 The *Supplier* includes all Subcontractors and subsubcontractors as Named Suppliers.

Z10.2 The *Client* may at any time notify the *Supplier* 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 *Supplier* 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.

Clause Z11 Corruption or loss of data

Z11.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Supplier's* default so as to be unusable, the *Supplier* immediately reports this to the *Project Manager* and

- the *Project Manager* may instruct the *Supplier* to restore the data in accordance with the *Project Manager's* requirements (and any cost incurred by the *Supplier* in so doing is Disallowed Cost) or
- the *Client* may itself restore the data (and the *Supplier* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

Clause Z12 Landscaping Aftercare

Z12.1 The following *additional conditions of contract* apply after the *defects date* in relation to the Section comprising

landscaping aftercare only

(1) Until the Completion Date, the *Supervisor* notifies the *Supplier* of each Defect as soon as he finds it and the *Supplier* notifies the *Supervisor* of each Defect as soon as he finds it.

(2) The *Supplier* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins when the Defect is notified.

(3) If the *Supplier* is not given access in order to correct a notified Defect before the end of the *defect correction period*, the *Project Manager* assesses the cost to the *Supplier* of correcting the Defect and the *Supplier* pays this amount. The Scope is treated as having been changed to accept the Defect.

(4) If landscaping aftercare is to be paid for as a series of lump sums each linked to an activity on the Activity Schedule, the date when each such activity is completed is an assessment date.

OPTIONAL CLAUSES (to apply only if so stated in the Contract Data)

Clause Z13 *Extended liability period* for Plant

Z13.1 If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant stated in the Contract Data requires the replacement of part of the Plant, the *Supplier* corrects any further Defect in the part which has been replaced during the *extended liability period*.

Z13.2 The *Supplier* carries the risk of loss or damage caused by or resulting from work in correcting a Defect after the *defects date*.

Clause Z14 Network Rail Possessions

Z14.1a The *Supplier* pays to the *Client* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

[or]

Z14.1b The total of the Prices is reduced by the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

[For either option]

Z14.2 In clause 25.3 of the *conditions of contract* insert an additional bullet before the first bullet

- by paying fines or charges to Others,

Clause Z15 The *Supplier*'s share

Z15.1 Clause 54 of the *conditions of contract* is amended as follows

- in clause 54.2, line 1, after "*Supplier*" insert "(subject to clause 54.10)",
- in clause 54.3, lines 2 and 4 (two places), after "*works*" insert "(other than the Section comprising landscaping aftercare)" and
- after clause 54.8, insert new clauses

"54.9 For the purposes of clauses 54 and 93.4, the total of the Prices and the Price for Work Done to Date relate to Construction Phase Activities only, including any Construction Phase Activities which the *Project Manager* instructs the *Supplier* to perform during Stage One.

54.10 The *Supplier* is not paid its share of any saving

- if the total Project Cost exceeds the Budget or
- to the extent that inclusion of the *Supplier*'s share would cause the total Project Cost to exceed the Budget.

54.11 If clause Z15.3 applies, the *Supplier's share percentages* are adjusted as stated in that clause."

Z15.2 In clause 93.4 of the *conditions of contract*, line 1, delete "there is a termination" and insert

- "the *Client* terminates during Stage Two for a reason not stated in the Termination Table or
- the *Supplier* terminates for any of reasons R1-R10, R16 or R19".

Z15.3 If the *Project Manager* and the *Supplier* have not agreed the total of the Prices for Stage Two at the completion of PCF Stage 5, the *Project Manager* may assess the total of the Prices, notify the *Supplier* of the assessment and issue a notice to proceed to Stage Two. In that event, each of the *Supplier's share percentages* is halved.

ANNEX THREE

Schedule of Cost Components

This schedule is part of these *conditions of contract*. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

In this schedule the *Supplier* means the *Supplier* and Associated Companies, but not its Subcontractors.

1 People

The following components of

- the cost of people who are directly employed by the *Supplier* (excluding people identified in the Fee Schedule) and whose normal place of working is within the Working Areas,
- the cost of people who are directly employed by the *Supplier* (excluding people identified in the Fee Schedule) and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and
- the cost of people undertaking design who are directly employed by the *Supplier* (excluding people identified in the Fee Schedule) and who are Providing the Works outside the Working Areas, proportionate to the time they spend working.

11 Wages, salaries and amounts paid by the *Supplier* for people paid according to the time worked on the contract.

12 Payments related to work on the contract and made to people for

(a) overtime

(b) working in special circumstances

(c) special allowances

(d) absence due to sickness and holidays

(e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works.

13 Payments made in relation to people in accordance with their employment contract for

(a) travel, subsistence and lodging in accordance with Highways England's Travel and Subsistence policy

(b) relocation

(c) medical examinations

(d) passports and visas

(e) travel insurance

(f) items (a) to (e) for dependents

(g) protective clothing

(h) contributions, levies or taxes imposed by law

(i) pensions and life assurance excluding payments made in relation to any pensions deficits

(j) death benefit

(k) occupational accident benefits

(l) medical aid and health insurance

(m) a vehicle

(n) safety training specific to Providing the Works.

14 The following components of the cost of people who are not directly employed by the *Supplier* but are paid for by the *Supplier* according to the time worked while they are within the Working Areas.

Amounts paid by the *Supplier*.

2 Equipment

The following components of the cost of Equipment which is used within the Working Areas.

21 Payments for the hire or rent of Equipment not owned by

- the *Supplier*,
- the *Supplier's* ultimate holding company or
- a company with the same ultimate holding company

at the hire or rental rate multiplied by the time for which the Equipment is required.

22 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Supplier*,
- purchased by the *Supplier* under a hire purchase or lease agreement or

- hired by the *Supplier* from the *Supplier's* ultimate holding company or from a company with the same ultimate holding company

at open market rates, multiplied by the time for which the Equipment is required.

23 Payments for Equipment purchased for work included in the contract listed with a time- related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

25 Payments for the purchase price of Equipment which is consumed.

26 Unless included in the hire or rental rates, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

27 Payments for purchase of materials used to construct or fabricate Equipment.

28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

3 Plant and Materials

The following components of the cost of Plant and Materials.

31 Payments for

- purchasing Plant and Materials,

- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

4 Subcontractors

The following components of the cost of Subcontractors.

41 Payments to Subcontractors, excluding Associated Companies, for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Supplier*, which would result in the *Client* paying or retaining the amount twice.

5 Charges

The following components of the cost of charges paid or received by the *Supplier.*

51 Payments for the provision and use in the Working Areas of

- water,
- gas,
- electricity,
- telephone and
- internet.

52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the works.

53 Payments for

(a) cancellation charges arising from a compensation event

(b) buying or leasing land or buildings within the Working Areas

(c) compensation for loss of crops or buildings

(d) royalties

(e) inspection certificates

(f) charges for access to the Working Areas

(g) facilities for visits to the Working Areas by Others

(h) consumables and equipment provided by the *Supplier* for the *Project Manager's* and *Supervisor's* offices.

54 Payments made and received by the *Supplier* for the removal from Site and disposal or sale of materials from excavation and demolition.

6 Manufacture and fabrication

The following components of the cost of manufacture and fabrication of Plant and Materials by the *Supplier* which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas.

7 Design

Not Used

8 Insurance

The following are deducted from cost

- the cost of events for which the contract requires the *Supplier* to insure and
- other costs paid to the *Supplie*r by insurers.