



Highways England Company Limited

NEC 4 Framework Contract

(June 2017)

Contract Data Part 1

Concrete Roads Lifecycle Extension Works Framework

September 2020

CONTENTS AMENDMENT SHEET

Amend No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SOS	04/08/20
1	1	Amendment to Z100.1 & .3 to make clear when first inflation of prices is to happen	DC	03/09/20

Framework Contract Data Part 1

PART ONE – DATA PROVIDED BY THE *CLIENT*

The Data which will apply to all work under the Framework Contract is

The *conditions of contract* are the clauses of the NEC4 Framework Contract June 2017 and the *additional conditions of contract*.

The *Client* is

Name

Highways England Company Limited

Address for communications

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

Address for electronic
communications

ConcreteRoads@highwaysengland.co.uk

The *Client's Representative* is

Name

To be confirmed at Framework Contract award

Address for communications

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

Address for electronic
communications

To be confirmed at Framework Contract award

The Framework Information is in	the document entitled “CRF LEW - Framework Information”.
The <i>framework scope</i> is in	the document entitled “CRF LEW - Framework Information”.
The <i>programme information</i> is in	The document entitled “CRF LEW – Programme Information”
The <i>selection procedure</i> is in	the document entitled “CRF LEW - Framework Information”.
The <i>quotation procedure</i> is in	the document entitled “CRF LEW - Framework Information”.
The <i>end date</i> is	4 years after the Framework Contract Date.
The <i>staff rates</i> are	are calculated in accordance with the <i>staff schedule of cost components</i> , and do not exceed the Maximum Staff Rates
The <i>maximum staff rates</i> are	in the <i>quotation information</i>
The <i>staff schedule of cost components</i> is in	The document entitled ‘CRF LEW – Staff Schedule of Cost Components’
The period for reply to a <i>Supplier’s</i> quotation is	3 weeks.
The <i>additional conditions of contract</i> are	the Z Clauses (Framework Contract) listed in this document.

Contract Data entries relating to Z Clauses

Z100 The *staff index* is the EARN01: Average Weekly Earnings (AWE) Regular Pay Index figures seasonally adjusted, excluding bonuses and arrears, Whole Economy, Tab 5, Column K54L published by the Office for National Statistics.

The *construction index* is RPIx: RPI All Items Index Excl Mortgage Interest, CDID CHMK, published by the Office for National Statistics.

The Data which will apply to all Time Charge Orders is

Not used

The Data which will apply to all Work Orders is

in the document entitled “CRF LEW – Work Order Contract Data”.

Z CLAUSES (Framework Contract)

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Delete the following defined term:

“(4) A Time Charge Order is a contract to provide advice on a proposed Work Order on a time charge basis”.

Add the following defined terms:

In the framework contract and in any Work Order

- (6) 3D Scheme Delivery Process is detailed in S274 of the Work Order Scope
- (7) Associated Company is
 - a Consortium Member or
 - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Supplier* or a Consortium Member.
- (8) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Supplier* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Supplier* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Supplier* or a Consortium Member.
- (9) Concrete Framework Supplier is a supplier on one of the *Client's* Concrete Roads Frameworks for supply of design services, lifecycle extension works, or reconstruction works.

- (10) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Supplier*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (11) Consult Notice is a notice issued by the Client to the Supplier when the Client has serious commercial concerns about the Supplier, sufficient enough that it would have a major concern in placing further work with the Supplier (until the issue is rectified), including the Supplier's overall financial strength, payment of suppliers, bribery or fraud issues, or serious performance failures in connection with this framework or any other contract with the Client.
- (12) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (13) Controller is the single person (or group of persons acting in concert) that
 - has Control of the *Supplier* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Supplier* or a Consortium Member.
- (14) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Supplier*, a Consortium Member or any Guarantor.
- (15) The Data Protection Acts are the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018 and any other laws or regulations relating to privacy or personal data.
- (16) Designer is a LEW Designer or a Recon Designer
- (17) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (18) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).
- (19) Financial Standing Test is the financial test for the *Supplier*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the framework contract.
- (20) Framework Contract Date is the date when this framework contract came into existence.
- (21) General Anti-Abuse Rule is
 - the legislation in Part 5 of the Finance Act 2013 and
 - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (22) Guarantor is a person who has given a Parent Company Guarantee to the *Client*.
- (23) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02

Halifax and others.

- (24) Incoming Contractor is any contractor appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Contractor*.
- (25) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.
- (26) LEW Contractor is a contractor instructed to carry out lifecycle extension works under the *Client's* Concrete Roads Framework – LEW agreement
- (27) LEW Designer is a designer instructed to design lifecycle extension works under the *Client's* Concrete Roads Framework – Design agreement.
- (28) Maximum Staff Rates are the *maximum staff rates* unless later changed in accordance with the contract.
- (29) Package is a collection of Schemes. The prefix LEW or Recon (such as LEW Package) relates to the Schemes being for lifecycle extension works or reconstruction works. The prefix Design/ Join Repair (JR)/ Bay Replacement and Slab Levelling (BR&SL)/ Surface Treatment (ST)/ Design and Build (D&B) (such as LEW Design Package) relates to the services required in the Package. The number after a Package (such as LEW Package 1) relates to all Schemes to be included in X12/ Z150 incentive mechanism (LEW Package 1 would include all LEW (Design/ JR/ BR&SL/ ST) Package 1(A/B)). The letter after a Package (such as Package 1A) relates to the Schemes being undertaken by one of the suppliers under a framework.
- (30) Parent Company Guarantee is a parent company guarantee of the *Supplier's* performance in the form set out in the Framework Information.
- (31) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.
- (32) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Acts.
- (33) Quality Statement is the *quality statement* unless later changed in accordance with these *conditions of contract*, detailing the commitments made by the *Supplier* as part of its tender in respect of how it is to perform its obligations under the framework contract.
- (34) Recon Contractor is a contractor instructed to carry out reconstruction works under the *Client's* Concrete Roads Framework – Recon agreement.
- (35) Recon Designer is a designer instructed to carry out initial design and technical assurance of reconstruction works under the *Client's* Concrete Roads Framework – Design agreement.
- (36) Relevant Tax Authority is HM Revenue & Customs or, if the *Supplier* is

established in another jurisdiction, the tax authority in that jurisdiction.

- (37) Schedule of Rates are the *schedule of rates* unless later changed in accordance with this contract, priced in accordance with the document title 'CRF LEW – Method of Measurement' and the Specification in Annex 2 to the Scope.
- (38) Scheme is a piece of work as set out in the *programme information*
- (39) Staff are employees employed by the *Supplier* or an Associated Company or any Subcontractor to Provide the Service at any time.
- (40) Subcontractor has the meaning given to it in the Work Order.
- (41) Supplier is the *Supplier* or the other supplier under the *Client's* Concrete Roads Framework – Recon agreement.
- (42) Supplier Background IPR is IPR owned by the *Supplier* or a third party before the date the framework contract came into existence, or created by the *Supplier* or a third party independently of the framework contract and any Work Order, which in each case is or will be used
- before the defects date to perform the *Supplier's* obligations under any Work Order,
 - for the maintenance, operation and modification of the *Supplier's* obligations under any Work Order, or
 - for the design of any works using any materials received from the *Supplier*.
- (43) The Secretary of State is the Secretary of State for Transport.
- (44) Tax Non-Compliance is where a tax return submitted by the *Supplier* to a Relevant Tax Authority on or after 1 October 2012
- is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Supplier* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
 - the failure of an avoidance scheme in which the *Supplier* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.
- (45) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (46) TUPE Information is information regarding the Staff including identity, number, age, sex, length of service, job title, grade and terms and conditions of employment, details of any disciplinary procedure taken against a member of Staff, detail of any grievance procedure taken by a member of Staff, together with any other matters affecting each of those Staff including but not limited to the information which a transferor is obliged to notify to a

transferee pursuant to regulation 11(2) of TUPE.

20 The Parties' Obligations

20.3 Delete "or Time Charge Order"

22 Time Charge Order

Delete Clause 22

30 Completion

30.1 Delete "Time Charge Order or" and "Time Charge Orders and" from the 2 sub-bullets.

90 Termination

90.2 Delete "Time Charge Order or" and "Time Charge Orders and" from the 2 sub-bullets.

Z2 Interpretation & Changes to the Framework Information

Z2.1 In the framework contract and any Work Order, except where the context shows otherwise

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

Z2.2 The *Client's Representative* may give an instruction to the *Supplier* which changes the Framework Information. The *Client's Representative* consults with the *Supplier* before instructing a change.

Z3 Recovery of sums due from the *Supplier*.

Z3.1 Where, under the framework contract or any Work Order, a sum of money is recoverable from or payable by the *Supplier*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Supplier* under the framework contract, any Work Order or any other contract with the *Client*.

Z4 Assignment and transfer

- Z4.1 The *Supplier* does not assign, transfer or charge the benefit of the framework contract, Work Order or any part of it or any benefit or interest under it without the prior agreement of the *Client*.
- Z4.2 If the *Supplier* wishes to transfer the benefit and burden of the framework contract and all Work Orders issued to a new supplier, it seeks the *Client's* agreement to do so. The *Supplier* explains the reasons for the proposed transfer and provides the *Client* with all such information as the *Client* may require in order to make its decision. If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Framework Information or such other form as the *Client* may reasonably require.
- Z4.3 If requested by the *Client*, the *Supplier* executes a novation agreement transferring the benefit and burden of the framework contract or any Work Order to
- a Department or Office of Government,
 - a local authority,
 - an organisation established to take over the *Client's* functions or part of them or
 - another public body or organisation exercising similar functions.

The novation agreement is in the form set out in the Framework Information or such other form as the *Client* may reasonably require.

Z5 Confidentiality

- Z5.1 The *Supplier* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person
- the terms of the framework contract or any Work Order and
 - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Supplier* in the course of performing its obligations under the framework contract or any Work Order
- except that the *Supplier* may disclose information
- to its legal or other professional advisers,
 - to anyone employed by it or acting on its behalf as needed to enable the *Supplier* to perform its obligations,
 - where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Supplier* consults the *Client* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
 - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
 - which is in the public domain at the time of disclosure other than due to the fault of the *Supplier* or

- with the consent of the *Client*

Z5.2 The *Supplier* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to perform its obligations under the framework contract or any Work Order.

Z6 Not Used

Z7 Termination - Public Contract Regulations 2015

Z7.1 The *Client* may terminate the framework 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 *Supplier* at the date of award of the framework contract or applies at the time the *Client* intends to award a Work Order to the *Supplier*.

Z7.2 The *Client* may terminate the framework 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.

Z8 Not Used

Z9 Change of Control and financial distress

Z9.1 The *Supplier* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.

Z9.2 The *Supplier* notifies the *Client* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier* (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 *Supplier* (or a Consortium Member), or
- the composition of the *Supplier* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Supplier* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

- Z9.3 The *Supplier* notifies the *Client* immediately of any change or proposed change in the name or status of the *Supplier* or a Consortium Member.
- Z9.4 The *Supplier* notifies the *Client* immediately if any of the following events occurs in relation to the *Supplier*, a Consortium Member or a Guarantor
- its Credit Rating falls below the relevant *credit rating*,
 - there is a further fall in its Credit Rating below the relevant *credit rating*,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
- Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Supplier* and the *Client's Representative* 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 *Supplier's* obligations under the framework contract or any Work Order with immediate effect. In the event of a Work Order termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z9.6 If as a result of a Change of Control
- a person or organisation with which the *Client* does not wish to be associated for ethical or reputational reasons is an Associated Company or
 - the *Client* decides (having reviewed any information provided by the *Supplier* and made appropriate inquiries) that the *Supplier* is no longer in a position to perform its obligations under the framework contract or any Work Order.
- the *Client* may terminate the *Supplier's* obligations under the framework contract or any Work Order with immediate effect. In the event of a Work Order termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z9.7 If a Change of Control occurs, the *Supplier* 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 *Supplier* remains in a position to perform its obligations under this contract.

Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Supplier* 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 *Supplier* and accepted by the *Client*.

Z9.9 A reason for not accepting an alternative guarantor proposed by the *Supplier* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9.13 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.

Z9.10 If required by the *Client*, the *Supplier* within four weeks of notification gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.

Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not meet the Financial Standing Test if the *Supplier* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client*'s acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.

Z9.12 If

- the *Supplier* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Supplier* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
- the *Supplier* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
- the *Supplier* 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

- terminate the framework contract with immediate effect and

- treat such failure as a substantial failure by the *Supplier* to comply with their obligations under any Work Order.

Z9.13 If the *Supplier*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Supplier* (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 *Supplier* 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.

Z10 Joint ventures

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

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Supplier's* obligations under the framework contract and any Work Order.

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

Z10.4 Not Used

Z10.5 A Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement.

Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Supplier* to comply with its obligations under the framework contract and any Work Order.

Z10.7 Not Used

Z11 Parent Company Guarantee

Z11.1 If required by the *Client*, the *Supplier* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the date of award of the framework contract, it is given to the *Client* within four weeks of the date of award of the framework contract or of the *Client's* request, whichever is later.

Parent Company Guarantees are given for:

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

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

- Z11.2 A failure to comply with this condition is treated as a substantial failure by the *Supplier* to comply with its obligations under the framework contract and any Work Order.

Z12 Discrimination, Bullying and Harassment

- Z12.1 The *Supplier* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

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

resulting from any act or omission of the *Supplier* in connection with the framework contract and any Work Order.

Z13 Intellectual Property Rights (IPRs)

- Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with this framework contract and any Work Order, except as stated otherwise in the Work Order Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Supplier* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Supplier* provides to the *Client* the documents which transfer these IPRs to the *Client*.

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

The *Supplier's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.

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

Z14 Not Used

Z15 Tax Non – Compliance

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

Z15.2 The *Supplier* notifies the *Client* within one week of any Tax Non-Compliance occurring after the date of award of the framework and provides details of

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

Z15.3 If

- the warranty given by the *Supplier* under clause Z15.1 is untrue,
- the *Supplier* fails to notify the *Client* of a Tax Non-Compliance or
- the *Client* decides that any mitigating factors notified by the *Supplier* are unacceptable.

the *Client* may

- terminate the framework contract with immediate effect and
- treat such breach as a substantial failure by the *Supplier* to comply with its obligations under any Work Order.

Z16 – Z51 Not Used

Z52 Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

Z52.1 Not Used

Z52.2 The *Supplier* provides and ensures that any Subcontractor provides the TUPE Information to the *Client* or to any Prospective Tenderer or Incoming Contractor within the *period for reply* after the *Client's* request to do so and in any event at least twelve months before the *end date*. The *Supplier* warrants that the TUPE Information is complete and accurate as at the date it is disclosed.

Z52.3 The *Client* may disclose any of the TUPE Information to any Prospective Tenderer and Incoming Contractor and ensures that prior to such disclosure the Prospective Tenderer or the Incoming Contractor undertakes not to disclose (unless required by law to do so) the TUPE Information to any other person other than a person

- who is a servant, agent or legal adviser of the Prospective Tenderer or Incoming Contractor and
- who has undertaken not to disclose that information unless required by law to do so.

Z52.4 After the TUPE Information has been provided, the *Supplier*

- informs the *Client* of any change to any part of the TUPE Information and
- co-operates with any reasonable request made by the *Client* or any Prospective Tenderer or Incoming Contractor concerning the TUPE Information

within seven (7) days of a change or receipt of a request.

Z52.5 So far as reasonably practicable, the *Supplier* does not and ensures that any Subcontractor does not make or promise to make any changes affecting the TUPE Information which would increase the Employment Costs of the Staff in the eight (8) months before or at any time after the *end date* without the prior consent of the *Client* (such consent not to be unreasonably withheld) unless such change is required by law. The *Supplier* supplies to the *Client* full particulars of any proposed changes and the *Client* responds within a reasonable time.

Z52.6 The *Supplier* does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the works or services under any Package Contract more than five per cent of the Staff in the twelve months before the *end date* without the prior consent of the *Client* (such consent not to be unreasonably withheld).

Z52.7 Before the *end date*, the *Supplier* informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The *Client* requests the Incoming Contractor to provide to the *Supplier* the information required under regulation 13 of TUPE.

Z52.8

- The *Supplier* indemnifies and keeps indemnified the *Client* and any Incoming Contractor in respect of any claims, costs (including Employment Costs), expenses, payments and liabilities arising from
- any claim by any of the Staff or by a third party or trade union or body representing any of the Staff in relation to any act or omission which allegedly occurred before the end date,
- any failure by the *Supplier* or any Subcontractor to comply with its obligations under regulations 11 and 13 of TUPE and
- any claim by any employee or former employee of the *Supplier* or any Subcontractor who is not identified in the TUPE Information that their employment or any liability in respect of their employment or its termination has or should have transferred to the Incoming Contractor or the *Client* pursuant to TUPE.

Z53 - Z57 Not Used

Z58 Revisions to Quality Statement

- Z58.1 The *Supplier* may submit to the *Client's Representative* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that
- it will not enable the *Supplier* to meet a Performance Requirement,
 - it will unacceptably increase the risk of failure to meet a Performance Requirement,
 - it will not enable the *Supplier* to achieve the level of performance specified in the Quality Statement,
 - it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement, or
 - It will be considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z58.2 If changes to the Quality Statement are agreed, the Quality Statement applies to all Work Orders. This change is not a compensation event under the Work Orders.

Z59 Not Used

Z60 Tax Arrangements of appointees

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this framework contract or any Work Order, the *Supplier* 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 framework contract or any Work Order, the *Supplier* 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 *Supplier* 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 *Supplier* 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 *Supplier* to comply with his obligations or
- instruct the *Supplier* 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 *Supplier* to comply with its obligations.

Z60.6 The *Supplier* acknowledges that the *Client* may

- supply any information which it receives under clauses Z60.3 or Z60.5 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible.

Z61 to Z99 Not Used

Z100 Indexation

Z100.1 On the 1st October 2021 and each subsequent year, the *Supplier* calculates a price adjustment factor, equal to $(L-B)/B$, where L is the value of the *staff index* for August the current year, and B is the value of the *staff index* for August 2020. If the price adjustment factor is below zero, zero is used as the price adjustment factor.

If a *staff 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.

Z100.2 After each calculation in Z100.1, 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. The adjusted *maximum staff rate* is the Maximum Staff Rate. Once calculated, the new Maximum Staff Rates applies to all Works Orders.

Z100.3 On the 1st April 2021 and each subsequent year, the *Supplier* calculates a price adjustment factor, equal to $(L-B)/B$, where L is the value of the *construction index* for February the current year, and B is the value of the *construction index* for August 2020.

If a *construction 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.

Z100.4 After each calculation in Z100.3, each *schedule of rate* is adjusted by an amount for price adjustment which is the product of the *schedule of rate* multiplied by the price adjustment factor. The adjusted *schedule of rates* are the Schedule of Rates.

Z100.5 The *Client* may consult the *Supplier* on any revised indices to replace the *index*. Any changes to the indices to make them more representative of the costs being incurred is agreed with the *Supplier*.