



**National Highways Limited**

## **Scheme Delivery Framework**

### **Contract Data Part 1 and Z Clauses (ECC - Lots 1 to 11)**

**September 2021**

### CONTENTS AMENDMENT SHEET

Amend No.	Revision No.	Amendments	Initials	Date
0	0	Contract Issue	AJP	Sept 21

# Contract Data – Part 1

This is the “ECC Contract Data” referred to in the framework contract applicable to Lots 1 to 11.

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

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

### 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 including amendments dated January 2019 and the provisions of the Framework Contract shall be deemed to be incorporated.

Main Option

C or E as stated in the Work Order

Option for resolving and avoiding disputes

W2

Secondary Options

X1 (for use only with Option C), X2, X8 applies unless disapplied in the Work Order, X10, X11, X15 applies unless it is disapplied in the Work Order, X18,  
Y(UK)1, Y(UK)2, Y(UK)3  
Z1A, Z7A, Z8, Z9A, Z14A, Z16-18, Z50, Z52, Z53, Z56, Z57, Z59, Z60, Z105, Z100 (for use only with Option E), Z107, Z151

The *works* are

as detailed in the Scope and the Work Order

The *Client* is

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

Address for  
electronic  
communications

info@highwaysengland.co.uk

The *Project Manager* is

Name

the *Client Representative* as stated in the document entitled “Sublot Details” in [Appendix 2](#)

Address for  
communications

is as stated in the document entitled “Sublot Details” in [Appendix 2](#)

Address for  
electronic  
communications

is as stated in the document entitled “Sublot Details” in [Appendix 2](#)

The *Supervisor* is

Name

as stated in the Work Order

Address for  
communications

as stated in the Work Order

Address for  
electronic  
communications

as stated in the Work Order

The Scope is in

The document entitled “ECC Scope” and the Work Order

The Site  
Information is in

as detailed in the Work Order

The *boundaries  
of the site* are

as detailed in the Work Order

The *language of the contract* is

English

The *law of the contract* is the law of

England, subject to the jurisdiction of the Courts of England

The *period for reply* is

two weeks

The following matters will be included in the Early Warning Register

as detailed in the Work Order

Early warning meetings are held at intervals no longer than

one month

### Contract Data entry relating to Data Protection Legislation

The contact details of the *Client's* Data Protection Officer is:

as stated in the Framework Information and Scope.

## 2 The *Contractor's* main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*.

The *key dates* and *conditions* to be met are as detailed in the Work Order.

The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than one month.

## 3 Time

The *go live date* is

stated in the document entitled "Sublot Details" in [Appendix 2](#) and being the date before which the *Client* does not intend to issue a Work Order other than for Mobilisation and (where stated) Design Validation

The <i>starting date</i> is	
	as detailed in the Work Order

The *access dates* are as detailed in the Work Order

The *Contractor* submits revised programmes at intervals no longer than one month

The *completion date* for the whole of the *works* is as stated in the Work Order

The *Client* is not willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is two weeks after a Work Order is issued

#### 4 Quality Management

The period within which the *Contractor* is to submit a quality policy statement and quality plan is Stated in the Work Order under which the *Contractor* is instructed to prepare the quality policy statement and quality plan

The period between Completion of the whole of the *works* other than excepted items and the *defects date* is 52 weeks

Excepted items The period between Completion of the high friction surfacing and the *defects date* is 24 Months after Scheme Completion

The period between Completion of thin surface course systems and the <i>defects date</i>	is	60	Months after Scheme Completion
The period between Completion of landscaping and the <i>defects date</i>	is	60	Months after Scheme Completion
The period between Completion of cathodic protection and the <i>defects date</i>	is	24	Months after Scheme Completion

The *defect correction period* is four weeks

## 5 Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is

one

calendar month

The *first assessment date* is

6th

of the next month following the *starting date*

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

3

% per annum above the Bank of England base rate in force from time to time

The *Contractor's share percentages* and the *share ranges* are:

*share range*

*Contractor's share percentage*

less than

85%

0%

from

85% to 95%

25%

from

95% to 105%

50%

greater than

105%

25%

The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Work Done to Date

## 6 Compensation events

The place where weather is to be recorded is

the Met Office weather station nearest to the place where the works are performed

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 12:00 hours GMT

The *weather measurements* are supplied by

Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone 0870 900 0100

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

the Met Office weather station nearest to the place where the works are performed

and which are available from

Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB. Telephone 0870 900 0100

These are additional compensation events

- (22) The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.
- (23) The *Project Manager* gives an instruction for dealing with an object of value or historical or other interest found on, in or under the Working Areas.



- (24) The Secretary of State issues additional directions or guidance to the *Client* under section 6 of the Infrastructure Act 2015 or changes any directions or guidance previously issued (including directions or guidance contained in the Licence).
- (25) The *Project Manager* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.
- (26) The *Project Manager* instructs the *Contractor* to re-deploy resources from the *works* to other work of the *Client*.
- (27) Asbestos is unexpectedly discovered at the Site by other framework contractors and/or Others (which is not itself due to an act, omission or default of the *Contractor*) in the course of the *Contractor* Providing the Works
- (28) An instruction under Z109 which changes the Framework Information.

## 8 Liabilities and insurance

These are additional *Client's* liabilities

- |     |                                                                                                                                                                                                                                                   |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Loss of or damage to any part of the Working Area due to theft.                                                                                                                                                                                   |
| (2) | Loss of or damage to any part of the Working Area by any cause occurring during the construction of a Scheme, excluding such loss or damage which results from an act, omission or default of the <i>Contractor</i> or an Other Works Contractor. |
| (3) | Loss of or wear or damage to any part of the Working Area by any other cause, except loss, wear or damage which is due to any act, omission, default or breach of contract on the part of the <i>Contractor</i>                                   |

## 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 his nominee

The *Senior Representatives* of the *Client* are

Name (1)

Martyn Gannicott

Address for  
communications

The Cube, 199 Wharfside Street, Birmingham, B1 1RN

Address for electronic  
communications

Martyn.Gannicott@highwaysengland.co.uk

Name (2)

Martin Hobbs

Address for  
communications

Piccadilly Gate, Store Street, Manchester, M1 2WD

Address for electronic  
communications

Martin.Hobbs@highwaysengland.co.uk

**Option X1: Price adjustment for inflation (for use only with Option C)**

The *base date* for index is

1<sup>st</sup> February 2021

The *index* is

Highways Term Maintenance Price Adjustment Formulae Indices - 2010 Series Highways Term Maintenance Cost Index 2010 Series, Work Category WC 10/2 Renewals and Construction Work, published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors, and the proportion used to calculate the price adjustment factor is 100%.

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

The undertakings to Others are provided to

as stated in the Work Order, if any.

The *Subcontractor undertaking to Others* are

works

provided to

as stated in the Work Order, if any.

as stated in the Work Order, if any.

The *Subcontractor undertaking to the Client* are

works

as stated in the Work Order, if any.

**Option X10: Information modelling**

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

if applicable, as stated in the Work Order

**Option X15: The *Contractor's* design**

The *period for retention* following Completion of the whole of the *works* or earlier termination is

12 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim

As per the Scope  
[Annex 06](#)

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

As per the Scope  
[Annex 06](#)

### Option X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect and consequential loss is limited to

The Total of the  
Prices

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

£5,000,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

Lot 1: £5,000,000  
Lot 2: £5,000,000  
Lot 3: £1,000,000  
Lot 4: £5,000,000  
Lot 5: £1,000,000  
Lot 6: £1,000,000  
Lot 7: £5,000,000  
Lot 8: £5,000,000  
Lot 9: £5,000,000  
Lot 10: £5,000,000  
Lot 11: £5,000,000  
on a per Work  
Order basis

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters listed in X18.5, is limited to

Lot 1: £10,000,000  
Lot 2: £10,000,000  
Lot 3: £10,000,000  
Lot 4: £10,000,000  
Lot 5: £3,000,000

Lot 6: £6,000,000  
Lot 7: £10,000,000  
Lot 8: £10,000,000  
Lot 9: £5,000,000  
Lot 10:  
£10,000,000  
Lot 11:  
£10,000,000  
on a per Work  
Order basis

The *end of liability date* is

12

years after Completion of the whole  
of the *works*.

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

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

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

The first *invoice date* is

on or before the 23rd of month after the *first  
assessment date*

Later *invoice dates* occur on the same day of each calendar month after the first *invoice date*  
until all amounts due to the *Contractor* under the contract have been paid.

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

term

*beneficiary*

Prompt Payment, Scope para 11.4

- a Subcontractor
- subcontractor
- subsubcontractors

Subcontracting, Scope para 11.4

a Subcontractor

The provisions of Option Y(UK)1

Named Suppliers

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## Option Z: Additional conditions of contract

The *additional conditions of contract* are the following clauses

Z1A, Z7A, Z8, Z9A, Z14A,  
Z16-18, Z50, Z52, Z53, Z56,  
Z57, Z59, Z60, Z100 (for  
use only with Option E),  
Z105, Z107, Z151

**Contract Data entries relating to Z Clauses**

Z100 (for use only with  
Option E)

The *staff rate index* is

EARN03: Average Weekly  
Earnings by Industry: "Not  
Seasonally Adjusted Average  
Weekly Earnings - Index  
Figures Excluding Bonuses,  
Including Arrears": Sector F –  
Construction: Tab 4 Column  
K5AH published by the Office  
for National Statistics.

**Clause Z107** Network Rail Possessions

The *Network Rail possession charge* is

Type x £ as stated in the Work Order

per possession

Type y £ as stated in the Work Order

per possession

Z Clause (ECC) Contents	
Number	Title
Z1A	Changes to Core and Secondary Option Clauses
Z7A	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9A	Change of Control and financial distress
Z14A	Project Bank Account
Z15	Tax Non - Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>works</i> from the Scope
Z18	Corruption or loss of data
Z50	Health and Safety Plan
Z53	Pensions
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z59	Indemnified claims
Z60	Tax Arrangements of Public Appointees
Z100	Indexation (for use only with Option E)
Z105	Innovation - Title to Equipment
Z107	Network Rail Possessions
Z151	Audit, Contract Management Points and Nonconformities



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

### **11 Identified and defined terms**

#### **11.2 Add the following defined terms:**

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

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

(38) EU Reference is any European Union

- regulation,
- decision,
- tertiary legislation or
- provision of the European Economic sub-lot agreement.

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

(40) Health and Safety Plans are

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

(41) 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*.

(42) Indemnified Claim is a matter for which the *Contractor* is liable under the contract

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

(44) Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.

(45) Licence is the document entitled “Highways England: Licence” dated April 2015 listed in [Appendix 2](#) of the Framework Information.

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(46) Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to carry out works or provide services similar to the *work* in relation to the site during the period immediately prior to the *access date*.

(47) A Scheme is a group of works to be carried out by the *Contractor*, framework suppliers and/or Others, for the repair, renewal or improvement of a section of the strategic road network and associated assets as briefly described in a Work Order.

(48) Scheme Completion is when the *Project Manager* certifies that all the work comprised in a Scheme has been completed and that any defects in the Scheme (including any Defects) that would have prevented the *Client*, other framework suppliers and Others from using the strategic road network and associated assets and framework suppliers and/or Others from doing their work have been corrected.

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

(50) Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of works similar to the *works* in relation to the Site during the period immediately prior to the *access date*, other than employees who object to being transferred to the *Contractor*.

(51) TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006.

(52) A Work Order is the *Project Manager's* instruction to carry out *works* in accordance with the Scope of the Work Brief.

Amend the following terms

#### **11.2 (26) Disallowed Cost**

In the definition of "Disallowed Cost"

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

- implementing any modifications or enhancements to the *Contractor's* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client's* requirements as stated in the Scope,
- carrying out additional audits of the *Contractor's* contract management system during any period while the number of Contract Management Points in effect is above the Threshold Level
- replacing a *key person* (and any associated costs),
- correcting Defects after Scheme Completion,
- complying with section 1.2.15 (regarding substance abuse etc) and clause 1.6.1 (security) in [Appendix 10](#) of the Framework Information and resulting costs;

(ii) after the last bullet point insert an additional paragraph as follows, "and any other cost stated in the *additional conditions of contract* as being a disallowed cost.

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## **12 Interpretation and the law**

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

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

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

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

## **15 Early Warning**

15.1 In the second bullet point after “Completion” insert “or delay Scheme Completion”.

15.4 In line 3 after “Scope” insert “or any Work Order”.

## **26 Subcontracting**

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

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

## **28 Assignment**

Delete clause 28

## **29 Disclosure**

Delete clause 29

## **43 Notifying and correcting Defects**

43.1 In line 1 after “*defects date*” insert “for a Scheme”.

## **44 Correcting Defects**

44.2 Insert at the end of the first sentence before the full-stop “or such other time period as is specified by the *Project Manager* to minimise the adverse effect on the Client or

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Others”; in the second line before “Completion” in both instances insert “Scheme”.

## **50 Assessing the amount due**

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

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

- the *Supervisor* issues the Defects Certificate or
- the *Project Manager* issues a termination certificate.

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

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

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

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

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

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

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

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

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

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

## 51 Payment

Delete Clause 51.1 and 51.2 and replace with:

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

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

## 60 Compensation events

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

or

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

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

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

**70 The *Client*’s title to Plant and Materials**

Delete clause 70 and insert:

“70.1 The value of Plant and Materials outside the Working Areas is excluded from the Price for Work Done to Date unless

- the Plant and Materials is within the United Kingdom,
- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title to the Plant and Materials,
- the Plant and Materials is stored separately and is clearly and visibly marked as for the *Client* and this contract,
- the Plant and Materials is adequately protected against water, theft, vandalism and other casualties,
- the Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas and
- the *Contractor* has provided a vesting certificate unless otherwise accepted by the *Project Manager* (in the form annexed to the Framework Information, [Appendix 2](#)) for the value of the Plant and Materials.

70.2 Where the value of Plant and Materials outside the Working Areas is included in an application for payment

- the *Contractor*’s title in the Plant and Materials passes to the *Client*,
- the *Contractor* does not remove it from where it is stored except for use on the Working Areas and
- the risk of loss or damage to the Plant and Materials remains with the *Contractor*.

70.3 The value of Plant and Materials within the Working Areas is excluded from the Price for Work Done to Date unless

- title in the Plant and Materials has already passed to the *Client* under clause 70.2 or
- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant and Materials.

70.4 The *Contractor*’s title in Plant and Materials passes to the *Client* when it is brought within the Working Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor*.

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70.5 The *Contractor* does not remove Plant and Materials within the Working Areas from where it is stored except for use on Working Areas or with the *Project Manager's* prior written permission.

70.6 The title to Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* prior written permission."

### **83 Insurance cover**

Delete clause 83 and insert

"83.1 The Contractor provides the insurances stated in, and to comply with the requirements set out in, [Annex 06](#) to the Scope."

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

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

### **Option X10 Information modelling**

X10.7(3) Delete this sub-clause.

### **Option X11 Termination by the *Client***

X11.2 In line 2 delete "A1, A2 and A4" and insert "A1 and A2".

### **Option X18 Limitation of liability**

X18.5 Delete the bullet points and insert in its place

- loss of or damage to the *Client's* property,
- delay damages,
- *Contractor's* share,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Contractor* to insure (but only up to the required level for each type of insurance stated in the Scope, [Annex 06](#).
- infringement of the rights of Others,
- loss or damage
  - to third party property or
  - due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Contractor's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

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

Y1.2 In line 1 delete “three” and insert “six”.

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

Y1.9

In the second sentence delete “four” and insert “two”.

Delete the final sentence and insert

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

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

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

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

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

- if the *Project Manager* makes an assessment after the issue of a Defects Certificate, five weeks after the issue of the Defects Certificate,
- if the *Project Manager* does not make an assessment after the issue of a Defects Certificate, one week after the *Contractor* issues its assessment or
- if the *Project Manager* has issued a termination certificate, fourteen weeks after the issue of the certificate.

The final date for payment is the later of

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

The *Project Manager's* certificate is the payment notice specifying the amount due at the due date for payment (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the *Project Manager* does not make an assessment after the end of the Service Period, the *Contractor's* assessment is the Payment Notice.



If the *Project Manager* does not certify and issue the payment notice in accordance with the contract, the *Contractor's* application for payment is the Payment Notice.

Y2.3 If either Party intends to pay less than the notified sum, it issues a pay less notice to the other Party on or before the 27<sup>th</sup> of each calendar month by stating the amount considered to be due or to have been due on the date the pay less notice is served and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.

### Schedule of Cost Components

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

### Z7A Termination - Public Contract Regulations 2015

- Z7A.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date.
- Z7A.2 The *Client* may terminate the contract with immediate effect
- if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
  - the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.
- Z7A.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the Contractor,
  - R19 if the modification or infringement was due to a default by the Client and
  - R20 if the modification or infringement was due to any other reason

### Z8 Subcontracting

- Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless

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otherwise agreed by the *Project Manager*.

- Z8.3 The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor (at any stage of remoteness from the *Client*). The *Contractor* then arranges the removal of the subcontractor (at any stage of remoteness from the *Client*) and the appointment of a replacement in accordance with the contract.
- Z8.4 The *Client* may terminate if a key Subcontractor or another key resource needed for the *works* is no longer available and the *Contractor* is unable to propose an alternative resource acceptable to the *Project Manager*. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
- Z8.5 Before
- appointing a proposed subcontractor or
  - allowing a subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Project Manager* for acceptance
- either
    - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor or
    - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor and
  - details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor.
- Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Project Manager* has accepted the submission. A reason for not accepting the submission is that
- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
  - the *Project Manager* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.
- Z8.7 If requested by the *Project Manager*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5
- Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that

- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

the *Project Manager* may instruct the *Contractor* to

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

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

- Z9A.1 The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.
- Z9A.2 The *Contractor* notifies the *Client* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (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 *Contractor* (or a Consortium Member), or
  - the composition of the *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z9A.3 The *Contractor* notifies the *Client* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.
- Z9A.4 The *Contractor* notifies the *Client* immediately if any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor
- its Credit Rating falls below the relevant *credit rating*,
  - there is a further fall in its Credit Rating below the relevant *credit rating*,
  - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
  - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
  - it commits a material breach of its covenants to its lenders or
  - its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
- Z9A.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Project Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Works

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with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

Z9A.6 If as a result of a Change of Control

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

the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

Z9A.7 If a Change of Control occurs, the *Contractor* provides to the *Client*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a 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 *Contractor* remains in a position to perform its obligations under this contract.

Z9A.8 If a Change of Control or any of the events listed in clauses Z9A.2 to Z9A.4 occurs, the *Client* may require the *Contractor* 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 *Contractor* and accepted by the *Client*.

Z9A.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9A.13 or

have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9A.4 has occurred.

Z9A.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.

Z9A.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to

demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.

Z9A.12 If

- the *Contractor* fails to notify the *Client* that an event listed in clause Z9A.4 has occurred,
- neither the Controller nor any alternative guarantor proposed by the Contractor complies with the Financial Standing Test within the timescale stated in clause Z9A.11 or fails to provide the legal opinion required by clause Z9A.13
- the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* within four weeks of a request from the *Project Manager* to do so or
- the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project Manager* will meet the Financial Standing Test within 18 months of the *Project Manager's* acceptance

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

Z9A.13 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (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 *Contractor* provides a legal opinion from a lawyer or law firm which is

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

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

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

## **Z14A Project Bank Account**

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

## **Z16 Value Added Tax (VAT) Recovery**

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

## **Z17 Termination and removal of part of the works**

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- Z17.1 The *Project Manager* may instruct the *Contractor* that
- part of the *works* is to be permanently removed from the contract or
  - for urgent reasons of health and safety, part of the *works* is to be temporarily removed from the contract.
- In either case the *Contractor* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Contractor* to provide works similar to the removed *works* (or part of it).
- Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*.
- Z17.3 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Project Manager*
- completes the performance of any part of the *works* started prior to the date of termination and
  - co-operates with the *Client* or any Incoming Contractor so as to ensure a smooth transfer of functions.
- Z17.4 Not used.

## **Z18 Corruption or loss of data**

- Z18.1 If any data of the *Client* is corrupted, lost or degraded as a result of the *Contractor* default so as to be unusable, the *Contractor* immediately reports this to the *Project Manager* and
- the *Project Manager* may instruct the *Contractor* to restore the data in accordance with the *Project Manager's* requirements (and any cost incurred by the *Contractor* in so doing is Disallowed Cost) or
  - the *Client* may itself restore the data (and the *Contractor* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

## **Z50 Health and Safety Plan**

- Z50.1 The *Client* may terminate if the *Contractor* has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the Contract Date. This is treated as a termination because of a substantial failure of the *Contractor* to comply with his obligations.
- Z50.2 The period for producing the Health and Safety Plans may be extended by not more than four weeks if the *Project Manager* and the *Contractor* agree to the extension before the Health and Safety Plans are due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

- Z50.3 If the *Client* does not terminate, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has produced all the Health and Safety Plans in the form which the contract requires.

## **Z53 Pensions**

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

## **Z56 Construction Industry Scheme**

- Z56.1 In this clause (but not otherwise)
- the “Act” is the Finance Act 2004 and
  - the “Regulations” are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).
- Z56.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.
- Z56.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act
- is registered for gross payment,
  - is registered for payment under deduction,
  - is exempt from registration as a local authority or other public body or
  - is neither registered nor exempt from registration.
- Z56.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration
- the *Contractor* submits an application for payment which separately identifies the cost of labour and
  - the *Client* deducts the relevant percentage from the payment in accordance

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with the Act and the Regulations.

## **Z57 Infrastructure Act 2015**

- Z57.1 The *Contractor* Provides the Works 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 *Project Manager* to the *Contractor*).
- Z57.2 The *Project Manager* notifies the *Contractor* 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 *works*. The *Contractor* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

## **Z59 Indemnified claims**

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





Z60	Tax Arrangements of Public Appointees
Z60.1	Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the <i>Contractor</i> complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
Z60.2	Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the <i>Contractor</i> 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 <i>Client</i> may, at any time during the term of this contract, request the <i>Contractor</i> 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	<p>If the <i>Contractor</i> fails to provide information in response to a request under clause Z60.3</p> <ul style="list-style-type: none"> <li>• within the period for reply or</li> <li>• 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</li> </ul> <p>the <i>Client</i> may</p> <ul style="list-style-type: none"> <li>• treat such failure as a substantial failure by the <i>Contractor</i> to comply with his obligations or</li> <li>• instruct the <i>Contractor</i> to replace the relevant member of Staff.</li> </ul>
Z60.5	If the <i>Client</i> 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 <i>Client</i> may treat such non-compliance as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z60.6	<p>The <i>Contractor</i> acknowledges that the <i>Client</i> may</p> <ul style="list-style-type: none"> <li>• supply any information which it receives under clauses Z60.3 or Z60.5 or</li> <li>• advise the non-supply of information</li> </ul> <p>to the Commissioners of Her Majesty's Revenue &amp; Customs for the purpose of the collection and management of revenue for which they are responsible.</p>
Z100	Indexation (for use only with Option E)
Z100.1	<p>On each anniversary of the Contract Date, the <i>Contractor</i> calculates a price adjustment factor, equal to <math>(L-B)/B</math>, where L is the last published value of the <i>staff rate index</i> and B is the last value of the <i>staff rate index</i> published before the Contract Date.</p> <p>If a <i>staff rate index</i> 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.</p> <p>The price adjustment factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating adjustments after this date.</p>

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- Z100.2 After each anniversary of the Contract Date, each *maximum staff rate* is adjusted by an amount for price adjustment which is the product of the *maximum staff rate* multiplied by the price adjustment factor calculated at the last anniversary. The adjusted *maximum staff rate* is the Maximum Staff Rate.
- Z100.3 Compensation events are assessed using the lesser of the *staff rate* or the *maximum staff rate* current at the time of assessing the compensation event.

**Z105 Innovation – Title to Equipment**

- Z105.1 At Completion or (if earlier) when an Innovation is removed from the Working Areas, the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title in any Equipment used in the development of the Innovation. The *Contractor* ensures that the legal and beneficial title in the relevant Equipment transfers from the *Contractor* or a subcontractor to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

**Z107 Network Rail Possessions**

- Z107.1 The *Contractor* pays the *Client* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.
- Z107.2 In clause 25.3 of the conditions of contract insert an additional bullet before the first bullet
- by paying fines or charges to Others

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

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

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## Annex One

### ECC Schedule of Cost Components

This schedule is part of the *conditions of contract*. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

In this schedule the *Contractor* means the *Contractor* and Associated Companies, but not its Subcontractors.

All components of cost incurred by Associated Companies will not be subject to the application of the Associate Companies' fee percentage.

#### 1a People

The following components of

- the cost of people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is within the Working Areas,
- the cost of people who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas
- the cost of people undertaking design who are directly employed by the *Contractor* (excluding people identified in the Fee Schedule) and who are Providing the Works outside the Working Areas, proportionate to the time they spend working and
- the cost of people who are directly employed by the Contractor to perform the role of Principal Contractor and/or Lead Contractor whether working in or outside the Working Areas as appropriate to that role.

11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract.

12 Payments related to work on the contract and made to people for

(a) overtime

(b) working in special circumstances

- 
- (c) special allowances
  - (d) absence due to sickness and holidays
  - (e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works.
- 13 Payments made in relation to people in accordance with their employment contract for
- (a) travel, subsistence and lodging in accordance with the *Client's* Travel and Subsistence policy
  - (b) relocation
  - (c) medical examinations
  - (d) passports and visas
  - (e) travel insurance
  - (f) items (a) to (e) for dependents
  - (g) protective clothing
  - (h) contributions, levies or taxes imposed by law
  - (i) pensions and life assurance excluding payments made in relation to any pensions deficits
  - (j) death benefit
  - (k) occupational accident benefits
  - (l) medical aid and health insurance
  - (m) a vehicle
  - (n) safety training specific to Providing the Works.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Working Areas.
- Amounts paid by the *Contractor*.

## **1b People (Option E Work Orders only)**

The cost of people (as calculated in accordance with Section 1a) shall not exceed the Total Hourly Bill Rate (or *maximum staff rate*) for the same or equivalent role, as detailed within the *quotation information*.

The *maximum staff rates* shall be adjusted annually for inflation, in accordance with Clause Z100.

Where the *Contractor* proposes, and the *Project Manager* agrees that additional staff roles are required outside of those identified in the *quotation information* in order to undertake part of the *work* identified in an Option E Work Order, the *Contractor* proposes a new *maximum staff rate* for the role. The new *maximum staff rate* is calculated in accordance with the contract, using the same principles and templates as those used to calculate the *maximum staff rates* within the *quotation information*.

The *Project Manager* either accepts or does not accept the proposed *maximum staff rate*. The reasons for not accepting the proposed *maximum staff rate* are;

- the rate is not representative of the “market rate” for such a role. The *Contractor* shall demonstrate, through benchmarking or other methods, that the *maximum staff rate* is in line with the market for such a person,
- a rate for the proposed role or a similar and equivalent role has already been agreed,
- the proposed role will not be used to undertake part of the *work* identified in an Option E Work Order or is already recovered in the overheads and/or fee or,
- the rate is not calculated in accordance with the contract.

If accepted by the *Project Manager*, the *maximum staff rate* for the new staff role is added to the *quotation information*.

## **2 Equipment**

The following components of the cost of Equipment which is used within the Working Areas

### **21 Payments for the hire or rent of Equipment not owned by**

- the *Contractor*,
- the *Contractor's* ultimate holding company or
- a company with the same ultimate holding company

- 
- at the hire or rental rate multiplied by the time for which the Equipment is required.

22 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company
- at open market rates, multiplied by the time for which the Equipment is required.

The reference to “open market rates” shall be read and construed as the mean average of a minimum of three prices, obtained and evidenced by the *Contractor* from local plant hire companies that are able to supply the required equipment, including deductions for length of hire, spend based and other discounts, unless otherwise agreed by the *Project Manager*.

23 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

The reference to “open market sale price” shall be read and construed as the mean average of a minimum of three prices, obtained and evidenced by the *Contractor*, from local plant hire companies that are able to supply the required equipment, including deductions for length of hire, spend based and other discounts, unless otherwise agreed by the *Project Manager*.

24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.



- 25 Payments for the purchase price of Equipment which is consumed.
- 26 Unless included in the hire or rental rates, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
  - erecting and dismantling Equipment and
  - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

### **3 Plant and Materials**

The following components of the cost of Plant and Materials.

- 31 Payments for
- purchasing Plant and Materials,
  - delivery to and removal from the Working Areas,
  - providing and removing packaging and
  - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

### **4 Subcontractors**

The following components of the cost of Subcontractors.

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

## **5 Charges**

The following components of the cost of charges paid or received by the *Contractor*.

### **51 Payments for the provision and use in the Working Areas of**

- water,
- gas,
- electricity,
- telephone and
- internet.

### **52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.**

### **53 Payments for**

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land or buildings within the Working Areas
- (c) compensation for loss of crops or buildings
- (d) royalties
- (e) inspection certificates
- (f) charges for access to the Working Areas
- (g) facilities for visits to the Working Areas by Others
- (h) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.

### **54 Payments made and received by the *Contractor* for the removal from Site and disposal or sale of materials from excavation and demolition.**

## **6 Manufacture and fabrication**

The following components of the cost of manufacture and fabrication of Plant and Materials by the *Contractor* which are

- wholly or partly designed specifically for the *works* and

- 
- manufactured or fabricated outside the Working Areas.

61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas.

## **7 Design**

Not Used

## **8 Insurance**

The following are deducted from cost

- the cost of events for which the contract requires the *Contractor* to insure and
- other costs paid to the *Contractor* by insurers.