



Highways England Company Limited

NEC4 Professional Service Short Contract

June 2017 (with amendments January 2019)

Contract Data

in relation to a *service* for

**Access Surveys and Guides of Motorway Service
Areas in England**

January 2020

CONTENTS AMENDMENT SHEET

Issue No.	Revision No.	Amendments	Initials	Date

Contract Data

The *Client's* Contract Data

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

The *Client* is

Name

Highways England Company Limited

Address for communications

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

Address for electronic communications

info@highwaysengland.co.uk

The *service* is

Provision of Access Surveys and Guides of Motorway Service Areas in England

The *starting date* is

30 March 2020

The *completion date* is

29 March 2023

The *delay damages* are

nil

per day

The *law of the contract* is

England, subject to the jurisdiction of the Courts of England

The *period for reply* is

two weeks

The *defects date* is

Not applicable

weeks after Completion

The *assessment day* is the

7th day

of each month

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

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

The *Adjudicator* is

Name

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

Address for communications

Address for electronic communications

The interest rate on late payments is

Not applicable

% per complete week of delay

The *Client* provides this insurance

Not applicable

The *Consultant* provides the following insurance cover.

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	One million pounds (£1,000,000.00)	From the <i>starting date</i> until [six (6)] years following completion of the whole of the <i>service</i> or earlier termination.
	in respect of each claim, without limit to the number of claims	
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the <i>Service</i>	One million pounds (£1,000,000.00)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination.
	in respect of each event, without limit to the number of events	
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	One million pounds (£1,000,000.00)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination.
	in respect of each event, without limit to the number of events	

The *Consultant's* total liability to the *Client* which arises under or in connection with the contract is limited to

One million pounds (£1,000,000.00)

The *Adjudicator nominating body* is

Institution of Civil Engineers Arbitration Procedure (April 2012)

The *tribunal* is

arbitration

The arbitration procedure is

the Institution of Civil Engineers Arbitration Procedure (April 2012)

Z14 – Not Used

The *Consultant* is not to pay any charges made and to be paid any *project bank*

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 (with amendments January 2019) and the *additional conditions of contract* clauses Z1 to Z62.

The Consultant's Contract Data

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

The *Consultant* is

Name

Address for communications

Address for electronic communications

The Quality Statement is in

The *fee percentage* is

%

The *people rates* are

category of person

unit

rate

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

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

Contract Data entry relating to Data Protection Legislation

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

Contract Data entries relating to Z Clauses

Z9 - Change of Control and financial distress

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

party	rating agency	credit rating
<i>Consultant</i>		
Consortium Member		

Guarantor

Z14 – Not Used

Z Clause Contents	
Number	Title
Z1	Changes to Core and Secondary Option clauses
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Z14	Not Used
Z15	Tax Non – Compliance
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Z17	Removal of <i>service</i> from the Scope
Z18	Corruption or loss of data
Z19 – Z49	Not Used
Z50	Not Used
Z51	Changes to the Prices
Z52	Not Used
Z53	Not Used
Z54	Not Used
Z55	Not Used
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Z57	Not Used
Z58	Not Used
Z59	Not Used
Z60	Tax Arrangements of appointees
Z61	Not Used
Z62	Third Party Rights

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms:

(12) 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.

(13) 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.

(14) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Consultant*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.

(15) The Contract Date is the date when the contract came into existence.

(16) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.

(17) 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.

(18) 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.

(19) The Data Protection Acts are the General Data Protection Regulation (EU 2016/679) and any other laws or regulations relating to privacy or personal data.

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

(21) Documentation has the meaning defined in the Scope.

(22) 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).

(23) EU Reference is any European Union

- regulation,
- decision,
- tertiary legislation or
- provision of the European Economic Area agreement

(24) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.

(25) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for this contract.

(26) 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.

(27) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.

(28) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(29) 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*).

(30) Indemnified Person has the meaning defined in the Scope.

(31) 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.

(32) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

(33) Open Source Software has the meaning defined in the Scope.

(34) OSS has the meaning defined in the Scope.

(35) Parent Company Guarantee is a guarantee of the *Consultant's* performance in the form set out in the Scope

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

(37) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the Data Protection Acts.

(38) Quality Management Points are points accrued by the *Consultant* in accordance with the quality table in the Scope.

(39) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to this contract.

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

Related Dispute.

(41) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

(42) The Secretary of State is the Secretary of State for Transport.

(43) Staff are employees employed by the *Consultant* or an Associated Company or any Subcontractor to Provide the Service at any time.

(44) Tax Non-Compliance is where a tax return submitted by the *Consultant* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012

- Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Consultant* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- The failure of an avoidance scheme in which the *Consultant* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- Gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

(45) Threshold Level is the threshold level of Quality Management Points stated in the Scope.

Amend the following terms

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.

51 Payment

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

60 Compensation events

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

or

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

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

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

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, and
- the words “includes” or “including” are construed without limitation.

Z3 Recovery of sums due from the *Consultant*.

Z3.1 Where, under the contract a sum of money is recoverable from or payable by the *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 *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement to do so. The *Contractor* 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 the Scope or such other form as the *Client* may reasonably require.

- Z4.3 If requested by the *Client*, the *Consultant* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to
- an organisation established to take over the *Client's* functions or part of them,
 - another public body exercising similar functions,
 - a Department or Office of Her Majesty's Government or
 - a local authority

Z5 Confidentiality

- Z5.1 The *Consultant* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person
- the terms of this contract and
 - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Service

except that the *Consultant* may disclose information

- to its legal or other professional advisers,
 - to anyone employed by it or acting on its behalf as needed to enable the *Consultant* to Provide the Service
 - where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Client* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
 - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
 - which is in the public domain at the time of disclosure other than due to the fault of *the Consultant* or
 - with the consent of the *Client*
- Z5.2 The *Consultant* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

Z6 Adjudication

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

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

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

Z7 Termination - Public Contract Regulations 2015

- Z7.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.
- Z7.2 The *Client* may terminate the contract if
- 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
- R2 if the modification or infringement was due to a default by the *Consultant*,
 - R5 if the modification or infringement was due to a default by the *Client* and
 - R8 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 Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z8.3 Not Used
- Z8.4 The *Client* may terminate if a key subcontractor or another key resource needed for the *service* is no longer available and the *Consultant* is unable to propose an alternative resource acceptable to the *Client*. In the event of a termination under this Z8.4, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.
- Z8.5 Before
- appointing a proposed subcontractor or
 - allowing a subcontractor to appoint a proposed subsubcontractor

the *Consultant* submits to the *Client* 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 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

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

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

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

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

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

the *Client* may instruct the *Consultant* to

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

Z8.9 The *Consultant* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that his appointment will not allow the *Contractor* to Provide the Service. The *Consultant* does not appoint a proposed subcontractor until the *Client* has accepted him.

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

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

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

Z9 Change of Control and financial distress

- Z9.1 The *Consultant* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.
- Z9.2 The *Consultant* notifies the *Client* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant* (or a Consortium Member), or
 - the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z9.3 The *Consultant* notifies the *Client* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member.
- Z9.4 The *Consultant* notifies the *Client* immediately if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor
- its Credit Rating falls below the relevant *credit rating*,
 - there is a further fall in its Credit Rating below the relevant *credit rating*,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
- Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under Z9.5, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.
- Z9.6 If as a result of a Change of Control
- a person or organisation with which the *Client* does not wish to be associated for ethical or reputational reasons is an Associated Company or
 - the *Client* decides (having reviewed any information provided by the *Consultant* and made appropriate inquiries) that the *Consultant* is no longer in a position to Provide the Service
- the *Client* may terminate the *Contractor's* obligation to Provide the Service with

immediate effect. In the event of a termination under Z9.6, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

- Z9.7 If a Change of Control occurs, the *Consultant* provides to the *Client*:
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of the board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client* and
 - any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
 - any other information requested by the *Client* in order to satisfy itself that the *Consultant* remains in a position to perform its obligations under this contract.
- Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Consultant* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Consultant* and accepted by the *Client*.
- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Consultant* is that it does not
- meet the Financial Standing Test,
 - provide the legal opinion required in clause Z9.13 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.
- Z9.10 If so required by the *Client*, the *Consultant* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.
- Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client*'s acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.
- Z9.12 If
- the *Consultant* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
 - neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the Financial Standing Test within the timescale

stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13

- the *Consultant* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
- the *Consultant* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will meet the Financial Standing Test within 18 months of the *Client's* acceptance

the *Client* may treat such failure as a substantial failure by the *Consultant* to comply with its obligations.

Z9.13 If the *Consultant*, a Consortium Member, a Guarantor or an alternative guarantor 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, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- accepted by the *Client*.

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

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

Z10 Joint ventures

Z10.1 This clause applies if the *Consultant* is an unincorporated joint venture.

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant's* obligations under this contract.

Z10.3 The *Consultant* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Consultant* acknowledges that receipt of a communication by the *Consultant's* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Client* in advance of any change to the identity of the *Consultant's* nominated representative.

Z10.4 The *Consultant* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Consultant*.

Z10.5 A Consortium Member gives not less than four weeks' notice to the *Client* of any 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 & 90.2 of the conditions of contract are amended by inserting after “the other Party” the words “or in the case of the *Consultant*, any Consortium Member”.

Z11 Parent Company Guarantee

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

Parent Company Guarantees are given for:

- a standalone company – from its Controller, 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.

- Z11.2 A failure to comply with this condition 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 this contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Consultant* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Consultant* provides to the *Client* the documents which transfer these IPRs to the *Client*.

- Z13.2 The *Consultant* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party. The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client*.

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

damages and equitable relief.

Z13.3 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Z13.4 The *Consultant* warrants to the *Client* that

- the Software does not contain any Open Source Software other than OSS and
- 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.
- all components of the Software:
 - are free from material design and programming errors,
 - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Statement,
 - the Documentation and
- do not infringe any Intellectual Property Rights

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

Z14 Not Used

Z15 Tax Non – Compliance

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

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

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

Z15.3 The *Consultant* is treated as having substantially failed to comply with its obligations if

- the warranty given by the *Consultant* under clause Z15.1 is untrue,

- the *Consultant* fails to notify the *Client* of a Tax Non-Compliance or the *Client* decides that any mitigating factors notified by the *Consultant* are unacceptable.

Z16 Value Added Tax (VAT) Recovery

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

Z17 Termination and removal of part of the service

Z17.1 The *Client* may at any time instruct the *Consultant* that

- part of the *service* is to be permanently removed from the Scope or
- for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the Scope.

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

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R4, R6 or R8, 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 *Client*

- completes the performance of any part of the *service* started prior to the date of termination and
- co-operates with the *Client* or any Incoming Consultant to ensure a smooth transfer of functions.

Z18 Corruption or loss of data

Z18.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultants* default so as to be unusable, the *Consultant* immediately reports this to the *Client* and

- the *Client* may instruct the *Consultant* to restore the data in accordance with the *Client's* requirements 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 - Z50 Not Used

Z51 Changes to Prices

Z51.1 The Parties may at any time agree a reduction to the Prices.

Z51.2 The reduced Prices apply to any service performed after the reduction is agreed.

Z51.3 If the Consultant does not agree a reduction requested by the Client, the Client may terminate the Consultant's obligation to Provide the Service by notifying the Consultant.

Z52 Not Used

Z53 Not Used

Z54 Not Used

Z55 Not Used

Z56 Not Used

Z57 Not Used

Z58 Not Used

Z59 Not Used

Z60 Tax Arrangements of appointees

Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

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

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

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

the *Client* may

- treat such failure as a substantial failure by the *Consultant* to comply with 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 for the purpose of the collection and management of revenue for which they are responsible.

Z61 Not Used

Z62 Third Party Rights

Z62.1 A subcontractor and subsubcontractor have the right to enforce the terms of clause Z8 Subcontracting and Fair payment

Z62.2 Not Used

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