



**National Highways Limited**

## **Scheme Delivery Framework**

### **Contract Data Part 1 and Z Clauses (PSC – Lot 12)**

**September 2021**

### CONTENTS AMENDMENT SHEET

<b>Amend No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>
0	0	Contract Issue	AJP	Sept 21

# Contract Data – Part 1

This is the “PSC Contract Data” referred to in the framework contract applicable to Lot 12.

## PART ONE – DATA PROVIDED BY THE *CLIENT*

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

### 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 with amendments January 2019 and the provisions of the framework contract shall be deemed to be incorporated.

Main Option	C or E as stated in the Work Order		Option for resolving and avoiding disputes	W2
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Secondary Options	X2, X8 (unless disapplied in the Work Order), X10, X11, X18, Y(UK)1, Trust Deed, Joining Deed, Y(UK)2, Y(UK)3 Z1A, Z7A, Z8, Z9A, Z14A, Z16 to Z18, Z50, Z52, Z53, Z57, Z59, Z60, Z100, Z151
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The <i>service</i> is	as stated in the Scope and the Work Order
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The *Client* is

Name	National Highways Limited
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Address for communications	Bridge House, 1 Walnut Tree Close Guildford
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	<p>Surry GU1 4LZ</p> <p>Registered number 09346363</p>
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Address for electronic communications	info@highwaysengland.co.uk
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The *Service Manager* is

Name	the <i>Client Representative</i> as stated in the document entitled “Sublot Details” in <a href="#">Appendix 2</a>
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Address for communications	is as stated in the document entitled “Sublot Details” in <a href="#">Appendix 2</a>
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Address for electronic communications	is as stated in the document entitled “Sublot Details” in <a href="#">Appendix 2</a>
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The Scope is in	The document entitled “PSC Scope” and the Work Order
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The <i>language of the contract</i> is	English	
The <i>law of the contract</i> is the law of	England, subject to the jurisdiction of the Courts of England	
The <i>period for reply</i> is	two weeks	
The <i>period for retention</i> is	12	year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register		
as stated in the Work Order		
Early warning meetings are to be held at intervals no longer than		one month
<b>Contract Data entry relating to Data Protection Legislation</b>		
The contact details of the <i>Client's</i> Data Protection Officer is:		Is as stated in the Framework Information and Scope.
<b>2 The <i>Consultant's</i> main responsibilities</b>		
If the <i>Client</i> has identified work which is set to meet a stated <i>condition</i> by a <i>key date</i>		
The <i>key dates</i> and <i>conditions</i> to be met are		
<i>condition</i> to be met		<i>key date</i>
(1)	as detailed in the Work Order	
The <i>Consultant</i> prepares forecasts of the total Defined Cost plus Fee and <i>expenses</i> at intervals no longer than		one month
<b>3 Time</b>		
The <i>go live date</i> is		stated in the document entitled "Sublot Details" in <a href="#">Appendix 2</a> and being the date before which the Client does not intend to issue a Work Order other than for Mobilisation and (where stated) Design Validation
The <i>starting date</i> is		As stated in the Work Order

The <i>Client</i> provides access to the following persons, places and things	
access	<i>access date</i>
(1)	Office Space (for Lot 12.1 only) As stated in the Scope
The <i>Consultant</i> submits revised programmes at intervals no longer than	
One month	
The <i>completion date</i> for the whole of the <i>service</i> is	
as stated in the Work Order	
The period after the Contract Date within which the <i>Consultant</i> is to submit a first programme for acceptance is	
As stated in the Work Order	
<b>4 Quality management</b>	
The period within which the <i>Consultant</i> is to submit a quality policy statement and quality plan is	
Stated in the Work Order under which the <i>Consultant</i> is instructed to prepare the quality policy statement and quality plan	
The period between Completion of the whole of the <i>service</i> and the <i>defects date</i> is	
52 weeks	
<b>5 Payment</b>	
The <i>assessment interval</i> is	
one calendar month	
The first assessment date is	
6 <sup>th</sup> of the next month following the <i>starting date</i>	

The <i>expenses</i> stated by the <i>Client</i> are			
Item		amount	
Travel and Subsistence but only for work-related travel outside of the Sublot boundary defined in the Scope		Payments in accordance with the National Highways Travel and Subsistence Policy	
The locations for which the <i>Consultant</i> provides a charge for the cost of support people and office overhead are		As detailed in the Scope section 1.10	
The <i>Consultant's share percentages</i> and the <i>share ranges</i> are			
<i>share range</i>		<i>Consultant's share percentage</i>	
less than	<input type="text" value="85"/> %	<input type="text" value="0"/> %	
from	<input type="text" value="85"/> % to <input type="text" value="95"/> %	<input type="text" value="25"/> %	
from	<input type="text" value="95"/> % to <input type="text" value="105"/> %	<input type="text" value="50"/> %	
greater than	<input type="text" value="105"/> %	<input type="text" value="25"/> %	
The <i>exchange rates</i> are those published in		The Financial Times	
on	The assessment date when the payment in another currency is in Price for Service Provided to Date		
<b>6 Compensation events</b>			
These are additional compensation events			

<ul style="list-style-type: none"> <li>(17) The <i>Client</i> notifies the <i>Consultant</i> that payments under the contract will no longer be made using the Project Bank Account</li> </ul>	
<ul style="list-style-type: none"> <li>(18) The <i>Service Manager</i> issues an instruction changing a Work Order</li> </ul>	
<ul style="list-style-type: none"> <li>(19) The <i>Consultant</i> receives a Work Order after the starting date stated in the Work Order</li> </ul>	
<ul style="list-style-type: none"> <li>(20) Z109.1 - An instruction under Z109 which changes the Framework Information.</li> </ul>	
<ul style="list-style-type: none"> <li>(21) Where the <i>Consultant</i> is appointed to Sublot 12.2 and complies with Clause Z52 in relation to Sublot 12.2</li> </ul>	
<b>8 Liabilities and insurance</b>	
The <i>Consultant</i> provides the insurances from the Insurance Table and in accordance with the requirements in <a href="#">Annex 06</a> of the Scope.	
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to	£10,000,000
<b>Resolving and avoiding disputes</b>	
The <i>tribunal</i> is	arbitration
The <i>arbitration procedure</i> 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 <i>arbitration procedure</i> does not state who selects an arbitrator is	
the President for the time being of the Institution of Civil Engineers or his nominee	
The <i>Senior Representatives</i> of the <i>Client</i> are	
Name (1)	



Address for communications	The Cube, 199 Wharfside Street, Birmingham, B1 1RN
Address for electronic communications	[REDACTED]
Name (2)	[REDACTED]
Address for communications	Piccadilly Gate, Store Street, Manchester, M1 2WD
Address for electronic communications	[REDACTED]

## X2: Changes in the law

The *law of the project* is

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

## X8: Undertakings to Others

The *undertakings to Others* are  
provided to

as stated in the Work Order, if any.

## X10: Information modelling

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is

if applicable, as stated  
in the Work Order

## X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to

The Total of the Prices

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

£10,000,000

The *end of liability date* is

12

years after the Completion of the whole of  
the *service*

## Y(UK)1: Project Bank Account

Charges made and interest paid by the  
*project bank*

The *Consultant* is to pay any charges  
made and to be paid any interest paid by  
the *project bank*.

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

If Option Y(UK)2 is used and the final date  
for payment is not fourteen days after the  
date on which payment becomes due

The period for  
payment is

13 days after  
the date on

which  
payment  
becomes  
due

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

Term

*beneficiary*

Prompt payment, Scope para 11.3

A Subcontractor  
subcontractors  
subsubcontractors

Subcontracting, Scope para 11.3

A Subcontractor  
subcontractors  
subsubcontractors

Term

*beneficiary*

The provisions of Options Y(UK)1

Named Suppliers

### Contract Data entries relating to Z Clauses

Z100

The *index* is

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

### Z: Additional conditions of contract

The *additional conditions of contract* are clauses Z1A, Z7A, Z8, Z9A, Z14A, Z16 to Z18, Z50, Z52, Z53, Z57, Z59, Z60, Z100, Z151

Z Clause (PSC) Contents	
Number	Title
Z1A	Changes to Core and Secondary Option Clauses
Z7A	Termination: Public Contract Regulations 2015
Z8	Subcontracting
Z9A	Change of Control and financial distress
Z14A	Project Bank Account
Z16	Value Added Tax Recovery
Z17	Removal of <i>service</i> from the Scope
Z18	Corruption or loss of data
Z50	Health and Safety Plan
Z53	Pensions
Z57	Infrastructure Act 2015
Z59	Indemnified claims
Z60	Tax Arrangements of appointees
Z100	Indexation
Z151	Audit, Contract Management Points and Nonconformities

**Z1A Changes to Core & Secondary Option Clauses**

**11 Identified and defined terms**

**11.2 Add the following defined terms:**

(23) Not used.

(24) Contract Management Points are points accrued by the *Consultant* in accordance with the contract management tables as detailed in [Appendix 4](#).

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

(26) EU Reference is any European Union

- regulation,
- decision,
- tertiary legislation or

provision of the European Economic Sublot agreement

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

(28) Health and Safety Plans are

- A completed Health and Safety Maturity Matrix (HSMM) for the *Consultant* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the HSMM,
- an implementation plan, setting out the actions to be taken by the *Consultant* or each Consortium Member over a period of 12 months following the date of the HSMM in order to improve the scores recorded in the HSMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
- an action plan, setting out the specific actions to be taken under this contract by the *Consultant* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Consultant* or each Consortium Member.

(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 relation to the site (or part of it) in place of the *Consultant*.

(30) Indemnified Claim is a matter for which the *Consultant* is liable under the contract.

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

(32) License is the document entitled "Highways England: License" dated April 2015 listed in [Appendix 2](#) of the Framework Information.

(33) Outgoing Consultant is any agent or consultant appointed by the *Client* or Others to carry out works or provide services similar to the service in relation to the site during the period immediately prior to the *access date*.

(34) Parent Company Guarantee is a guarantee of the *Consultant's* performance in the form set out in the Framework Information.

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

(36) Threshold Level is the threshold level of Contract Management Points stated in [Appendix 4](#).

(37) Transferring Employees are employees of an Outgoing Consultant (or of a Subcontractor of an Outgoing Consultant) employed for the carrying out of work or the provision of services similar to the *service* during the period immediately prior to the *access date*, other than employees who object to being transferred to the *Consultant*.

(38) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

(39) A Work Order is the *Service Manager's* instruction to carry out the *service* in accordance with the Scope of the Work Brief.

Amend the following terms

#### **11.2 (18) Disallowed Cost**

In the definition of "Disallowed Cost"

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

- complying with section 1.2.15 (regarding substance abuse etc.) and clause 1.6.1 (security) in [Appendix 10](#) of the Framework Information and resulting costs,
- implementing any modifications or enhancements to the *Consultant's* data collection systems (or those of a subcontractor, at any stage of remoteness from the Client) to meet the Client's requirements as stated in the Scope,

implementing any modifications or enhancements to the *Consultant's* data collection systems (or those of a subcontractor, at any stage of remoteness from the Client) to meet the Client's requirements as stated in the Scope,

- carrying out additional audits of the *Consultant's* contract management system during any period while the number of Contract Management Points in effect is above the Threshold Level,
- replacing a *key person* (and any associated costs)

## **12 Interpretation and the law**

### **12.2 Delete & replace clause with**

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

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

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

## **23 Subcontracting**

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

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

## **25 Assignment**

Delete clause 25

## **26 Disclosure**

Delete clause 26

## **50 Assessing the amount due**

Delete existing wording in Clauses 50.1, 50.2, 50.3 and 50.6 and replace with:

50.1 The *Service Manager* assesses the amount due at the last day of the calendar month before each *assessment date*. The first assessment date is stated in the Contract Data. Later assessment dates occur on the 6<sup>th</sup> of each calendar month after the end of each *assessment interval* until

- four weeks after the *defects date*
- the *Service Manager* issues a termination certificate.

In assessing the amount due, the *Service Manager* considers an application for payment submitted by the *Consultant* that is date compliant and detail compliant.

If the *Consultant* submits an application for payment which is not in accordance with the contract, the *Service Manager* is not obliged to ascertain (on behalf of the *Consultant*) the amount the *Consultant* considers is due at the last day of the calendar month before each assessment date.

50.2.1. The *Consultant* submits an application for payment to the *Service Manager* no earlier than the 1<sup>st</sup> day of each calendar month and before each assessment date setting out the amount the *Consultant* considers is due at the last day of the calendar month before the *assessment date*.

An application for payment that is not submitted, is submitted earlier than the 1<sup>st</sup> day of each calendar month, is submitted on or after each assessment date, is not in accordance with the contract. The *Service Manager* issues a payment notice pursuant to clause 50.4. An application for payment that is submitted earlier than the 1<sup>st</sup> day of each calendar month or is submitted on or after each assessment date is assessed at the next *assessment interval*.

A date non-compliant application for payment is not construed by the *Service Manager* as a date compliant application for payment until the assessment date falling one calendar month after the date of receipt of the date non-compliant application for payment.

50.2.2 The *Consultant's* application for payment includes details of how the amount has been assessed and all information, in the required format, stated in the Scope.

An application for payment that does not include details of how the amount has been assessed and all information, in the required format, stated in the Scope is not in accordance with the contract. The *Service Manager* issues a payment notice pursuant to clause 50.4.

50.3 If the *Consultant* submits an application for payment in accordance with the contract, the amount due at the last day of the calendar month before the assessment date is

- the Price for Service Provided to Date
- plus other amounts to be paid to the *Consultant*,
- less amounts to be paid by or retained from the *Consultant*.

50.6 The *Service Manager* corrects any incorrectly assessed amount due in a later payment notice (or pay less notice as appropriate).

## **51 Payment**

Delete Clauses 51.1 and 51.2 and replace with:

51.1 The *Service Manager* certifies a payment on or before the 19th of each calendar month. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Consultant* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Consultant*. The Party to which payment is due submits an invoice to the other Party for the amount due (stated in the payment notice) on or after receipt of the *Service Manager's* certificate but no later than the 23<sup>rd</sup> of each calendar month. Payments are in the *currency of the contract* unless otherwise stated in the contract.



51.2 If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

## 60 Compensation events

In clause 60.1(1) delete “or” at the end of the first bullet point and insert a comma. At the end of the clause delete the full stop and insert

or

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

60.1 (4) 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”.

In the sixth bullet point of clause 61.4 delete “Defined Cost” and insert “the *Consultant’s* costs”.

## 63 Assessing compensation events

Insert new clause 63.13:

“The rates agreed pursuant to clause 63.2 shall be reflected in the updated Scope and *quotation information*. After the first claim for a compensation event pursuant to clause 60.1(21) occurs in relation to a Work Order, the Scope and *quotation information* in relation to all subsequent Work Orders will be updated to reflect such agreed new rates. No further compensation events related to the clause 60.1 (21) will be accepted by the *Service Manager*.”

## 83 Insurance cover

Delete clause 83 and insert

83.1 The *Consultant* provides the insurances stated in, and to comply with the requirements set out in, [Annex 6](#) to the Scope.

## **87 Limitation of liability**

At the end of clause 87, insert the following additional excluded matters

- loss of or damage to the *Client's* property,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Consultant* to insure but only up to the required level for each type of insurance stated in the [Annex 6](#) to the Scope.
- loss or damage due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Consultant's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

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

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

### **Option X11**

X11.2 Delete "amounts due on termination are A1 and A3" and insert "amount due on termination is A1."

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

Y1.2 In line 1 delete "three" and insert "six".

Clause Y1.6 is amended by inserting the following after the second sentence. "The *Client* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.

Y1.9

In the second sentence delete "four" and insert "two".

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

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

Delete Y2.1, Y2.2 & Y2.3 and replace with the following:

Y2.1 In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays and a reference to “invoice” shall include an “electronic invoice” where an invoice has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. If the invoice is an electronic invoice it must comply with the standard on electronic invoicing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

Y2.2 The due date for payment is the 17<sup>th</sup> of each calendar month. The due date for payment of a final payment is

- if the *Service Manager* makes an assessment after the *defects date* or the date the last Defect is corrected, five weeks after the issue of the *defects date* or the date the last Defect is corrected, whichever is the later,
- if the *Service Manager* does not make an assessment after the *defects date* or the date the last Defect is corrected, one week after the *Consultant* issues its assessment or
- if the *Service Manager* has issued a termination certificate, fourteen weeks after the issue of the certificate.

The final date for payment is the later of

- thirteen (13) days after the due date for payment and
- seven days after the receipt by the Party making payment of an invoice, issued in accordance with these *conditions of contract*.

The *Service Manager*’s certificate is the payment notice specifying the amount due at the due date for payment (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the *Service Manager* does not make an assessment after the *defects date* or the date the last Defect is corrected, the *Consultant*’s assessment is the payment notice.

If the *Service Manager* does not certify and issue the payment notice in accordance with the contract, the *Consultant*’s application for payment is the payment notice.

Y2.3 If either Party intends to pay less than the notified sum, it issues a pay less notice to the other Party on or before the 27<sup>th</sup> of each calendar month by stating the amount considered to be due or to have been due on the date the pay less notice is served and the basis on which that sum is calculated. A

Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.

### Schedule of Cost Components

Delete and replace with the document entitled "PSC Schedule of Cost Components" in Annex One.

### Short Schedule of Cost Components

Delete.

### Z7A Termination - Public Contract Regulations 2015

Z7A.1 The *Client* may terminate the contract 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.

Z7A.2 The *Client* may terminate the contract 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.

Z7A.3 The procedure and amount due on termination are the same as for

- R18 if the modification or infringement was due to a default by the *Consultant*,
- R19 if the modification or infringement was due to a default by the *Client* and
- R20 if the modification or infringement was due to any other reason.

### Z8 Subcontracting

Z8.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.

Z8.2 If the *Consultant* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.

Z8.3 The *Client* may, having stated the reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.

Z8.4 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 *Service Manager*. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.

Z8.5 Before

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

the *Consultant* submits to the *Service Manager* for acceptance

- either
  - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
  - other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor
- details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor

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

- it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015
- the *Service Manager* is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

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

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

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

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

- replace the Subcontractor or

- require the Subcontractor to replace the subsubcontractor.

## **Z9A Change of Control and financial distress**

- Z9A.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.
- Z9A.2 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 the contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z9A.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.
- Z9A.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.
- Z9A.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 *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z9A.6 If as a result of a Change of Control

- a person or organisation with which the *Client* does not wish to be associated for ethical or reputational reasons is an Associated Company or
- the *Client* decides (having reviewed any information provided by the *Consultant* and made appropriate inquiries) that the *Consultant* is no longer in a position to Provide the Service

the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.

- Z9A.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.
- Z9A.8 If a Change of Control or any of the events listed in clauses Z9A.2 to Z9A.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*.
- ZA9.9 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 Z9A.13 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9A.4 has occurred.
- Z9A.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*.
- Z9A.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.

- Z9A.12 If
- the *Consultant* fails to notify the *Client* that an event listed in clause Z9A.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 Z9A.11 or fails to provide the legal opinion required by clause Z9A.13
  - the *Consultant* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
  - the *Consultant* fails to demonstrate to the *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.

- Z9A.13 If the *Consultant*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Consultant* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
  - 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 Framework Information.

## **Z14A Project Bank Account**

- Z14A.1 The *Client* may at any time notify the *Consultant* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

## **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 *Service Manager* 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-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*.
- Z17.3 If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant* if instructed by the *Service Manager*
- completes the performance of any part of the *service* started prior to the date of termination and
  - co-operates with the *Client* or any Incoming Consultant to ensure a smooth transfer of functions.
- Z17.4 Not used.
- Z17.5 The following are treated as the *Consultant* having substantially hindered the *Client* or Others
- the *Consultant* substantially or repeatedly breaks a requirement of environmental legislation,
  - the *Consultant* persistently or materially fails to comply with the tender commitments or to meet any of the Performance Requirement or
  - a key resource needed by the *Consultant* to Provide the Service is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Service Manager*.

## **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 *Consultant's* default so as to be unusable, the *Consultant* immediately reports this to the *Service Manager* and
- the *Service Manager* may instruct the *Consultant* to restore the data in accordance with the *Service Manager's* requirements (and any cost incurred by the *Consultant* in so doing is Disallowed Cost) or
  - the *Client* may itself restore the data (and the *Consultant* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

## **Z50 Health and Safety Plan**

- Z50.1 The *Client* may terminate if the *Consultant* has not produced all the Health

and Safety Plans in the form which the contract requires within six weeks after the Contract Date. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

- Z50.2 The period for producing the Health and Safety Plans may be extended by not more than four weeks if the *Service Manager* and the *Consultant* agree to the extension before the Health and Safety Plans are due. The *Client* notifies the extension that has been agreed to the *Consultant*.
- Z50.3 If the *Client* does not terminate, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Consultant* has produced all the Health and Safety Plans in the form which the contract requires.

## **Z53 Pensions**

- Z53.1 The *Consultant* indemnifies the *Client* and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which
- relate to pension rights in respect of periods of employment on or after the Contract Date or
- arise out of the failure of the *Consultant*, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of the section headed "Pensions" in the Framework Information.

## **Z57 Infrastructure Act 2015**

- Z57.1 The *Consultant* Provides the Service in compliance with, and so as not to put the *Client* in breach of
- the Licence and
- any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Service Manager* to the *Consultant*).
- Z57.2 The *Service Manager* notifies the *Consultant* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the service. The *Consultant* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

## **Z59 Indemnified claims**

- Z59.1 The *Client* notifies the *Consultant* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Consultant* is liable under the contract (an Indemnified Claim).
- Z59.2 The *Consultant* 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 *Consultant* in defending the Indemnified Claim.
- Z59.3 The *Consultant* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Consultant* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Consultant*.
- Z59.5 The *Consultant* bears the costs which it incurs in defending an Indemnified Claim. The *Consultant* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Consultant's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Consultant* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Consultant*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Client* in respect of it.

## **Z60 Tax Arrangements of 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.

## **Z100 Indexation**

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

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

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

Z100.2 After each anniversary of the Contract Date, each *maximum staff rate* is adjusted by an amount for price adjustment which is the product of the *maximum staff rate* multiplied by the price adjustment factor calculated at the last anniversary. The adjusted *maximum staff rate* is the Maximum Staff Rate.

Z100.3 Compensation events are assessed using the lesser of the *staff rate* or the *maximum staff rate* current at the time of assessing the compensation event.

## **Z151 Audit, Contract Management Points and Nonconformities**

Z151.1 Following the issue of a contract warning notice and until the number of Contract Management Points in effect is reduced to below the Threshold Level, the *Service Manager* does not issue any further Work Orders to the *Consultant* and the *Client* may appoint Others to perform the *service*.

## Annex One

### PSC Schedule of Cost Components

This schedule is part of these *conditions of contract* only when Option C or E is used. An amount is included

- Only if it does not form part of the *expenses*,
- Only in one cost component,
- Only if it is incurred in order to Provide the Services, and
- Only if it does not already form part of the overheads or fee

#### 1 People

1.1 This section applies to people employed by the *Consultant* and Subcontractors but excludes Specialist Subcontractors (see Section 2).

1.2 The *staff rate* for each person who is expected to work on this contract is calculated in accordance with this Schedule. The calculation is carried out:

- within two weeks of the Contract Date,
- on each anniversary of the Contract Date,
- when National Insurance costs change – changes to employer's National Insurance contributions due to change in the law,
- when additional staff are identified to work on a Work Order,
- staff are formally re-assigned to a different role e.g. internal promotion,
- When the *Consultant* has undertaken and implemented a salary review (allowed once per calendar year only), and
- When the *Consultant* undertakes a pay reduction or pay cut to its workforce.

1.3 Each calculation is to make allowance for the most likely costs for each individual and is to be substantiated by a combination of current and historic costs. Allowances for newly recruited staff should be based on historic cost calculations for similar staff.

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- 1.4 The calculation for each *staff rate* shall use the same format as those to calculate the *maximum staff rate* as stated in the Staff Rate Tables forming part of the Work Orders in the *quotation information*.
- 1.5 The *Consultant* is to demonstrate, through benchmarking or other methods, that the costs of people and the cost calculated for each person is in line with the market for such a person. The *staff rate* does not exceed the *maximum staff rate* (National Highways office, *Consultant's* office or Subcontractor's office, as applicable) of staff in the *quotation information*.
- 1.6 The *Consultant* maintains a record of the *staff rate* calculations and a list of the rates for each person. The *Consultant* also maintains a record of staff hours per annum whether working part time or full time on this contract. The *Consultant* provides a copy of the list to the *Client* within four weeks of the Contract Date, whenever an entry is added or changed and on each anniversary of the Contract Date.
- 1.7 The *Consultant* submits each *staff rate* calculation to the Service Manager for approval. The Service Manager either accepts or does not accept the calculation. The reason for not accepting the proposed calculated *staff rates* is that the *staff rate* is not calculated in accordance with this framework contract.
- 1.8 If the Service Manager does not accept the proposed *staff rate* calculation for a person, the previously agreed *staff rate* or *maximum staff rate* (whichever is the less) for that person is used, until a *staff rate* is agreed.
- 1.9 If no previous *staff rate* has been agreed, then the *staff rate* used will be the *maximum staff rate* for that person, less one quarter (25%). Once the first *staff rate* is agreed for a person, the *Consultant* recalculates its previously applied Defined Cost (those assessed at *maximum staff rate* minus 25%) using the agreed *staff rate* or *maximum staff rate* (whichever is the less). An adjustment in the next application for payment is made by the *Consultant* to take into account the difference between the Defined Cost charged at the *maximum staff rate* minus 25% and the agreed *staff rate*.
- 1.10 Where the *Consultant* proposes and the Service Manager agrees that additional staff roles are required outside of those identified in the *quotation information* in order to undertake part of the *service* identified in a Work Order, the *Consultant* proposes a new *maximum staff rate* for the role, calculated in accordance with the framework contract.
- 1.11 The Service Manager either accepts or does not accept the proposed *maximum staff rate*. The reasons for not accepting the proposed *maximum staff rate* are;
- the rate is not representative of the "market rate" for such a role. The *Consultant* shall demonstrate, through benchmarking or other methods, that the *maximum staff rate* is in line with the market for such a person,

- a rate for the proposed role or a similar and equivalent role has already been agreed,
- the proposed role will not be used to undertake part of the *service* identified in a Work Order or is already recovered in the overheads and/or fee or,
- the rate is not calculated in accordance with the framework contract.

1.12 If accepted by the Service Manager, the *maximum staff rate* for the new staff role is used to calculate all future Work Orders, in which that role is required.

1.13 The *Consultant* identifies the costs incurred under the following headings:

1. Cost of people
2. Office Overheads (which does not exceed the *Consultant's* Office Overhead percentage value and National Highways Office Overhead percentage value in the *quotation information*)
3. Business Overheads (which does not exceed the Business Overhead percentage value in the *quotation information*)
4. Subcontract Overheads (which does not exceed the Subcontract Overhead value in the *quotation information*)
5. Directly Employed Fee (which does not exceed the percentage value in the *quotation information*)
6. Sub-Contract Fee (which does not exceed the percentage value in the *quotation information*)

The coverage of the payment under each of these categories, and the method of assessing the payments, is set out below:

a) - Cost of People

Under this component, the *Consultant* identifies:

- costs paid to people. Wages or salary but excluding any form of bonus, benefits in kind and expenses.
- costs incurred in relation to people. Employer's regular pension contributions (excluding any additional payment to reduce pension fund deficit) and national insurance payments (but excluding national insurance payments on any form of bonus, benefits in kind or expenses), medical aid and health insurance, medical examinations, death benefits, occupational accident benefits, personal protective equipment, vehicle or company car allowance (excluding company pool cars) and

travel and subsistence allowances (excluding those separately recoverable under the contract).

For contract staff (Agency Staff) and self-employed people, the hourly rate for a person is the amount paid by the *Consultant* for the services of that person and does not include any recruitment fees and the like (recovered through Business Overheads).

For staff employed by an Associated Company, the *staff rate* is calculated as if the staff member was employed directly by the *Consultant*.

The following calculation is carried out to establish the cost of people employed by the *Consultant*.

<b>Post</b>					<b>Calculation Method</b>
<b>Name</b>					
<b>Cost of people</b>					
Cost paid to people £					A
Cost incurred in relation to people £					B
Annual cost of people £	-	-	-	-	$C = A + B$
Total annual hours per annum (hrs)					D
Total annual hours available (hrs)					E
<b>Hourly cost of people</b> £	-	-	-	-	$F = C / E$

where

- the total hours per annum is the number of hours the *Consultant's* staff member is contracted to work (including contracted annual leave entitlements and public holidays) and
- the annual hours available is the *Consultant's* staff member total hours per annum minus any contracted annual leave entitlements, public holidays, sickness, training etc.

#### b) – Office Overheads

Overhead percentages for the cost of support people and office overhead are as detailed in the *quotation information*.

The cost of the local office is recovered by adding a percentage uplift to the cost of people working in that office. This overhead percentage covers the cost within the local office of office costs, including rent, service charge, maintenance costs, furniture and fittings, utilities, office equipment, consumables, security, cleaning and non-recoverable administrative staff.

Each office from which staff will be working on a Work Order will have its own overhead percentage, calculated as follows:



<i>Location</i>		<i>Calculation Method</i>
<b>Consultant's office overhead</b>		
Cost of office £	-	a
Cost of people employed in the office £	-	b
Consultant's office overhead (Added to cost of people) %	-	c = a/b

This overhead percentage is applied to people working within the office, including those making visits away from the office or working on a short-term basis elsewhere not in excess of two weeks.

Where people are working within a *Consultant's* office which is not people's normal work place for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, the overhead for that office is applied to the cost of people.

Where people are working within an office provided by National Highways (National Highways Office) which is not people's normal work place for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, National Highways Office Overhead is applied to the cost of people working in that office (National Highways Office) which covers the cost within the local office of the *Consultant's* own IT/telephone equipment, corresponding connections and car parking. *Consultant's* office overhead can be claimed once the *Consultant's* people returns from working in a National Highways Office.

Where people are co-located in a Subcontractor's office, no office overhead is applied to the cost of people.

The calculation and percentage for each of the tendered office overheads is agreed at the date this contract came into existence and is fixed for the duration of the contract.

The *Consultant* can propose a new *Consultant's* office overhead to the Service Manager, in instances where additional offices are necessary in order to provide part of the *service* identified in a Work Order.

The *Consultant* provides details and substantiation for the proposed *Consultant's* office overhead. The *Consultant's* office overhead is calculated in the same format and method as detailed above and in the *quotation information*.

The Service Manager either accepts or does not accept the proposed *Consultant's* office overhead. The reasons for not accepting the proposed *Consultant's* office overhead are;

- the proposed *Consultant's* office overhead is greater (as a percentage uplift) than the nearest tendered *Consultant's* office overhead (regardless of whether

the tendered office is still in use by the *Consultant* or not) to the proposed new office (the term “nearest” shall mean the closest geographically tendered *Consultant* office, as the crow flies), or

- the *Consultant* office overhead is not calculated in accordance with the framework contract

If accepted by the Service Manager, the office overhead percentage uplift for the *Consultant's* new office is applied to the cost of people based in the *Consultant's* new office and is fixed for the duration of the contract.

In instances where a proposed *Consultant's* office overhead is not accepted by the Service Manager, the office overhead applied to the cost of people based in the *Consultant's* new office is the nearest tendered office overhead (regardless of whether the tendered office is still in use by the *Consultant* or not) to the new office (the term “nearest” shall mean the closest geographically tendered *Consultant's* office, as the crow flies).

#### c) - Business Overheads

A percentage is added to the hourly cost of people to include allowances for all expenses not recovered through the contract, together with other overheads. The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

The *Consultant* demonstrates the build-up and calculations behind the Business Overhead percentages are substantiated by a combination of current and historic costs. The Business Overheads percentage value is fixed for the duration of the contract.

This percentage is applied to people working within the office, including those making visits away from the office or working on a short-term basis elsewhere not in excess of two weeks.

Where people are working within a *Consultant's* office which is not people's normal work place for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, the Business Overhead percentage for that office is applied to the cost of people.

Where people are working within an office provided by National Highways (National Highways Office) for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, Business Overhead percentage for people working in National Highways Office is applied to the cost of people working in that office (National Highways Office). Business Overhead percentage for people working in *Consultant's* own office can be applied to the cost of people once the *Consultant's* people return to working from National Highways Office.

The table 1 below identifies the various elements that are included in the Business Overheads.

**Table 1 – Business Overhead Components**

Item No	Business Overhead Components
1	Franchises, Royalties, Licences
2	Central, regional or area office management staff (including Directors) and other staff not chargeable to this framework contract
3	Accounting, Auditing and Payroll, Business Development, Human Resources, Recruitment (incl. any third party fees), IT, Procurement, Commercial and other business support services
4	General Contract Management – costs for individuals undertaking contract management functions on this framework contract but are not directly involved in undertaking tasks identified in the Work Orders
5	Research and Development
6	Publicity, Marketing, Sales, Exhibitions
7	Entertainment, charitable donations
8	Rents, Rates, Leases, Services and Servicing of Premises, Stationery, Telephones, Telex, FAX, Postage charges, excluding items covered in the local office overhead
9	IT & Computing, including computer equipment, software and software development, mobile phones but excluding items covered in the local office overhead
10	Asset Depreciation
11	Insurance Premiums
12	The amount of any excess borne by the Consultant in respect of any claims under Employer's Liability and Professional Indemnity Insurances
13	Finance and Interest Charges
14	Severance related to work on this contract
15	Bonuses & Incentives
16	Staff benefits in kind and any national insurance payments
17	Staff expenses and any national insurance payments

18	<b>Staff subscriptions (ICE, IHT etc.)</b>
19	<b>Surveying equipment and other equipment required to Provide the Services</b>
20	<b>Pool Vehicles (Chapter 8 compliant), including all on costs such as servicing, fuel etc.</b>
21	<b>Pension deficit and shortfall fund (allowance to be made for reimbursing contributions attributable to the part of the deficit that has been accrued during this framework contract only and shall not include making good any historic shortfall)</b>
22	<b>Bonds and Guarantees (including provision of parent company guarantees)</b>
23	<b>Training</b>
24	<b>Other central/corporate contributions and overhead charges</b>
25	<b>Legal Costs and Fees</b>
26	<b>Works Items included in the Business and/or Subcontract Overheads (as per the Work Order Schedule):</b>
26.01	Customer Service (PSC Scope 09)
26.02	Traffic Management and Access to Network (PSC Scope 3.8)
26.03	Network Occupancy Requirements (PSC Scope 08)
26.04	Environmental Management and Sustainability (PSC Scope 10)
26.05	Commercial Management (PSC Scope 04)
26.06	Risk Management (PSC Scope 05)
26.07	General Obligations (PSC Scope 11 & Framework Information 06)
27	Adjustment for non-recoverable hours - (An adjustment for non-recoverable hours provides for the Consultant to make adjustment for staff who are forecast to bill less than that total working hours per annum specified in the Staff Rates Table.)
28	Other non-recoverable costs - (Other non-recoverable costs - these should include any costs that the Consultant will incur that are not included in the Overheads Build Up)
29	<b>Other Overheads - Total</b> (please use rows below to specify others(if any) that are not covered above)

d) – Subcontractor Overhead

A percentage is added to the hourly cost of Subcontractor to include allowances for all expenses not recovered through the contract, together with other overheads.

This percentage is added in lieu of Business Overhead and Office Overhead (*Consultant's Office UK, Consultant's Office Outside the UK or National Highways Office Overhead*). The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

This percentage is applied to Subcontractor working within the office, including those making visits away from the office or working on a short-term basis elsewhere not in excess of two weeks.

Where Subcontractor are working within an office which is not Subcontractor's normal work place for a continuous period (including any periods of absence from work for any reason) in excess of two weeks, the Subcontractor Overhead percentage for that office is applied to the cost of Subcontractor.

e) – Fee (*Consultant's Staff*)

A percentage for fee is applied to the hourly Cost of People. The percentage is fixed at the Contract Date and is fixed for the duration of the contract.

The percentage addition for fee is to be the same for each member of staff; the allowance therefore is required to provide a profit contribution for the *Consultant's staff*. The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

This percentage for fee is applied to people working within the office, including those making visits away from the office or working on a short-term basis elsewhere not in excess of two weeks.

Where people are working within an office which is not people's normal work place for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, the percentage for profit for that office is applied to the cost of people.

Where people are working within an office provided by National Highways (National Highways Office) for a continuous period (including any periods of people absence from work for any reason) in excess of two weeks, the percentage for fee for people working in National Highways Office is applied to the cost of people working in that office (National Highways Office). The percentage for fee for people working in *Consultant's own office* can be applied to the cost of people once the *Consultant's* people return to working from National Highways Office.

f) Fee (Subcontractor staff)

A percentage for Subcontract fee is applied to the hourly Cost of People. The percentage is fixed at the Contract Date and is fixed for the duration of the contract.

The percentage addition for Subcontract fee is to be the same for each Subcontractor; the allowance therefore is required to provide a fee contribution for the *Consultant*. The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

This percentage for fee is applied to Subcontractor working within the office, including those making visits away from the office or working on a short-term basis elsewhere not in excess of two weeks.

Where Subcontractor are working within an office which is not Subcontractor's normal work place for a continuous period (including any periods of absence from work for any reason) in excess of two weeks, the percentage addition for Subcontractor fee for that office is applied to the cost of Subcontractor.

### Calculating staff rates

- 1.14 For staff working within their contracted hours, the *staff rate* for each person is calculated as follows:

Location		Calculation Method
<b>People working in Consultant's office (UK)</b>		
Hourly cost of People £		A
Consultant's Office overhead (UK) %		B1
Business overhead (Consultant's own office UK or Subcontractor Office UK) %		C1
Fee (Consultant's own office UK or Subcontractors office UK) %		E1
<b>Total rate - People working in Consultant's Office (UK)</b> £		$R1 = A1 + B1 + C1 + E1$
Or for		
<b>People working in Consultant's office (Outside the UK)</b>		
Hourly cost of People £		A
Consultant's Office overhead (Outside the UK) %		B2
Business overhead (Consultant's own office or Subcontractor's office Outside the UK ) %		C2
Fee (Consultant's own office or Subcontractor's office Outside the UK) %		E2
<b>Total rate - People working in Consultant's Office (Outside the UK)</b> £		$R2 = A + B2 + C2 + E2$
Or for		
<b>People working in National Highways offices</b>		
Hourly cost of people £		A
National Highways Office overhead %		B3
Business overhead (Working in National Highways offices) %		C3
Fee (Working in National Highways offices) %		E3

<b>Total rate – People working in <i>National Highways</i> offices £</b>		$R3 = A + B3 + C3 + E3$
Or for		
<b>People working in Subcontractor's offices (UK)</b>		
Hourly cost of people £		A
Business overhead (Working in <i>Consultant's</i> own office UK or subcontractors office UK) %		C1
Fee (Working in <i>Consultant's</i> own offices UK or Subcontractors office UK) %		E1
<b>Total rate – People working in Subcontractor's offices (UK) £</b>		$R4 = A + C1 + E1$
Or for		
<b>People working in Subcontractor's offices (outside UK)</b>		
Hourly cost of people £		A
Business overhead (Working in <i>Consultant's</i> own office or subcontractors office outside UK) %		C2
Fee (Working in <i>Consultant's</i> own offices or Subcontractors office outside UK) %		E2
<b>Total rate – People working in Subcontractor's offices (Outside UK) £</b>		$R5 = A + C2 + E2$
Or for		
<b>Subcontractors working in <i>Consultant's</i> offices (UK) or <i>National Highways</i> offices</b>		
Hourly cost of people £		A
Subcontract overhead (Working in <i>Consultant's</i> offices UK or <i>National Highways</i> offices) %		D1
Subcontract Fee (Working in <i>Consultant's</i> offices UK or <i>National Highways</i> offices) %		E4
<b>Total rate – Subcontractors working in <i>Consultant's</i> offices (UK) or <i>National Highways</i> offices £</b>		$R6 = A + D1 + E4$
Or for		
<b>Subcontractors working in <i>Consultant's</i> offices (Outside the UK)</b>		
Hourly cost of people £		A
Subcontract overhead (Working in <i>Consultant's</i> offices Outside the UK) %		D2



Subcontract Profit (Working in <i>Consultant's</i> offices Outside the UK) %		E5
<b>Total rate – Subcontractors working in Consultant's offices (Outside the UK)</b> ) £		$R7 = A + D2 + E5$
Or for		
<b>Subcontractor's working in Subcontractor's offices (UK)</b>		
Hourly cost of people £		A
Subcontract overhead (Working in Subcontractor own office UK) %		D3
Subcontract Profit (Working in Subcontractor own office UK) %		E6
<b>Total rate – Subcontractor's working in Sub-contractor's offices (UK)</b> £		$R8 = A + D3 + E6$
Or for		
<b>Sub-contractor's working in Subcontractor's offices (outside UK)</b>		
Hourly cost of people £		A
Subcontract overhead (Working in Subcontractor own office outside UK) %		D4
Subcontract Profit (Working in Subcontractor own office outside UK) %		E7
<b>Total rate – Subcontractor's working in Subcontractor's offices (outside UK)</b> £		$R9 = A + D4 + E7$

1.15 The method of payment is as follows:

- If the *staff rate* nominated in each Work Order is less than the Maximum Staff Rate for the National Highways Role (National Highways Office, *Consultant's* Office or Subcontractor's Office as applicable) in the *quotation information* then the rate payable is the *staff rate* in the Work Order, if approved by the *Client*, or
- If the *staff rate* nominated in each Work Order exceeds the Maximum Staff Rate (National Highways Office, *Consultant's* Office or Subcontractor's Office as applicable) for the National Highways Role in the *quotation information* then the rate payable is the Maximum Staff Rate (National Highways Office or *Consultant's* Office as applicable), if approved by the *Client*.

1.16 For staff working outside the contracted hours, the *staff rate* for each person is calculated as follows;

a) if any of the *Consultant's* or Subcontractor's staff are working (whether for the *Client* or any other client) in excess of their equivalent weekly contracted hours (minus any hours they are engaged on or undertake non-chargeable / billable activities to clients) then the *staff rate* for that staff member for those hours worked (whether for the *Client* or other client) in excess of their equivalent weekly contracted hours (minus any hours they are engaged on or undertake non-chargeable / billable activities to clients) is:

- where a member of staff is contracted to work additional hours at no additional recompense the *staff rate* shall be £0.00
- where the member of staff is recompensed then the *staff rate* is calculated as hourly cost of people + appropriate profit percentage only

where the equivalent weekly contracted hours is calculated as the total hours per annum available divided by the number of weeks per year the *Consultant's* staff is contracted to work including annual leave entitlements and public holidays; unless

b) the *staff rate* exceeds the Maximum Staff Rate (National Highways Office or *Consultant's* Office as applicable) for the National Highways Role then the *staff rate* is the equivalent *staff rate* for the National Highways Role stated in the *quotation information*.

1.14 On the anniversary of the Contract Date, the *Consultant* reconciles the total hours billed for each person for the previous year against the total annual hours available used to calculate the *staff rate*.

This exercise is not required to be undertaken for contract staff (Agency Staff) and self-employed people, who are paid on an hourly basis.

If the total annual hours billed (minus any hours where the member of staff is recompensed for working outside of their contractual hours) exceeds the total annual hours available, the *Consultant* makes an adjustment in the next application for payment for the difference between the total annual hours billed (minus any hours where the member of staff is recompensed for working outside of their contractual hours) and the total annual hours available, multiplied by the latest agreed staff rate for that person.

Example Staff Reconciliation Exercise		
Total annual hours billed	1,750.00 hrs	<i>a</i>
hours where the member of staff is recompensed for working outside of their contractual hours	50.00 hrs	<i>b</i>

<b>Total annual hours billed minus hours where the member of staff is recompensed for working outside of their contractual hours</b>	<b>1,700.00 hrs</b>	<b><math>c = a - b</math></b>
<b>Total annual hours available (as used to calculate the <i>staff rate</i>)</b>	<b>1,650.00 hrs</b>	<b><math>d</math></b>
<b>Hours required to be adjusted in next application for payment by the <i>Consultant</i></b>	<b>-50.00 hrs</b>	<b><math>e = d - c</math></b>
Latest <i>staff rate</i> for the person	£35.00	$f$
<b>Amount adjusted in the next application for payment by the <i>Consultant</i></b>	<b>-£1,750.00</b>	<b><math>g = e \times f</math></b>

Any under recovery against the annual hours available is recovered through Business Overhead, Item 27. No adjustment in the next application for payment is made in this scenario.

## Specialist Subcontractors

1.17 The following components of the cost of specialist Subcontractors.

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

The term “specialist Subcontractor” shall mean any Subcontractor (other than an Associated Company) that provides specialist design services, which;

1. Involves specialist design tasks that the *Consultant* or its Subcontractors cannot reasonably be expected or suitably qualified to undertake (regardless of whether the *Consultant* or Subcontractor has the resource to undertake said task),
2. is not being used to supplement a lack of resource,
3. is procured and paid for on a lump sum basis and no Maximum Staff Rate(s) have been agreed for the roles and,
4. is the subject of a formal subcontract agreement between the *Consultant* and the specialist Subcontractor.

The Service Manager reserves the right to not accept the use of a specialist Subcontractor in lieu of *Consultant's* people or Subcontractors, where the above conditions are not met.

#### Fee (Specialist Subcontractors)

A percentage for Specialist Subcontractor fee is applied to the total Defined Cost of the Specialist Subcontractor. The percentage is fixed at the Contract Date and is fixed for the duration of the contract.

The percentage addition for Specialist Subcontractor fee is to be the same for each Specialist Subcontractor; the allowance therefore is required to provide a profit contribution for the *Consultant*. The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

This is the only Fee to be applied to this component of cost.

### **Charges**

1.18 The following components of the cost of charges paid or received by the *Consultant*

- Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Work Order.

#### Fee (Charges)

A percentage for Charges fee is applied to the total Defined Cost of Charges. The percentage is fixed at the Contract Date and is fixed for the duration of the contract.

The percentage addition for Charges fee is to be the same for each Charge; the allowance therefore is required to provide a profit contribution for the *Consultant*. The calculation of this percentage is agreed at the date this contract came into existence and is fixed for the duration of the contract.

This is the only Fee to be applied to this component of cost.