

## SUBCONTRACT DATA

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

#### 1 General

- The *conditions of subcontract* 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 Engineering and Construction Subcontract June 2017, with October 2020 amendments.

Main Option: B      Option for resolving and avoiding disputes: W2

Secondary Options: [X5], X7, X8, X10, X11, X15, X18, X20, Y(UK)1, Y(UK)2, Y(UK)3, Z.

- The *works* in the main contract are M621 Junction Improvements.
- The *subcontract works* are BRIEF DESCRIPTION OF SUBCONTRACT SCOPE.
- The *Contractor* is
  - Name: Keltbray Highways Limited (company number 12788652) whose registered office is at St Andrews House, Portsmouth Road, Esher, England, KT10 9TA.
  - Address for communications: CEMAR
  - Address for electronic communications: CEMAR
- The *Client* in the main contract is
  - Name: National Highways Limited (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.
  - Address for communications: CEMAR
  - Address for electronic communications: CEMAR
- The *Project Manager* in the main contract is
  - Name: James Finnigan, National Highways Limited.
  - Address for communications: CEMAR
  - Address for electronic communications: CEMAR
- The *Supervisor* in the main contract is
  - Name: INSERT
  - Address for communications: CEMAR
  - Address for electronic communications: CEMAR
- The Subcontract Scope is in **Schedule 1**.
- The Site Information is in **Schedule 2**.
- The *boundaries of the site* are INSERT.
- The *language of this subcontract* is English.
- The *law of the subcontract* is the law of England and Wales subject to the jurisdiction of the courts of England and Wales.
- The *period for reply* by the *Contractor* is three weeks except that
  - The *period for reply* for INSERT is INSERT PERIOD
  - The *period for reply* for INSERT is INSERT PERIOD

- The *period for reply* by the *Subcontractor* is one week except that
  - The *period for reply* for INSERT is INSERT PERIOD
  - The *period for reply* for INSERT is INSERT PERIOD
- The following matters will be included in the Early Warning Register: see **Schedule 3**.
- Early warning meetings are to be held at intervals no longer than one month.

## 2 The *Subcontractor's* main responsibilities

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

| <i>condition</i> to be met | <i>key date</i> |
|----------------------------|-----------------|
| (1) .....                  | .....           |
| (2) .....                  | .....           |
| (3) .....                  | .....           |

## 3 Time

- The *subcontract starting date* is INSERT DATE.
- The *subcontract access dates* are

| part of the Site | date  |
|------------------|-------|
| (1) .....        | ..... |
| (2) .....        | ..... |
| (3) .....        | ..... |

- The *Subcontractor* submits revised programmes at intervals no longer than one month.
- The *subcontract completion date* for the whole of the *subcontract works* is INSERT DATE.
- The *Contractor* is / is not willing to take over the Subcontract Completion Date (Delete as applicable)
- The period after the Subcontract Date within which the *Subcontractor* is to submit a first programme for acceptance is 2 weeks.

## 4 Quality management

- The period after the Subcontract Date within which the *Subcontractor* is to submit a quality policy statement and quality plan is 2 weeks.
- The period between Completion of the whole of the *subcontract works* (other than any landscaping aftercare which may not form part of the Subcontract Scope) and the *defects date* is [52 weeks.]
- The *defect correction period* is two weeks except that
  - The *defect correction period* for works requiring traffic management is 12 weeks.

## 5 Payment

- The *currency of the subcontract* is the pound sterling (£).
- The *assessment interval* is monthly.
- The *interest rate* is 2.5% per annum above the base rate in force from time to time of the Bank of England.

## 6 Compensation Events

- The place where weather is to be recorded is Leeds Met Office.
- The *weather measurements* to be recorded for each calendar month are
  - the cumulative rainfall (mm)
  - the number of days with rainfall more than 5mm
  - the number of days with minimum air temperature less than 0 degrees Celsius
  - the number of days with snow lying at 08:00 hours GMT
- The *weather measurements* are supplied by Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB Telephone 0870 900 0100.
- The *weather data* and the records of past *weather measurements* for each calendar month which were recorded at **INSERT** and which are available from Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone: 0870 900 0100.
- Where no recorded data are available, assumed values for the ten year *weather data* for each *weather measurement* for each calendar month are available from Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone: 0870 900 0100.
- The *value engineering percentage* is 50%.
- There is no *method of measurement*. The tendered total of the Prices is deemed to include everything necessary to Provide the Subcontract Works in accordance with the Subcontract Scope.

## 7 Title

- There are no Contract Data entries required for this section of the core clauses.

## 8 Liabilities and insurance

- The *Subcontractor* provides the insurances stated in, and to comply with the requirements set out in, **Schedule 5**.

## Resolving and avoiding disputes

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

- The *Senior Representatives of the Contractor* are:
  - Name (1): Mark Lowson.
  - Address for communications: [Mark.Lowson@keltbray.com](mailto:Mark.Lowson@keltbray.com)
  - Address for electronic communications: **INSERT**
  - Name (2): Vip Gandhi
  - Address for communications: [Vip.Gandhi@keltbray.com](mailto:Vip.Gandhi@keltbray.com)
  - Address for electronic communications: **INSERT**
- The *Adjudicator* in the subcontract is to be nominated by the Institution of Civil Engineers.
- The *main contract Adjudicator* is the person chosen by the *Client* and *Contractor* from the list of adjudicators published by the Institution of Civil Engineers.
- The *Adjudicator nominating body* is the Institution of Civil Engineers.

#### **X5: Sectional Completion**

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

| <i>section</i> | <i>description</i> | <i>subcontract completion date</i> |
|----------------|--------------------|------------------------------------|
| (1)            | .....              | .....                              |
| (2)            | .....              | .....                              |
| (3)            | .....              | .....                              |
| (4)            | .....              | .....                              |

#### **X6: Bonus for early Completion**

If Option X6 is used without Option X5 The bonus for the whole of the *subcontract works* is £[xx] per day.

If Option X6 is used with Option X5 The bonus for each *section* of the *subcontract works* is £[xx]

| <i>section</i>         | <i>description@</i> | <i>amount per day</i> |
|------------------------|---------------------|-----------------------|
| 1                      | ..... INSERT.....   | INSERT                |
| 2                      | ..... INSERT.....   | INSERT                |
| 3                      | ..... INSERT.....   | INSERT                |
| 4                      | ..... INSERT.....   | INSERT                |
| Remainder of the works |                     | INSERT                |

#### **X7: Delay Damages**

- Delay damages for Completion of the whole of the *subcontract works* are INSERT AMOUNT per day.

#### **X7: Delay Damages**

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

| <i>section</i> | <i>description@</i> | <i>amount per day</i> |
|----------------|---------------------|-----------------------|
| 1              | ..... INSERT.....   | INSERT                |

|                        |                   |        |
|------------------------|-------------------|--------|
| 2                      | ..... INSERT..... | INSERT |
| 3                      | ..... INSERT..... | INSERT |
| 4                      | ..... INSERT..... | INSERT |
| Remainder of the works |                   | INSERT |

#### **X8: Undertakings to the *Client* or Others**

- The undertakings to the Client are [required / not required] for the *subcontract works*

#### **X10: Information modelling**

- The period after the Subcontract Date within which the *Subcontractor* is to submit a first Information Execution Plan for acceptance is one week.
- The minimum amount of insurance cover for claims made against the *Subcontractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim £[xxx].
- The period following Completion of the whole of the *subcontract works* or earlier termination for which the *Subcontractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 12 years.

#### **X15: The *Subcontractor's* design**

- The *period for retention* following Completion of the whole of the *subcontract works* or earlier termination is 12 years.
- The period following Completion of the whole of the *subcontract works* or earlier termination for which the *Subcontractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 12 years.

#### **X18: Limitation of liability**

- The *Subcontractor's* liability to the *Contractor* for indirect or consequential loss is limited to £10m for each and every occurrence.
- For any one event, the *Subcontractor's* liability to the *Contractor* for loss of or damage to the *Client's* or *Contractor's* property is limited to £10m.
- The *Subcontractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £10m for each and every occurrence.
- The *Subcontractor's* total liability to the *Contractor* for all matters arising under or in connection with the subcontract, other than excluded matters listed in clause X18.5, is limited to [insert sum].
- The *end of liability date* is 12 years after the Completion of the whole of the *subcontract works*.

#### **X20: Key Performance Indicators**

- The *incentive schedule* for Key Performance Indicators is in INSERT.
- A report of performance against each Key Performance Indicator is provided at intervals of INSERT months.

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

- The period for payment is 19 days after payment becomes due.

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

- term *beneficiary*  
The provisions of Option Y(UK)1 Subcontract Named Suppliers

**Z: Additional conditions of subcontract**

- The *additional conditions of subcontract* are listed in **Schedule 6**.

**Z13: Extended liability period for Plant**

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

**Z14: Network Rail possessions**

Indicate whether Z14.1a or b is used .....

- The Network Rail possession charge is

Type x £..... per possession  
Type y £..... per possession

## **PART TWO – DATA PROVIDED BY THE SUBCONTRACTOR**

### **1 General**

- The *Subcontractor* is
  - Name: **INSERT**
  - Address for communications: **INSERT**
  - Address for electronic communications: **INSERT**
- The *fee percentage* is **XXX**%.
- The *subcontract working areas* are **XXX**.
- The *key persons* are:
  - (1) Name. ....  
Job .....  
Responsibilities .....  
.....  
Qualifications .....  
Experience .....  
.....
  - (2) Name. ....  
Job .....  
Responsibilities .....  
.....  
Qualifications .....  
Experience .....  
.....
- The following matters will be included in the Early Earning Register: **XXXXX**.

### **2 The *Subcontractor's* main responsibilities**

- The Subcontract Scope provided by the *Subcontractor* for its design is in **XXX**.

### **3 Time**

- The programme identified in the Subcontract Data is **XXXX**.
- The *subcontract completion date* for the whole of the *subcontract works* is **XXXX**.

### **5 Payment**

- The *bill of quantities* is in **Schedule 7**.
- The tendered total of the Prices is **ACTIVITY SCHEDULE TOTAL**.

### Resolving and avoiding disputes

- The *Senior Representatives* of the *Subcontractor* are:
  - Name (1): **INSERT**
  - Address for communications:
  - Address for electronic communications: **INSERT**
  - Name (2): **INSERT**
  - Address for communications:
  - Address for electronic communications: **INSERT**

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

- *named suppliers* are **INSERT**.

### Data for the Schedule of Cost Components

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

| Equipment | time-related on cost charge | per time period |
|-----------|-----------------------------|-----------------|
| .....     | .....                       | .....           |
| .....     | .....                       | .....           |
| .....     | .....                       | .....           |
| .....     | .....                       | .....           |

- The rates for special Equipment are

| Equipment | rate  |
|-----------|-------|
| .....     | ..... |
| .....     | ..... |
| .....     | ..... |
| .....     | ..... |

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

| category of person | rate  |
|--------------------|-------|
| .....              | ..... |
| .....              | ..... |
| .....              | ..... |



.....

- The rates for Defined Cost of design outside the Working Areas are

category of person                      rate

.....

.....

.....

.....

- The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *subcontract works* and Equipment done outside the Working Areas are

.....

.....

.....

.....

## **Attestation and form of acceptance**

### **Attestation**

The terms and conditions of the subcontract have been agreed by the *Contractor* and the *Subcontractor* named in this Subcontract Agreement and in witness whereof they have caused this Subcontract Agreement to be executed.

### **Execution of the subcontract as a Deed by the Contractor**

Executed and delivered as a Deed by the said *Contractor*, acting by either a director and its secretary or two directors whose signatures are here subscribed or by affixing its common seal in the presence of the following:

Date of execution:

Common Seal:

Director:

Signature:

Name:

Director / Company Secretary:  
(delete as appropriate)

Signature:

Name:

### **Execution as a Deed by the Subcontractor (limited company)**

Executed and delivered as a Deed by the said *Subcontractor*, acting by either a director and its secretary or two directors whose signatures are here subscribed or by affixing its common seal in the presence of the following:

Date of execution:

Common Seal:

Director:

Signature:

Name:

Director / Company Secretary:  
(delete as appropriate)

Signature:

Name:

## **Acceptance of Subcontract Agreement**

To:

Address:

Email:

For the attention of:

Re: Subcontract Agreement No: **INSERT INTERNAL REF.**

I/We, the *Subcontractor* named below in this form of acceptance, hereby acknowledge receipt of and accept the terms and conditions of such Subcontract Agreement and in so doing undertake to you to Provide the Subcontract Works (as defined in the 'subcontract') upon and in accordance in all respects with requirements of the 'subcontract' and to act as stated in such subcontract and acknowledge and accept that, notwithstanding the method of forming such subcontract or any statute, it shall be deemed that for all purposes and in all respects such subcontract shall have effect as if executed and delivered as a Deed and, in particular, the period of limitation in respect of any cause of action arising under such subcontract or by reason of breach of such subcontract shall be deemed to be twelve years and we shall not in any proceedings of any kind plead a shorter period of limitation provided by any statute in respect of any such cause of action.

Signed by or on behalf of the *Subcontractor*:

Name of the *Subcontractor*: **SUBCONTRACTOR FULL NAME AND INCLUDE COMPANY  
REGISTRATION NUMBER**

Address of the *Subcontractor*:

Date:

Authorised Signatory:   Signature:

Name:

Position:

## **SUBCONTRACT AGREEMENT DOCUMENTS**

This document is deemed appended to and forms part of the Subcontract Agreement. The following documents only (including their schedules and annexes and any further documents they incorporate by reference) shall together constitute a binding agreement between the Parties and the terms "the Subcontract Agreement" or "this Subcontract Agreement" shall in all such documents be construed accordingly:

The Subcontract Agreement including the Subcontract Data and Attestation;

Schedule 1 – Subcontract Scope.

Schedule 2 – Site Information.

Schedule 3 – Early Warning Register.

Schedule 4 – Payment Schedule.

Schedule 5 – Insurance Requirements.

Schedule 6 – Option Z Clauses.

Schedule 7 – Activity Schedule.

Schedule 8 – Commitments Register

Schedule 9 – Short Schedule of Cost Components.

Schedule 10 – Subcontract pre-contract meeting minutes.

Schedule 11 – Data Processing Agreement.

Any ambiguity or inconsistency in or between the documents forming the Subcontract Agreement shall be construed and interpreted in the following listed order of priority:

- the Subcontract Agreement;
- the Subcontract Data - Part one;
- the Schedule 6 Option Z clauses;
- the Subcontract Data - Part two; and
- the remaining Schedules to the Subcontract Agreement and any other document forming part of this Subcontract Agreement.