



# **National Highways Limited Pavement Delivery Framework**

## **NEC 4 Framework Contract (June 2017)**

### **Framework Contract Data Part One**

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**CONTENTS AMENDMENT SHEET**

<b>Amend. No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>
0	0	Tender Issue	JW	15/03/2022

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

The *Client* is

Name

National Highways Limited, a company incorporated in and in accordance with the laws of England, having as its registered number (company No. 09346363) whose registered office is at:

Address for communications

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

Address for electronic communications

### The *Client's Representative* is

Name

To be confirmed at Framework Contract Date

Address for communications

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

Address for electronic communications	To be confirmed at Framework Contract Date
The Framework Information is in	the document entitled "PDF – Framework Information".
The <i>framework scope</i> is in	Section 2 of the Framework Information
The <i>selection procedure</i> is in	the Framework Information
The <i>quotation procedure</i> is in	the Framework Information
The <i>go live date</i> is	3 months after the Framework Contract Date and being the date before which the <i>Client</i> does not intend to issue a Work Order other than for Mobilisation.
The <i>end date</i> is	260 weeks after the Framework Contract Date
The <i>maximum staff rates</i> are	in the <i>quotation information</i>
The <i>schedule of rates</i> are	in the <i>quotation information</i>
The period for reply to a <i>Supplier's</i> quotation is	two weeks
The <i>additional conditions of contract</i> are	The Z Clauses (Framework Contract) listed in this document
The <i>quality table</i> is in	The document entitled "PDF Framework Information – Appendix 04 Quality Management"
The <i>Contracting Bodies</i> are	a contractor appointed to the <i>Client's</i> Concrete Roads Programme - Reconstruction Framework (and its successor)

**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 Data which will apply to all Work Orders is**

The *Adjudicator* is

Name

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

Address for  
communications

to be confirmed

Address for  
electronic  
communications

to be confirmed

The *Adjudicator*  
nominating body  
is

The Institution of Civil Engineers

The *currency of the contract* is the

pound sterling (£)

The *interest rate* is, (unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require) is

base

rate of the

Bank of England

in force from time to time

**The Data which will apply to all Main Contract Work Orders is**

in the documents entitled ECC Work Order Contract Data Part 1 and ECC Work Order Contract Data Part 2.

**The Data which will apply to all Subcontract Work Orders is**

in the documents entitled ECS Work Order Subcontract Data Part 1 and ECS Work Order Subcontract Data Part 2.

**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”.

At the end of the term “Work Order” in clause 11.2 (5), after the words “*framework scope*” insert the following:

“such Work Order being comprised of either:

- (i) where the Work Order is to be entered into by the *Client* and the *Supplier*, the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019 and October 2020) and the Contract Data (being the documents entitled ECC Work Order Contract Data Part 1 and ECC Work Order Contract Data Part 2 appended to the framework contract), Scope and other documents referenced therein, in each case as amended by the Additional Work Order (and such Work Order is referred to in the framework contract as the Main Contract Work Order); and
- (ii) where the Work Order is to be entered into by the *Contracting Body* and the *Supplier*, the NEC4 Engineering and Construction Subcontract June 2017 (with amendments January 2019 and October 2020) and the Subcontract Data (being the documents entitled ECS Work Order Subcontract Data Part 1 and ECS Work Order Subcontract Data Part 2 appended to the framework contract), Scope and other documents referenced therein in each case as amended and populated by the *Contracting Body* (and such Work Order is referred to in the framework contract as the Subcontract Work Order).

Together the Main Contract Work Order and Subcontract Work Order are referred to in the framework contract as a Work Order.”

Insert the following additional defined terms:

In the framework contract and in any Work Order

- (6) Associated Company is any of
- a Consortium Member or

- any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Supplier* or a Consortium Member.
- (7) 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.
- (8) 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.
- (9) Contract Management Points are points accrued by the *Contractor* in accordance with the contract management tables as detailed in Appendix 04.
- (10) Control has the meaning set out in section 1124 of the “Corporation Tax Act 2010”.
- (11) 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.
- (12) 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.
- (13) The Discrimination Acts are the “Equality Act 2010” and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (14) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the “Finance Act 2004” (as amended) 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)”.
- (15) EU Reference is any European Union
- regulation,
  - decision,
  - tertiary legislation or
  - provision of the European Economic Area agreement.
- (16) Exit Day is the exit day as defined in section 20 of the “European Union (withdrawal) Act 2018”, as amended.
- (17) “framework contract” where used refers to “the contract”.
- (18) 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.
- (19) Framework Contract Date is the date when the framework contract came into existence.
- (20) 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.
- (21) Guarantor is a person who has given a Parent Company Guarantee to the *Client*.
- (22) Halifax Abuse Principle is the principle explained in the CJEU case “C-255/02 Halifax” and others.
- (23) 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.
- (24) Licence is the document entitled “Highways England: Licence” dated April 2015 listed in Appendix 02.
- (25) Maximum Staff Rates are the *maximum staff rates* unless later changed in accordance with the framework contract.
- (26) Package Order is a schedule of the anticipated annual work allocation notified by the *Client* to the *Supplier* for information purposes only.
- (27) Parent Company Guarantee is a guarantee of the *Supplier’s* performance in the form set out in the Framework Information.
- (28) Performance Requirement is the required standard for performance of each element of the works as specified in the Scope to the relevant Work Order or Framework Information.
- (29) Pricing Information is the relevant section of the Framework Information.
- (30) Quality Submission is the *quality submission* unless later changed in accordance with these *conditions of contract*, detailing the Tender Commitments made by the *Supplier* as part of its tender in respect of how it is to perform its obligations under the framework contract and Work Orders.
- (31) Relevant Tax Authority is HM Revenue & Customs or, if the *Supplier* is established in another jurisdiction, the tax authority in that jurisdiction.
- (32) Scheme is a group of works to be carried out by the *Supplier*, framework contract suppliers or Others, for the repair, renewal, or improvement of a section of the strategic road network and associated assets as described in a Work Order.



- (33) Scope is the relevant Scope which applies to a Work Order.
- (34) Staff are persons employed or engaged by the *Supplier* or an Associated Company or any subcontractor (at any stage of remoteness from the *Client*), carrying out obligations under the contract or providing Work Orders at any time.
- (35) *Subcontract works* are the works to be carried out under the relevant Subcontract Work Order.
- (36) The Secretary of State is the Secretary of State for Transport.
- (37) 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 Framework Contract Date or to a civil penalty for fraud or evasion.
- (38) Tender Commitments are proposals made by the *Supplier* at tender stage in the “Tender Commitments Register” and are incorporated as a contractual requirement.
- (39) Threshold Level is the threshold level of Contract Management Points stated in Framework Information Appendix 04.
- (40) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (41) *works* are the works to be carried out under the relevant Main Contract Work Order.

**11.3** Insert a new clause 11.3 as follows:

“Additional capitalised terms referred to in the framework contract which are not comprised within clauses 11.2(1) to 11.2(40) have the meaning given in **Appendix 01** to the Framework Information”.

**20 The Parties’ Obligations**

20.1 After “the *Client’s Representative*” insert “or a *Contracting Body* (as applicable to the relevant Work Order).”

20.3 Delete “or Time Charge Order”

**21 Supplier Selection**

In clause 21.1 after “the *Client*” and “the *Client’s Representative*” insert “or a *Contracting Body*”.

## 22 Time Charge Order

Delete Clause 22

## 23 Quotation

Delete clause 23.1 and replace with:

“If the *Supplier* is to be considered for a proposed Work Order:

- (i) the *Client’s Representative*, in respect of the Main Contract Work Order, provides the Work Brief and associated documentation in accordance with the Pricing Information; or
- (ii) the *Contracting Body*, in respect of the Subcontract Work Order, provides additional Subcontract Data, Scope, Site Information and pricing document in accordance with the Pricing Information,

and in each such case instructs the *Supplier* to provide a quotation.”

In clauses 23.3, 23.4 and 23.5 after “the *Client’s Representative*” insert “or a *Contracting Body* (as applicable to the relevant Work Order)”.

In clause 23.4, in the second bullet, delete “or”. Insert a new bullet point after the second bullet as follows:

“that the *Client* or the *Contracting Body* (as applicable to the relevant Work Order assesses the total of the Prices in accordance with the Pricing Information, or”

## 30 Completion

30.1 In the first sub-bullet after “the *Client’s Representative*” insert “or a *Contracting Body*”.

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

## 90 Termination

90.1 Delete “Either Party” and insert “The *Client*”

90.2 In line one, delete “a Party” and replace with “the *Client*”.

90.2 In the first sub-bullet after “the *Client’s Representative*” insert “or a *Contracting Body* (as applicable)”.

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

## Z2 Interpretation

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 In the framework contract and any Work Order, 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.

Z2.3 For the purpose of any Work Order, a reference to *Supplier* shall be read and construed as the *Contractor* in relation to any *works* under the Main Contract Work Order or the *Subcontractor* in relation to any *subcontract works* under the Subcontract Work Order.

### **Z3 Recovery of sums due from the *Supplier***

Z3.1 Where, under the framework contract or any Main Contract 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 Main Contract 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 Main Contract 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 <i>Client</i> may reasonably require.
Z4.3	<p>If requested by the <i>Client</i>, the <i>Supplier</i> executes a novation agreement transferring the benefit and burden of the framework contract or any Work Order to</p> <ul style="list-style-type: none"> <li>• a department or office of Her Majesty's Government,</li> <li>• a local authority,</li> <li>• an organisation established to take over the <i>Client's</i> functions or part of them or</li> <li>• another public body exercising similar functions.</li> </ul> <p>The novation agreement is in the form set out in the Framework Information or such other form as the <i>Client</i> may reasonably require.</p>
<b>Z5</b>	<b>Not Used</b>
<b>Z6</b>	<b>Not Used</b>
<b>Z7</b>	<b>Termination - Public Contract Regulations 2015</b>
Z7.1	The <i>Client</i> 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 <i>Supplier</i> at the Framework Contract Date or applies at the time the <i>Client</i> or <i>Contracting Body</i> (as applicable to the relevant Work Order) intends to award a Work Order to the <i>Supplier</i> .
Z7.2	The <i>Client</i> may terminate the framework contract with immediate effect if the framework contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015.
<b>Z8</b>	<b>Not Used</b>
<b>Z9</b>	<b>Change of Control and financial distress</b>
Z9.1	The <i>Supplier</i> notifies the <i>Client</i> 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	<p>The <i>Supplier</i> notifies the <i>Client</i> immediately of any material change in</p> <ul style="list-style-type: none"> <li>• the direct or indirect legal or beneficial ownership of any shareholding in the <i>Supplier</i> (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 <i>Supplier</i> (or a Consortium Member), or</li> </ul>

- 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 Main Contract Work Order with immediate effect. In the event of a Main Contract Work Order termination under this clause, the termination procedures followed are P1, P2 and P3 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 Main Contract Work Order,
- the *Client* may terminate the *Supplier's* obligations under the framework contract or any Main Contract Work Order with immediate effect. In the event of a Work Order termination under this clause, the termination procedures followed are P1, P2 and P3 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*,
  - 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 its obligations under any Main Contract 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 practice 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.

Z10.3 The *Supplier* nominates the representative named in the Contract Data for the purposes of the framework 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 See Z10.4 in the Work Order Z clauses.

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 The *Client* may terminate the framework contract if the joint venture arrangement is terminated for any reason.

Z10.7 See Z10.7 in the Work Order Z clauses.

## **Z11 Parent Company Guarantee**

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

Parent Company Guarantees are given for

- a standalone company – from its Controller, or
- an unincorporated joint venture (“more than one party”) - the Controller of each Consortium Member or
- an incorporated joint venture – the Controller of each Consortium Member

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

- Z11.2 If the *Supplier* fails to comply with this condition, the *Client* may
- terminate the framework contract with immediate effect and
  - treat such failure as a substantial failure by the *Supplier* to comply with its obligations under the framework contract any Main Contract 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 the framework contract and any Work Order, except as stated otherwise in the Framework Information or 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 or the Work Order 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 it is involved relating to any Tax Non-Compliance prior to the Framework Contract Date.

- Z15.2 The *Supplier* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Framework Contract Date 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 –  
Z17 Not Used**

**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 *Supplier's* default so as to be unusable, the *Supplier* immediately reports this to the *Client's Representative* and

- the *Client's Representative* may instruct the *Supplier* to restore the data in accordance with the *Client's Representative's* requirements (and any cost incurred by the *Supplier* in doing so is born by the *Supplier*) or
- the *Client* may itself restore the data (and the *Supplier* pays to the *Client*

any reasonable expenses which the *Client* incurs in so doing).

**Z19 Conflict of Interest**

Z19.1 Any steps taken in accordance with section 9.52 of the Framework Information is not a compensation event under any Work Order.

Z19.2 In the *Supplier* fails to comply with section 9.52 of the Framework Information the *Client* may

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

**Z20 –  
Z51 Not Used**

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

Z52.1 The *Supplier* provides to the *Client* within 10 days of the *Client*'s request such information in connection with TUPE as the *Client* may require. The *Supplier* promptly notifies the *Client* of any later change to information provided by it.

Z52.2 The *Supplier* acknowledges that the *Client* may disclose information provided by the *Supplier* to

- any replacement provider of work similar to the *framework scope* and
- any person tendering to become a replacement provider.

The *Client* obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).

Z52.3 During the 8 month period immediately prior to the *end date*, the *Supplier* submits for the acceptance of the *Client* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the *framework scope* or Work Order Scope,
- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the framework contract or Main Contract Work Orders or
- move or deploy any key person away from the performance of the framework contract or Main Contract Work Orders.

The *Client* may withhold acceptance if the proposal would increase the cost to the *Client* of this or any future contract for the *framework scope*.

Z52.4 The *Supplier* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the work.

Z52.5 The *Supplier* complies with, and ensures that any Subcontractor complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's Government.

### **Z53 – Z56**

#### **Not Used**

### **Z57 Infrastructure Act 2015**

Z57.1 The *Supplier* complies with the framework contract and carries out Work Orders 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 *Client* to the *Supplier*).

Z57.2 The *Client* notifies the *Supplier* 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 framework contract or Work Orders. The *Supplier* 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.

### **Z58 Revisions to Quality Submission**

Z58.1 The *Supplier* may submit to the *Client's Representative* proposed revisions to the Quality Submission for acceptance within 2 weeks. 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 Submission,
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Submission or
- It will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Z58.2 If changes to the Quality Submission are agreed, the Quality Submission changes apply 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 the 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 national insurance contributions (NICs) in respect of that consideration.

Z60.2 Where any Staff are liable to NICs in respect of consideration received under the 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 14 days 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 its obligations under the framework contract and any Work Orders 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 under the framework contract and any Work Orders.

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 -  
Z99 Not Used**

## **Z100 Indexation**

Z100.1 On each anniversary of the Framework Contract Date, the *Supplier* calculates a price adjustment factor, equal to  $(L-B)/B$ , where L is the latest published value of the *staff index*, and B is the latest value of the *staff index* published before the Framework Contract Date. 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 under each Main Contract Work Order.

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 apply to all Main Contract Work Orders,
- the new Maximum Staff Rates apply to all Subcontract Work Orders at the date that such Subcontract Work Orders are entered into, but will not adjust Subcontract Work Orders which have already been issued to the *Supplier*.

Z100.3 The *staff index* at the Completion Date for a Main Contract Work Order is used to calculate any price adjustment after the Main Contract Work Order Completion Date.

Z100.4 In respect of Main Contract Work Orders compensation events are assessed using the lesser of the Defined Cost (as defined in the relevant Work Order) or the Maximum Staff Rate current at the time of assessing the compensation event. In respect of Subcontract Work Orders, compensation events are assessed using the lesser of the Defined Cost (as defined in the relevant Work Order) or the Maximum Staff Rate current at the date on which the Subcontract Work Order is issued to the *Supplier*.

Z100.5 Not Used

Z100.6 Not Used

Z100.7 Not Used

Z100.8 The *Client* may consult the *Supplier* on any revised indices to replace the *staff index*. The Parties may agree changes to the indices to make them more representative of the costs being incurred.

## **Z101 - Z109 Not Used**

## **Z110 Package Order**

Z110.1 After the *go live date* and prior to the start of each financial year thereafter the *Client* provides the *Supplier* with a Package Order. The Package Order does not oblige the *Client* to issue any Work Orders under this framework contract.

Z110.2 A Work Order may be issued to the *Supplier* in accordance with the framework contract when a Scheme is required to be carried out. The Work Order is the *Supplier's* instruction to proceed with the *works* referred to in the Work Order.

**Z111 -  
Z150 Not Used**

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

Z151.1 Following the issue of a contract warning notice in accordance with **Appendix 04** and until the number of Contract Management Points in effect is reduced to below the Threshold Level, the *Client* does not issue any further Work Orders to the *Supplier* and the *Client* may appoint Others to perform *works*.

**Z160 Changes to the Framework Information**

Z160.1 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. Any compensation event resulting from this instruction excludes those stated to not be a compensation event under the framework contract and excludes changes pursuant to clause 2.3 of the Framework Information.