



Highways England Company Limited

Smart Motorways Alliance

VOLUME 1

CONDITIONS OF CONTRACT

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Highways England Company Limited

Smart Motorways Alliance

Volume 1

1 - Schedule of Definitions

Term and Definition
Agile Responsibilities are those elements of the <i>works</i> which may be allocated to Partners in more than one Lot as listed in section S125 of the Scope.
The Alliance is the <i>Client</i> and the Partners. A reference to a member of the Alliance is a reference to the <i>Client</i> (as a member of the Alliance) or one of the Partners.
The Alliance Board comprises the <i>alliance board representatives</i> unless later changed in accordance with the contract.
The Alliance Budget Pricing Model (APBM) is the tool and supporting procedures used for calculating the Scheme Budget for Defined Solutions as described in the Quotation Information.
Alliance Completion is when the final Scheme reaches Scheme Completion.
The Alliance Cost is the sum of the Price for Work Done to Date and the Client's Costs.
The Alliance Customer Objective is the Alliance Objective related to customer performance for which performance targets are incorporated in the Performance Table.
The Alliance Delivery Objective is the Alliance Objective related to delivery performance for which performance targets are incorporated in the Performance Table.
The Alliance Earned Value for a specified time period is the sum of the Partner Earned Values for that period.
The Alliance Earned Value Percentage for a specified time period is the Alliance Earned Value divided by the sum of the Earned Value Projections for that period expressed as a percentage.
The Alliance Manager is the person nominated by the <i>Client</i> to manage the work on behalf of the Alliance Board.
An Alliance Objective is an aspect of performance by the Alliance which is in the Scope.
Alliance Performance Failure has the meaning given to it in Section 8 of the Implementation Plan.

Alliance Performance Improvement Process is the process for improving Alliance performance described in Section 8 of the Implementation Plan.

The Alliance Safety Objective is the Alliance Objective related to safety performance for which performance targets are incorporated in the Performance Table.

The Alliance Scope is

- the General Scope and
- the Lot Scope

and is information which

- specifies and describes the *works* or
- states any constraints on how the Alliance Provides the Works,

and is either

- in the documents which the Alliance Contract Data states it is in or
- in an instruction given in accordance with the contract.

The Alliance Start Date is the date on which the first Order is issued for a Scheme.

Alliance Underperformance has the meaning given to it in Section 8 of the Implementation Plan.

An Associated Company is

- a Consortium Member,
- a Material Subcontractor 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 a Partner or a Consortium Member.

Associated Works are works not forming part of the Smart Motorways programme, which may include

- supporting the future implementation of driverless and autonomous vehicles,
- supporting the *Client* to deliver technology-led Schemes and wider autonomous and connected vehicle road implementation strategies,

- delivering All Lane Running (ALR) and enhanced traffic management to non-motorway sections of the SRN and
- delivering capital works, maintenance or operations activity as part of a Scheme.

An Awarded Scheme is a Scheme for which an Order has been issued.

The Budget is the total of the Scheme Budgets for all Awarded Schemes.

Budget Share is the percentage of the Partner Fee stated as such in the *commercial workbook* for each Partner.

Building Information Modelling is a three-dimensional model-based process that provides insight and tools to more efficiently plan, design, construct, and manage Schemes from design to construction.

CDF is the collaborative delivery framework established by the *Client* in November 2014 to enable procurement of professional engineering design services and construction work required to deliver RIS1 schemes across the SRN.

The CDM Regulations are the Construction (Design and Management) Regulations 2015 (SI 51).

A Change of Control is

- an event where any single person, or group of persons acting in concert, acquires control of a Partner or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of a Partner 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 a Partner or a Consortium Member,
- a change in the direct or indirect legal or beneficial ownership of 3% or more of the issued share capital of a Partner or a Consortium Member or
- a change in the composition or status of a Partner which directly or indirectly affects the performance of the contract by the Partner or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

Client Background IPR is IPR owned by the *Client* before the Contract Date, or created by the *Client* independently of the contract, and which is not available to the Partners

otherwise than under the contract, but excluding IPRs owned by the *Client* in the Client Software.

Client's Costs are the following components of cost incurred by the *Client* in relation to the works whether as a member of the Alliance or otherwise

- amounts calculated using the rates and prices contained in the *Client's cost schedule*,
- amounts paid to other people for correcting Defects and
- costs and charges identified as payable by the *Client* in the *Client's cost schedule*, less any amount recovered by the *Client* from insurers.

Client Software is software which is owned by or licensed to the *Client* (other than under or pursuant to the contract) that is or will be used by the Partners in order to Provide the Works.

The Client System is the *Client's* computing environment (consisting of hardware, software and telecommunications networks or equipment) used by the *Client* or the Partners in connection with the contract which is owned by the *Client* or licensed to it by a third party and which interfaces with the Partner Systems or which is necessary for the *Client* to receive the works.

The Client's Requirements are the requirements identified as such in the Scheme Scope unless later changed by the *Client* in accordance with the contract.

The Commitment SLA Register is the register maintained by the Alliance Manager listing those commitments made by the Partners in their tender submissions which the *Client* decides are to be incorporated into the contract.

The Completion Date is the *completion date* for a Scheme unless later changed in accordance with the contract.

A Consortium Member is an organisation which is a member of the group of economic operators comprising a Partner, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.

The Contract Date is the date when the contract came into existence.

Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.

Controller is the single person (or group of persons acting in concert) that

- has control of a Partner or a Consortium Member or
- holds or controls the largest direct or indirect interest in the relevant share capital of a Partner or a Consortium Member.

Core Responsibilities are those elements of the *works* which are uniquely allocated to the Partners in one Lot as listed in section S120 of the Scope.

A Corrupt Act is

- the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust, or
- abusing any entrusted power for private gain

in connection with the contract or any other contract with the *Client*. This includes any commission paid as an inducement which was not declared to the *Client* before the Contract Date.

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 a Partner, a Consortium Member or any Guarantor.

Customer Performance Target is a target stated in the Performance Table for delivery of the Alliance Safety Objective.

Data is all Personal Data collected, generated or otherwise processed by the Partners in the course of Providing the Works.

A Data Loss Event is an event that results, or may result, in unauthorised access to Personal Data held by the Processor for the purposes of the contract, and/or actual or potential and/or destruction of Personal Data in breach of the contract, including any Personal Data breach.

Data Protection Impact Assessment is an assessment by the *Client* of the impact of the envisaged processing on the protection of Personal Data.

The Data Protection Legislation is

- the General Data Protection Regulation (EU 2016/679),

<ul style="list-style-type: none">• the Law Enforcement Directive (EU 2016/680),• the Data Protection Act 2018 and• any other data protection laws and regulations applicable in England and Wales.
A Data Subject is an individual who is the subject of Personal Data.
A Data Subject Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
The Decision Matrix is the matrix at Annex A to the Implementation Plan which defines the decision-making authority of the Alliance Board.
A Defect is <ul style="list-style-type: none">• a part of the <i>works</i> which is not in accordance with the Scope or• a part of the <i>works</i> designed by the Alliance which is not in accordance with the applicable law or the Alliance's design which the Alliance Board has accepted.
The Defects Certificate is a statement that there are no notified Defects.
Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.
A Defined Solution is a repetitive construction works element of the Smart Motorways Programme as more particularly described in the Quotation Information.
Delivery Performance Target is a target stated in the Performance Table for delivery of the Alliance Safety Objective.
DfT means the Department for Transport.
A Digitally Enabled Design Partner is any Partner appointed to Lot 2.
Digitally Enabled Design Functions are the functions as described in the Implementation Plan.
Disallowed Cost is <ul style="list-style-type: none">• cost which is not justified by a Partner's accounts and records,

- cost which should not have been paid to a Subcontractor or supplier in accordance with its contract,
- the cost of implementing any modifications or enhancements to a Partner's information technology systems (including computerised design systems) related to working in the Alliance,
- costs incurred in connection with additional audits that are required during any period while the number of Quality Management Points in effect for the Alliance, a Scheme or a Partner is above the Threshold Level,
- costs associated with the engagement of a *Partner key person* or a selected *Alliance key person* who is to be replaced during the period of handover to a replacement,
- the cost of Equipment brought to the Working Areas earlier than when needed to Provide the Works or retained in the Working Areas when no longer needed to Provide the Works,
- costs incurred by a Partner in relation to a Scheme after the issue of the Defects Certificate (other than the cost of landscaping aftercare, if carried out by a Partner) and
- preparation for and conduct of an adjudication or proceedings of the *tribunal* between members of the Alliance, including payments to the *Adjudicator* or a member of the *tribunal*.

The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.

DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).

The Early Warning Register is a register of matters which are

- listed in the Contract Data for inclusion or
- notified by the Alliance Manager or a member of the Alliance as early warning matters.

It includes a description of the matter and the way in which the effects of the matter are

to be avoided or reduced.

Earned Value Projection is the value of work expected to be delivered by a Partner in Providing the Works during a specified time period, measured using a methodology to be developed by the Alliance in accordance with the Implementation Plan.

Enforcement Action is enforcement action brought by a regulatory authority under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.

Equipment is items provided and used by the Alliance to Provide the Works and which the Scope does not require the Alliance to include in the *works*.

The Expenditure Profile for a Scheme is the *expenditure profile* unless later changed in accordance with the contract.

A Financial Distress Event is the occurrence of any of the following events in relation to a Partner, 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.

The Financial Standing Test is the financial test used by the *Client* in the tender stage of the competition for the contract or at a later date to assess the financial standing of a Partner, a Consortium Member or a proposed Guarantor.

The General Scope is Section B of the Alliance Scope.

Goals Share is the percentage of the Partner Fee stated as such in the *commercial workbook* for each Partner.

Guarantor is a person who gives a Parent Company Guarantee to the Client.

The Health and Safety Plans are

- a completed Supply Chain Health and Safety Maturity Matrix (SCMM) for a Partner or a Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
- an SCMM plan, setting out the actions to be taken by a Partner or a Consortium Member over a period of 12 months following the date of the SCMM in order to improve the scores recorded in the SCMM 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 a Partner 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 a Partner or a Consortium Member.

The Implementation Plan is information which describes

- the management structure of the Alliance,
 - the roles and responsibilities of the members of the Alliance,
 - delegation by the Alliance Board,
 - the use of common systems and processes and
 - other information which the Alliance Board requires to be included,
- and is either
- in the documents which the Alliance Contract Data states it is in or
 - in an instruction given in accordance with the contract.

An Incoming Provider is a member of the Alliance who takes over the provision of any part of the *works* in respect of which TUPE applies.

Indemnified Claim is defined in clause Z16.1.

An Indemnified Person is the *Client* and any person to whom the *Client* (or any direct or indirect sub-licensee of the *Client*) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with the contract.

The Information Execution Plan is the latest Information Execution Plan issued by the Alliance Manager.

The Information Model is the electronic integration of Project Information in the form stated in the Information Model Requirements.

The Information Model Requirements are the requirements identified in the Scope for creating the Information Model.

Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

An Insolvency Event is one of the following or its equivalent

- if a member of the Alliance is an individual and has
 - presented an application for bankruptcy,
 - had a bankruptcy order made against it,
 - had a receiver appointed over its assets or
 - made an arrangement with its creditors or
- if a member of the Alliance is a company or partnership and has
 - had a winding-up order made against it,
 - had a provisional liquidator appointed to it,
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct),
 - had an administration order made against it or had an administrator appointed over it,
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets or
 - made an arrangement with its creditors.

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.

An IPRs Claim is any claim against an Indemnified Person of infringement or alleged infringement (including the defence of an infringement or alleged infringement) of any Relevant IPRs, except to the extent caused by

- any use of any Relevant IPRs by or on behalf of the Indemnified Person or
- any use of the Client Software by or on behalf of the Partners

for a purpose not reasonably to be inferred from the provisions of the contract.

The Issued Programme is the latest programme issued by the Alliance Manager. The latest programme issued by the Alliance Manager supersedes previous Issued Programmes.

Joining Deed is an agreement in the form set out in the contract under which a Supplier joins the Trust Deed for a Scheme.

Licence is the document entitled "Highways England Licence" dated April 2015 identified in the Scope.

Lot 1 means the programme management services required to Provide the Works.

Lot 2 means the digitally enabled design services required to Provide the Works.

Lot 3 means the on-site assembly and delivery services required to Provide the Works.

The Lot Scope is Section A of the Alliance Scope.

A Material Subcontractor is a Subcontractor named in the Contract Data as critical to a Partner's ability to undertake specified elements of the *works*, but only when appointed by that Partner.

A Milestone Key Date is a target date for achievement of a Delivery Performance Target stated in the Performance Table.

Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed for a Scheme.

A Non-Defined Solution is an item of work or activity which falls beyond the design

principles and scope of a Defined Solution as more particularly described in the Quotation Information.

On-site Assembly and Delivery Functions are the functions as described in the Implementation Plan.

An On-site Assembly Partner is a Partner appointed to Lot 3.

Open for Traffic is when a Scheme is substantially complete and meets the ORR guidance for having no further permanent traffic management in place, recognising that there may be work left to complete which may require partial or overnight closures to finalise.

Open Source Software is software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in the software grants the right to use, study, change and distribute the software to all persons and for any purposes free of charge.

Optimisation is the process for re-allocation of work among members of the Alliance prior to the issue of an Order as detailed in Section 6 of the Implementation Plan.

Order is an order issued by the *Client* pursuant to clause Z19.1 for a Scheme.

ORR is the Office of Rail and Road.

OSS is the Open Source Software listed in the Software Schedule.

Others are people or organisations who are not the *Client*, the Alliance Manager, a Partner or any employee, Subcontractor or supplier of a member of the Alliance.

An Outgoing Provider is a member of the Alliance who relinquishes the provision of any part of the *works* in respect of which TUPE applies.

A Parent Company Guarantee is a guarantee of a Partner's performance in the form set out in the Scope.

The Partners are the Production Management Partner, Digitally Enabled Design Partners and On-site Assembly Partners and Partner means any one of them. The Partners are the *partners* unless later changed in accordance with the contract.

Partner Background IPR is IPR owned by a Partner or a third party before the Contract

Date or created by a Partner or a third party independently of the contract, which in each case is or will be used before or during the contract for designing, testing, implementing or Providing the Works, but excluding IPRs owned by a Partner in the Partner Software or by any third party in the Third Party Software.

Partner Budget Deduction is a deduction from the amount due to a Partner for Alliance overspends against the Budget as detailed in the Performance Table.

Partner Budget Incentive is an incentive payable to a Partner for Alliance savings achieved against the Budget as detailed in the Performance Table.

The Partner Budget Performance Cap for a Partner is the product of the Total Partner Fees Paid and the Budget Share.

Partner Earned Value is the actual value of work delivered by a Partner in Providing the Works during a specified time period, measured using a methodology to be developed by the Alliance in accordance with the Implementation Plan.

Partner Fee or Fee is the fee payable to a Partner for a Scheme or a Periodic Instruction calculated in accordance with the Quotation Information.

Partner Fee Projection is

- for the Digitally Enabled Design and On-site Assembly Partners, a cash flow forecast of the Partner Fee for each Scheme to reflect anticipated resourcing requirements during the lifecycle of the Scheme, prepared and updated by the Alliance at the times and in the format stated in the Implementation Plan and
- for the Production Management Partner, a cash flow forecast of the Partner Fee for each (other than the first) Periodic Instruction, assessed by the *Client* in accordance with the Implementation Plan and included in the Periodic Instruction.

The Partner Fees Paid (Current Period) is the total of the Partner Fees previously paid to a Partner in the current Performance Period.

Partner Goals Performance Deduction Portion is a deduction from the amount due to a Partner for Alliance non-achievement of a Performance Target (other than a Budget overspend), calculated in accordance with the Performance Table.

The Partner Goals Performance Cap is the maximum amount payable by a Partner in a Performance Period for Alliance non-achievement of the Alliance Performance Targets

(other than a Budget overspend) and is calculated as the product of the Partner Fees Paid (Current Period) and the Goals Share for that Partner.

Partner Performance Failure has the meaning given to it in the Partner Performance Improvement Process.

Partner Performance Improvement Process is the process (aligned with the Alliance Performance Improvement Process) to be developed by the Alliance for improving Partner performance as described in Section 8 of the Implementation Plan.

Partner Underperformance has the meaning given to it in the Partner Performance Improvement Process.

Partner Software is software which is proprietary to a Partner (or an Associated Company of a Partner) that is or will be used by the Partners in order to Provide the Works, including the software specified as such in the Software Schedule.

The Partner Systems is the Partners' computing environment (consisting of hardware, software and telecommunications networks or equipment) used by the *Client* or the Partners in connection with the contract which is owned by a Partner or licenced to it by a third party which interfaces with the Client's System or which is necessary for the *Client* to receive the *works*.

The PBA Administrator is the member of the Alliance identified in an Order who establishes and administers the Project Bank Account for a Scheme.

A PCF Stage is one of the stages of a Scheme defined as such in the Project Control Framework.

Performance Management Framework is the framework for managing Alliance performance described in Section 8 of the Implementation Plan.

The Performance Table Information is the document at Annex H to the Implementation Plan setting out rules and templates to be used when preparing the Performance Table.

The Performance Table is the table to be prepared by the Alliance Manager in accordance with the Performance Table Information accepted by the *Client* setting targets for the achievement of the Alliance Objectives and payments linked to the achievement or non-achievement of those objectives, unless later changed in

accordance with the contract.
A Performance Period is a period described as such in the Performance Table Information.
Performance Targets are the targets stated in the Performance Table for delivery of the Alliance Objectives.
A Periodic Instruction is an instruction to the Production Management Partner to perform the Core Responsibilities allocated to it in the General Scope and such of the Agile Responsibilities as are stated in the Periodic Instruction during the period stated in the Periodic Instruction.
Personal Data is any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Legislation.
Plant and Materials are items intended to be included in the <i>works</i> .
The Price for Work Done to Date for each Partner is <ul style="list-style-type: none">• the total Defined Cost which the Alliance Manager forecasts will have been paid by the Partner before the next assessment date, plus• a proportion of the Partner Fee assessed in accordance with clause 55.
The Principal Contractor is the person appointed in that capacity for a Scheme pursuant to the CDM Regulations.
The Principal Designer is the person appointed in that capacity for a Scheme pursuant to the CDM Regulations.
Processor means each of the Partners.
The Production Hub is the centralised function within the Alliance which <ul style="list-style-type: none">• drives integrated programme planning, standard policies and processes,• coordinates logistics and supply chain management across the Alliance,• establishes the risk framework and reporting for the Alliance,• enables technology, co-location and collaboration, information management and benefits tracking across the Alliance,

<ul style="list-style-type: none">• drives continuous improvement, employee engagement and people capability and• embeds best practice and innovation across the Alliance.
Production Hub Functions are the functions as described in the Implementation Plan.
The Production Management Partner is the Partner appointed to Lot 1.
A Project Bank Account is an account in relation to a Scheme used to receive payments from the <i>Client</i> and the Partners and to make payment to the Partners and Named Suppliers.
Project Information is information (including Software code) provided by the Alliance and other Information Providers which is used to create, operate or change the Information Model.
The Project Control Framework is the document of that name identified in the Scope.
Protective Measures are appropriate, technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Procurement Policy Note 02/18.
To Provide the Scheme means to do the work necessary to complete a Scheme in accordance with the contract and all incidental work, services and actions which the contract requires.
To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with the contract and all incidental work, services and actions which the contract requires.
Quality Management Points are points accrued by the Alliance, a Scheme or a Partner in accordance with the quality table in the Scope.
The Quantification Rules are the rules set out in the Quotation Information for the assessment of quantities for a Scheme used in the calculation of the Scheme Budget.
The Quotation Information is the document of that name identified in the Contract Data.

Relevant IPR is IPR used to Provide the Works or otherwise provided or licensed by the Partners (or to which the Partners have provided access) to the Client or a third party in fulfilment of the Partners obligations under the contract, including any IPR in the Specially Written Software, the Partners Software, the Partners Background IPRs and the Third Party Software.

Responsible Partners are the Partners with primary responsibility for delivery of a Scheme (or specified parts of a Scheme) as identified in an Order.

A Restricted Person is

- an *Alliance key person*,
- a *Partner key person* or
- a person employed or engaged by a member of the Alliance (or an Associated Company) and deployed in the Production Hub, but excluding support staff.

RIDDOR Incident is an incident occurring under any contract between

- a Partner or an Associated Company and
- the *Client* or any other person

which results in death or serious injury to any worker or non-worker and for which a Partner is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).

Road Investment Strategy 1 (RIS 1) is the strategy that defines 127 schemes for delivery by the *Client*, to be commenced during the period from 2015 to 2020.

Road Investment Strategy 2 (RIS 2) is the strategy in which DfT has identified new schemes for delivery by the *Client*, to be commenced during the period from 2020 to 2025.

Road Investment Strategy 3 (RIS 3) is the strategy in which DfT will identify new schemes for delivery by the *Client*, to be commenced during the period from 2025 to 2030.

Safety Performance Target is a target stated in the Performance Table for delivery of the Alliance Safety Objective.

A Scheme is a scheme of work identified in an Order.

The Scheme Budget is the budget for a Scheme calculated in accordance with the Quotation Information and stated in the Scheme Contract Data unless later changed in accordance with the contract.

Scheme Completion is when the Alliance has

- done all the work which the Scope states is to be done by the Scheme Completion Date
- corrected notified Defects which would have prevented the *Client* from using the *works* or Others from doing their work.

If the work which the Alliance is to do by the Scheme Completion Date is not stated in the Scope, Completion is when the Alliance has done all the work necessary for the *Client* to use the *works* and for Others to do their work.

Scheme Notification is an initial notification from the *Client* to the Alliance giving details of a proposed Scheme.

The Scheme Scope is information which

- specifies and describes the *works* for a Scheme,
- identifies the division of responsibility between the Partners who are to Provide the Scheme, including who are the Responsible Partners and
- states any constraints on how the Alliance Provides the Scheme

and is either

- in the documents which the Scheme Contract Data states it is in or
- in instruction given in accordance with the contract.

The Scope is

- Alliance Scope and
- Scheme Scope.

The Secretary of State is the Secretary of State for Transport.

A Security Incident is a breach of security leading to the accidental or unlawful

destruction, loss, alteration, unauthorised disclosure of, or access to, Data.

The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in a Scheme.

SME (Small and medium sized enterprise) is a Subcontractor or a sub-subcontractor that

- is autonomous,
- is a European Union enterprise not owned or controlled by a non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros, and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Software is Specially Written Software, Partner Software or Third Party Software.

Software Schedule is the *software schedule* unless later changed in accordance with the contract.

Specially Written Software is software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by a Partner (or by a Subcontractor (at any stage of remoteness from the *Client*) or other third party on behalf of a Partner) specifically for the purposes of the contract, including

- any Partner Background IPRs that are embedded in or which are an integral part of such software and
- any modifications or enhancements to Partner Software or Third Party Software created specifically for the purposes of the contract.

Staff Rate Schedule is the *staff rate schedule* unless later changed in accordance with

the contract.

Staff are employees of any member of the Alliance who work wholly or mainly on any part of the *works* that is subject to a TUPE transfer.

The Strategic Road Network (SRN) is the strategic highway network owned and operated by the *Client*.

A Subcontractor is a person or organisation who has a contract with a member or members of the Alliance to

- construct or install part of the *works*,
- design all or part of the *works*, except the design of Plant and Materials carried out by the supplier or
- provide a service in the Working Areas which is necessary to Provide the Works, except for the
 - hire of Equipment or
 - supply of people paid for by a Partner according to the time they work.

A Subcontractor Warranty is a collateral warranty provided by a Subcontractor in favour of the *Client* in substantially the form at Annex I of the Alliance Scope.

A Sub-Processor is a third party (including an Associated Company) engaged by a Partner to process Data.

A Supervisory Authority is any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Legislation.

A Supplier is a person or organisation who has a contract to

- construct or install part of the *works*,
- provide a service necessary to Provide the Works or
- supply Plant and Materials for the *works*.

The Supply Chain are the Subcontractors and suppliers (at any stage of remoteness from the *Client*) engaged by the Partners to support the Alliance in Providing the Works.

Tax Non-Compliance is where a tax return submitted by a Partner or a Consortium

Member 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 Partner 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 a Partner or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

Third Party Software is software which is proprietary to any third party (other than an Associated Company of a Partner) that is or will be used by the Partners in order to Provide the Works, including the software specified as such in the Software Schedule and including OSS.

Threshold Level is the respective level of Quality Management Points at which an Alliance, Scheme or Partner quality improvement process is commenced as detailed in section S660 of the Scope.

The Total Partner Fees Paid is the total of the Partner Fees previously paid to a Partner under the contract.

Transfer Date is any date on which a transfer pursuant to TUPE occurs in relation to any part of the *works*.

Transferring Employee is an employee of any member of the Alliance who works wholly or mainly on the *works* and who transfers from the Outgoing Provider to the Incoming Provider pursuant to TUPE.

Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account for a Scheme.

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

TUPE Information is the employee liability information in respect of the Transferring

Employees defined in Regulation 11 of TUPE.

The Working Areas are the Site and areas provided by a member of the Alliance which are

- necessary for Providing the Scheme and
- used only for work in the contract.



Highways England Company Limited

Smart Motorways Alliance

Volume 1

2 - Core W, X and Y Clauses

1 General

Actions

10

- 10.1 The Alliance and the Alliance Manager shall act as stated in the contract.
- 10.2 The Alliance and the Alliance Manager act in a spirit of mutual trust and co-operation.

Identified and defined terms

11

- 11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 Defined terms and their meanings are listed in the Schedule of Definitions.

Interpretation and the law

12

- 12.1 In the contract, except where the context shows otherwise words in the singular also mean in the plural and the other way round.
- 12.2 The contract is governed by the *law of the contract*.
- 12.3 No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Alliance.
- 12.4 The contract is the entire agreement between the Alliance.
- 12.5 An action required to Provide a Scheme which these *conditions of contract* allocate to the Alliance, the members of the Alliance or the Partners is undertaken by the Responsible Partners.
- 12.6 A reference in these *conditions of contract* to Completion (or Completion of the whole of the *works*) is a reference to Scheme Completion.
- 12.7 Unless otherwise stated, a reference to the *Client* in the contract is a reference to the *Client* in its capacity as a buyer of services from the Alliance and not as a member of the Alliance.

Communications 13

13.1 Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the contract*.

13.2 If the Implementation Plan specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Implementation Plan.

If the Implementation Plan does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.

13.3 If the contract requires the *Client*, the Alliance Manager, the Alliance Board or a member of the Alliance to reply to a communication, unless otherwise stated in the contract, they reply within the *period for reply*.

13.4 The *Client*, the Alliance Board or the Alliance Manager reply to a communication submitted or resubmitted to them for acceptance. If the reply is not acceptance

- the *Client* states the reasons in sufficient detail to enable the Alliance Board or the relevant Partner to correct the matter,
- the Alliance Board state the reasons in sufficient detail to enable the Alliance Manager to correct the matter or
- the Alliance Manager states the reasons in sufficient detail to enable the member of the Alliance to correct the matter.

The communication is resubmitted within the *period for reply* taking account of these reasons.

13.5 The *Client*, the Alliance Board or the Alliance Manager may extend the *period for reply* to a communication submitted to them before the reply is due. The *Client* informs the Alliance Board or the relevant Partner of an extension. The Alliance Board informs the Alliance Manager of an extension. The Alliance Manager informs the member of the Alliance of an extension.

13.6 The *Client* issues certificates to the Alliance Board. The Alliance Manager issues certificates to the

Alliance and the Alliance Board.

- 13.7 A notification or certificate which the contract requires is communicated separately from other communications.

The Client

14

- 14.1 The *Client's* acceptance of the work does not change the Alliance's responsibility to Provide the Works.

- 14.2 The *Client* may give an instruction to the Alliance which changes the Client's Requirements or these elements of the Implementation Plan

- the section entitled "Work allocation and optimisation" or
- the performance indicators and metrics in the Performance Management Framework.

- 14.3 Any instruction, decision or other action of the *Client* under the contract (other than payment) is given, taken or done by the *Client's Representative* or their delegate (and by no other person).

- 14.4 The *Client's Representative*, after notifying the Alliance Manager, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Client's Representative* in the contract includes an action by their delegate. The *Client's Representative* may take an action which they have delegated.

- 14.5 The *Client* may replace the *Client's Representative* after notifying the Alliance Manager of the name of the replacement.

Early Warning

15

- 15.1 A member of the Alliance or the Alliance Manager gives an early warning by notifying all other members of the Alliance as soon as either becomes aware of any matter which could

- delay Scheme Completion or any Milestone Key Date,
- prejudice achievement of the Alliance Objectives,
- impair the performance of the *works* in use,
- increase the Budget or
- increase the Alliance Cost.

The Alliance Manager enters early warning matters in the Early Warning Register and issues a copy of the updated Early Warning Register to the Alliance. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The Alliance Manager prepares a first Early Warning Register and issues it to the Alliance within one week of the *starting date*. The Alliance Manager holds a first early warning meeting within two weeks of the *starting date*.

Later early warning meetings are held

- if the Alliance Manager or a member of the Alliance instructs an early warning meeting to be held, and, in any case,
- at no longer interval than the interval stated in the Contract Data until Alliance Completion.

The Alliance Manager agrees with the Alliance who attends an early warning meeting.

- 15.3 At an early warning meeting, those who attend co-operate in

- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with the contract, will take them,
- deciding which matters can be removed from the Early Warning Register and
- reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

The Alliance Manager revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the Alliance within one week of the early warning meeting. If a decision needs a change to the Scope, the Alliance Manager notifies the Alliance Board at the same time as the revised Early Warning Register is issued.

Requirements for instructions 16

- 16.1 If a member of the Alliance becomes aware of an ambiguity or inconsistency in or between the

documents which are part of the contract, it notifies the matter to the Alliance Board who give an instruction to the Alliance Manager to resolve it.

- 16.2 If a member of the Alliance becomes aware that the Scope includes an illegal or impossible requirement, it notifies the Alliance Manager.
- 16.3 If the Scope (other than the Client's Requirements) includes an illegal or impossible requirement, the Alliance Manager submits a proposal to change the Scope to the Alliance Board. The Alliance Board either gives an instruction to the Alliance Manager to change the Scope or instructs the Alliance Manager to resubmit the proposal.
- 16.4 If the Client's Requirements include an illegal or impossible requirement, the *Client* gives an instruction to the Alliance Manager which changes the Client's Requirements.

Corrupt Acts 17

- 17.1 Neither a member of the Alliance nor a Consortium Member does a Corrupt Act.
- 17.2 A member of the Alliance takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware.
- 17.3 The members of the Alliance include equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment.

Prevention 18

- 18.1 If an event occurs which
- stops the Alliance completing a Scheme or
 - stops the Alliance completing a Scheme by the date for planned Scheme Completion shown on the Issued Programme,
- and which
- the Alliance could not prevent and
 - people or organisations experienced in works similar to the *works* would have judged at the *starting date* for the Scheme to have such a small chance of occurring that it would have been unreasonable to have allowed for it,
- the Alliance Manager submits a proposal to the Alliance Board for how the event can be dealt with. The Alliance Board gives an instruction to the Alliance Manager stating how the event is to be dealt with.

2 The Alliance's Main Responsibilities

The Alliance

20

- 20.1 The members of the Alliance
- collaborate with each other to achieve the Alliance Objectives,
 - work collectively to support the delivery of the contract on a best for Alliance basis,
 - develop and use common systems and processes as set out in the Implementation Plan,
 - give advice, information and opinion fully, openly and objectively to the Alliance Board and to the other members of the Alliance when asked to do so by the Alliance Board and
 - establish an integrated alliance delivery team based on a best for project basis and supporting the sharing of knowledge, information, and best practice.
- 20.2 The Alliance Provides the Works in accordance with the
- Scope,
 - Alliance Objectives and
 - Implementation Plan.

The Alliance Board

21

- 21.1 A member of the Alliance may replace its *alliance board representative* after notifying the other members of the Alliance of the name of the replacement.
- 21.2 The Alliance Board meets
- when an Alliance member requires a meeting, and, in any case,
 - at no longer interval than the interval stated in the Contract Data from the Contract Date until Alliance Completion.
- 21.3 Unless otherwise stated in these *conditions of contract* or in the Implementation Plan, an action or decision of the Alliance Board is taken following agreement of all *alliance board representatives* or their delegates. Agreement to an action of the Alliance Board is made
- at a meeting of the Alliance Board if all *alliance board representatives* or their delegates are present or

- by a communication from each *alliance board representative*.

21.4 An *alliance board representative*, after notifying the Alliance Manager, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of an *alliance board representative* in the contract includes an action by their delegate. An *alliance board representative* may take an action which they have delegated.

21.5 The Alliance Board acts in accordance with the contract and

- sets the strategy for the achievement of the Alliance Objectives,
- makes decisions as stated in the contract,
- instructs the Alliance Manager and
- is the first stage in the resolution of disputes between members of the Alliance.

21.6 The Alliance Board may instruct other people to attend an Alliance Board meeting.

21.7 The Alliance Board may give an instruction to the Alliance Manager which changes the Scope (other than the Client's Requirements or Section B of the General Scope). An instruction of the Alliance Board to change the Scope is not a compensation event.

21.8 The *Client* may add a Partner to the Alliance only in order to replace a Partner whose obligation to participate in Providing the Works has been terminated. The *Client* adds the replacement Partner's data to the Contract Data and instructs the Alliance Manager to change the Performance Table accordingly.

The Alliance Manager

22

22.1 The Alliance Manager acts in accordance with the Implementation Plan and complies with an instruction given in accordance with the contract.

22.2 The Alliance Manager maintains a record of changes to the Scope.

22.3 The Alliance Manager prepares a report that contains

- forecasts of the Alliance Cost with an explanation of

any changes made since the previous forecast,

- details of the Alliance's performance against the Performance Targets including a forecast of the final measurement against each target,
- forecasts of the dates of Scheme Completion and Alliance Completion,
- any other information stated in the Scope and
- any other information the Alliance Board instructs the Alliance Manager to report upon

and submits it to the Alliance Board at the intervals stated in the Contract Data from the Alliance Start Date until Alliance Completion.

- 22.4 If the Alliance Manager's forecast final measurement against a Performance Target will not achieve the performance level stated, the Alliance Manager submits to the Alliance Board for acceptance the Alliance's proposals for improving performance. The Alliance Board either accepts the proposals or states that they will not provide the improvement in performance needed to achieve the Performance Target. The Alliance Manager resubmits the communication within the *period for reply* taking account of these reasons.

The Alliance's Design

23

- 23.1 The Alliance carries out the design necessary to Provide the Works.

- 23.2 The Alliance Manager submits the particulars of the Alliance's design as the Scope requires to the Alliance Board for acceptance.

The Alliance does not proceed with the relevant work until the Alliance Board has accepted the Alliance's design.

- 23.3 The Alliance Manager may submit the Alliance's design for acceptance in parts if the design of each part can be assessed fully.

- 23.4 The members of the Alliance retain copies of drawings, specifications, reports and other documents which record their design for the *period for retention*. The copies are retained in the form stated in the Scope.

- 23.5 The Alliance is not liable for a Defect which arose from its design unless it failed to carry out that design using the skill and care normally used by professionals designing works similar to the *works*.

People 24

- 24.1 Each Partner provides its *Partner key persons* to do the jobs stated in the Contract Data.
- 24.2 At the Alliance Start Date, a Partner makes available its *Alliance key persons* for selection in accordance with the process set out in the Implementation Plan to fill the Alliance roles stated in the Contract Data. If an *Alliance key person* is not selected, the Partner may re-deploy that person.
- 24.3 If a *Partner key person* ceases to be available for any reason, the Partner provides a replacement person who has been accepted by the Alliance Manager. The Partner submits the name, relevant qualifications and experience of a proposed replacement person to the Alliance Manager for acceptance. Reasons for not accepting the person include that their relevant qualifications and experience are not as good as those of the person who is to be replaced.
- 24.4 If a selected *Alliance key person* ceases to be available for any reason, the Alliance selects a replacement person in accordance with the process set out in the Implementation Plan.
- 24.5 The *Client* may, having stated the reasons, instruct a Partner to remove a person. The Partner then arranges that, within the time specified in the instruction, the person has no further connection with the work included in the contract.

Working with Others 25

- 25.1 The Alliance co-operates with Others, including in obtaining and providing information which they need in connection with the *works*. The Alliance shares the Working Areas with Others in accordance with the principles stated in the Scope.
- 25.2 The members of the Alliance provide services and other things as stated in the Scope and the Implementation Plan.

Subcontracting 26

- 26.1 If a member of the Alliance intends to subcontract work (other than to a Material Subcontractor), it provides
- details of the work to be undertaken by the

Subcontractor,

- the name and details of the proposed Subcontractor,
- the proposed subcontract documents, including any pricing information

to the Alliance Manager for acceptance. A member of the Alliance does not appoint a proposed Subcontractor until the Alliance Manager has accepted it.

26.2 A Partner subcontracts the work specified in the Contract Data to a Material Subcontractor unless the *Client* agrees otherwise. Before subcontracting work to a Material Subcontractor, the Partner provides

- details of the work to be undertaken by the Material Subcontractor and
- the proposed subcontract documents, including any pricing information

to the *Client* for acceptance. The Partner does not appoint a Material Subcontractor until the *Client* has accepted them. If the *Client* does not accept them, the Partner changes the details or documents to remove the objection.

26.3 Reasons for not accepting a proposed Subcontractor (including a Material Subcontractor) include that

- if a Subcontractor Warranty is required under the Alliance's supply chain strategy, the Subcontractor has not delivered a Subcontractor Warranty to the Alliance Manager,
- the Subcontractor has not been engaged in accordance with the Supply Chain requirements in the Implementation Plan or the Alliance's supply chain strategy or
- the proposed subcontract documents do not include all the provisions specified in the Scope.

26.4 The members of the Alliance are responsible for participating in Providing the Works as if they had not subcontracted. The contract applies as if a Subcontractor's employees and equipment were the members of the Alliance's.

Other responsibilities

27

27.1 The Alliance obtains approval of its design from Others where necessary.

27.2 The Alliance obeys an instruction which is in accordance with the contract and is given by the *Client*, the Alliance

Board or the Alliance Manager.

27.3 The Alliance acts in accordance with the health and safety requirements stated in the Scope.

Disclosure

28

28.1 Each Partner keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person

- the terms of the contract and any Order and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the Partner in the course of Providing the Works

except that the Partner may disclose information

- to its legal or other professional advisers,
- to anyone employed by it or acting on its behalf as needed to enable the Partner to perform its obligations,
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the Partner consults with the owner of the information and takes full account of the owner's views about whether (and if so to what extent) the information should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the Partner or
- with the consent of the information owner.

3 Time

Starting and Completion

30

- 30.1 The Alliance does not start work on the Site for a Scheme until the first *access date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Client* decides the date of Completion and certifies it within one week of the date.

Revising the Implementation Plan

31

- 31.1 The Alliance Manager or a member of the Alliance may propose a change to the Implementation Plan, other than these elements
- the section entitled “Work allocation and optimisation”,
 - the performance indicators and metrics in the Performance Management Framework or
 - the Decision Matrix.
- 31.2 The Alliance Manager consults with the Alliance on a proposed change to the Implementation Plan and submits the proposed change to the Alliance Board for acceptance.
- The Alliance Board notifies the Alliance Manager of the acceptance of the change or the reasons for not accepting it. If the Alliance Board accepts the change, it includes in the notification an instruction changing the Implementation Plan. If the Alliance Board does not accept the change, the Alliance Manager either submits a revised proposal or agrees with the Alliance that no change is required.

The Programme

32

- 32.1 If a programme is not identified in the Contract Data, the Alliance Manager prepares a first programme and issues it to the Partners, the Alliance Board and the *Client* within the period stated in the Contract Data.
- 32.2 The members of the Alliance coordinate their work for the benefit of the *works* and to support the creation and updating of the programme by the Alliance Manager.
- 32.3 The Alliance Manager shows on each programme that it

issues the following information in relation to each Scheme

- how the work is to be carried out to achieve the Alliance Objectives,
- the *starting date*, *access dates*, any Milestone Key Dates and the Completion Date,
- planned Completion,
- the order and timing of the operations which the Alliance plans to do in order to Provide the Scheme,
- the order and timing of the work of Others as last agreed with them by the Alliance or, if not so agreed, as stated in the Scope,
- the dates when the Alliance plans to complete other work needed to allow the Others to do their work,
- provisions for
 - float,
 - time risk allowances,
 - health and safety requirements and
 - the procedures set out in the contract,
- the dates when, in order to Provide the Scheme in accordance with the programme, the Alliance will need
 - access to a part of the Site if later than its *access date*,
 - acceptances and
 - information from Others,
- for each operation, a statement of how the Alliance plans to do the work identifying the principal Equipment and other resources which will be used and
- other information which the Scope requires the Alliance to show on a programme.

A programme issued by the Alliance Manager is in the form stated in the Scope.

Revising the programme

33

33.1

The Alliance Manager shows on each revised programme

- the actual progress achieved on each operation and its effect up on the timing of the remaining work,
- how the Alliance plans to deal with any delays and

- to correct notified Defects and
- any other changes which the Alliance Manager proposes to make to the Issued Programme.
- 33.2 The Alliance Manager revises the programme and issues it to the Partners, the Alliance Board and the *Client*
- when the Alliance Manager or a member of the Alliance requests that the programme is changed and the Alliance Manager, in consultation with the Alliance, decides to change it and, in any case,
 - at no longer interval than the interval stated in the Contract Data from the Alliance Start Date until Alliance Completion.
- Access to and use of the Site** **34**
- 34.1 The *Client* allows access to and use of each part of the Site to the Alliance which is necessary for the work included in the contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Issued Programme.
- Instructions to stop or not to start work** **35**
- 35.1 The *Client* may instruct the Alliance to stop or not start any work. The *Client* subsequently gives an instruction to the Alliance to re-start or start the work unless the Scope is changed to remove work.
- Take over** **36**
- 36.1 The *Client* takes over a Scheme not later than two weeks after Completion.
- 36.2 If the Alliance Board agrees, the *Client* may take over any part of a Scheme before Completion has been certified. The *Client* certifies the date upon which it takes over the part of the Scheme and its extent within one week of the date.
- 36.3 The Alliance acknowledges that
- vehicular traffic will continue to use the parts of the SRN comprised in a Scheme and
 - the *Client* may temporarily occupy parts of the SRN for operational purposes
- at all times from the *access date* until Completion and that this use does not constitute take over by the *Client*.

4 Quality Management

Quality management system

40

- 40.1 Each member of the Alliance operates a quality management system which complies with the requirements stated in the Scope.
- 40.2 Within the period stated in the Contract Data, the Alliance Manager produces a quality plan and issues it to the Alliance.
- 40.3 The members of the Alliance support the creation and updating of the quality plan by the Alliance Manager. The members of the Alliance comply with the Alliance quality plan.
- 40.4 Within the period stated in the Contract Data after the *starting date* for a Scheme, the Responsible Partners produce a quality plan for the Scheme and issue it to the Alliance Manager. The Scheme quality plan complies with the requirements stated in the Scope. The Responsible Partners comply and ensure compliance with the Scheme quality plan.

Tests and inspections

41

- 41.1 This clause only applies to tests and inspections required by the Scope or the applicable law.
- 41.2 The Alliance Manager informs the *Client* of each test and inspection carried out by the Alliance before the test or inspection starts and afterwards informs the *Client* of the results. The *Client* informs the Alliance Manager of each of the tests and inspections it will carry out before the test or inspection starts and afterwards informs the Alliance Manager of the results. The Alliance Manager informs the *Client* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Client* may watch any test done by the Alliance.
- 41.3 If a test or inspection shows that any work has a Defect, the Alliance corrects the Defect and the test or inspection is repeated.

Searching for and notifying Defects 42

- 42.1 Until the *defects date* for a Scheme, the Alliance Manager may instruct the Alliance to search for a Defect in the Scheme. The Alliance Manager gives reasons for the search with the instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
 - providing facilities, materials and samples for tests and inspections done by the Alliance and
 - doing tests and inspections which the Scope does not require.
- 42.2 Until the *defects date* for a Scheme
- a member of the Alliance notifies the Alliance Manager and other members of the Alliance, and
 - the Alliance Manager notifies the Alliance
- as soon as they become aware of a Defect in the Scheme.

Correcting Defects 43

- 43.1 If a Defect is a failure to achieve an Alliance Objective, the Alliance does not correct the Defect. For other Defects, the Alliance corrects a Defect whether or not the Alliance Manager has notified it.
- 43.2 If the Alliance is required to correct a Defect, it corrects it before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Client* issues the Defects Certificate for a Scheme to the Alliance Board at the *defects date* if there are no notified Defects (other than any Defects relating to landscaping aftercare), or otherwise at the date when all notified Defects have been corrected.
- 43.4 The *Client's* rights in respect of a Defect which the Alliance Manager has not found or notified are not affected by the issue of the Defects Certificate.
- 43.5 If the *Client* instructs the Alliance to carry out landscaping aftercare after the *defects date*, clauses 42.2 and 43.2 continue to apply (in relation to landscaping aftercare only) until 24 months after Scheme Completion.

43.6 The *Client* allows the Alliance access to and use of a part of the *works* which has been taken over if it is needed for correcting a Defect.

Accepting Defects 44

44.1 The *Client* may change the Scope so that a Defect does not have to be corrected. The change is not a compensation event.

5 Payment

Assessing the amount due

50

- 50.1 The Alliance Manager, in consultation with the Partners, assesses the amount due and submits an application for payment to the *Client* before each assessment date. The first assessment date is decided by the Alliance Manager and is not later than the *assessment interval* after the Alliance Start Date. Later assessment dates occur at the end of each *assessment interval* until the final assessment.
- 50.2 The Alliance Manager's application for payment includes the amount due to each of the Partners, details of how the amount has been assessed and is in the form stated in the Scope.
- 50.3 The amount due at the assessment date is the total of the
- Price for Work Done to Date,
 - plus other amounts to be paid to each Partner,
 - less amounts to be paid by or retained from each Partner.
- 50.4 If the Alliance Manager has incorrectly assessed the amount due in an application made before the assessment date, the *Client* informs the Alliance Manager of the error within one week of the date of issue of the application and the Alliance Manager corrects the amount due.
- 50.5 Payments of Defined Cost made by a Partner in a currency other than the *currency of the contract* are included in the amount due as payments to be made to it in the same currency.

Payment

51

- 51.1 The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. If the assessment reduces the amount due to a Partner, payment is made by the Partner to the *Client*. Other payments are made by the *Client* to the Partners. Payments are in the *currency of the contract* unless otherwise stated in the contract.

- 51.2 If a payment is late, 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.
- 51.3 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.
- 51.4 Any tax which the law requires a member of the Alliance to pay is added to any payment made under the contract.

Defined Cost

52

- 52.1 All the Partners' costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
- 52.2 The Partners keep these records
- accounts of payments of Defined Cost,
 - proof that the payments have been made,
 - communications about and assessments of compensation events for Subcontractors and
 - other records as stated in the Scope.
- 52.3 The Partners allow the Alliance Manager and the *Client* to inspect at any time within working hours the accounts and records which they are required to keep.

Performance measurements

53

- 53.1 At the dates stated in the Performance Table, the Alliance Manager assesses the Alliance's performance in accordance with the Performance Table.
- If a part of the *works* does not meet a Performance Target, other than a Budget saving or overspend, the Alliance Manager assesses the amounts to be paid by the Partners in accordance with the Performance Table and the Partners pay those amounts.
- 53.2 At the dates stated in the Performance Table and when the final amount due is assessed, the Alliance Manager assesses the difference between the Alliance Cost and the Alliance Earned Value for the work which has been

completed.

- 53.3 If the Alliance Earned Value is greater than the Alliance Cost, a Budget saving has been created and the Partners are paid the amounts stated in the Performance Table. If the Alliance Cost is greater than the Alliance Earned Value, a Budget overspend has been created and the Partners pay the amounts stated in the Performance Table.

Final assessment 54

- 54.1 No later than eight weeks after the end of each Performance Period, the members of the Alliance submit to the Alliance Manager details of
- the Defined Cost incurred by each Partner,
 - the Client's Costs incurred and
 - the amount to be paid by each Partner for non-achievement of any of the Performance Targets (other than a Budget saving or overspend)

in relation to that Performance Period.

- 54.2 No later than eight weeks after
- Alliance Completion or
 - the Alliance Manager issues a termination certificate terminating the obligation of all the Partners to participate in Providing the Works and (if applicable) any work referred to in Option T5 or T6 in clause Z19.10 has been completed

the members of the Alliance submit to the Alliance Manager details of the final amount due to each Partner (or from each Partner to the *Client*).

- 54.3 If the Alliance Manager has issued a termination certificate terminating the obligation of a Partner to participate in Providing the Works, no later than eight weeks after

- issuing the termination certificate or
- if Option T2 or T3 in clause Z19.9 applies to any Schemes, the Partner completing its work on those Schemes in accordance with that clause

the members of the Alliance submit to the Alliance Manager details of the final amount due to the Partner (or from the Partner to the *Client*).

- 54.4 Within thirteen weeks of receiving the details set out in any of clauses 54.1 to 54.3, the Alliance Manager
- makes a final assessment of the amounts to which the details relate,
 - notifies the Alliance Board of its assessment and gives the Alliance Board details of how the assessment has been calculated and
 - where the assessment arises from an event stated in clause 54.2 or 54.3, submits an application for payment to the *Client*.
- 54.5 An assessment of the Alliance Manager under clause 54.4 is conclusive evidence of the amounts stated in the assessment unless
- a dispute as to an amount is referred to the Alliance Board or to the *Adjudicator* within four weeks of the date of the assessment,
 - any issues referred to but not agreed by the Alliance Board are referred to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced,
 - a member of the Alliance refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the amounts stated in the assessment within four weeks of the decision being made or
 - a third party auditor or regulator of the *Client* identifies that any costs included in Defined Cost were not in fact incurred by a Partner.

Partner Fees

55

- 55.1 The amount included in the Price for Work Done to Date in respect of the Partner Fee for the Production Management Partner is the total of
- in relation to the first Periodic Instruction, an amount calculated by applying the Production Management Partner's *fee percentage* to the Defined Cost,
 - in relation to any other completed Periodic Instructions, the total Partner Fee paid under them and
 - in relation to the current (if not the first) Periodic Instruction, the product of the cumulative Partner Fee Projection from the start of the Periodic Instruction to the assessment date and the Alliance Earned Value Percentage calculated over the same period.

- 55.2 The amount included in the Price for Work Done to Date in respect of the Partner Fee for a Digitally Enabled Design Partner or an On-site Assembly Partner is the total of
- in relation to any previous Performance Periods, the total Partner Fee paid and
 - in relation to the current Performance Period, the product of the cumulative Partner Fee Projection from the start of the Performance Period to the assessment date and the Alliance Earned Value Percentage calculated over the same period.
- 55.3 The total amount included in the Price for Work Done to Date in respect of the Partner Fee for
- the Production Management Partner for a Periodic Instruction does not exceed the Partner Fee for that Periodic Instruction or
 - a Digitally Enabled Design Partner or an On-site Assembly Partner for a Scheme does not exceed the Partner Fee for that Scheme.
- 55.4 Where the total Partner Fee paid to a Digitally Enabled Design Partner or an On-site Assembly Partner in a Performance Period is more or less than the Partner Fee Projection due to the Alliance Earned Value Percentage for the Performance Period being greater or less than 1, the Partner Fee Projection for the next Performance Period is adjusted to include the difference.

6 Compensation Events

Compensation events 60

- 60.1 The following are compensation events.
- (1) The *Client* gives an instruction changing the Client's Requirements.
 - (2) The Alliance Board give an instruction changing the Scope in order to avoid or reduce the effects of a compensation event.
 - (3) An event which is a *Client's* liability stated in these *conditions of contract*.
 - (4) An event which
 - stops the Alliance completing a Scheme or
 - stops the Alliance completing a Scheme by the date for planned Scheme Completion shown on the Issued Programme,and which
 - the Alliance could not prevent,
 - people or organisations experienced in works similar to the *works* would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and
 - is not one of the other compensation events stated in the contract.

Notifying compensation events 61

- 61.1 For a compensation event which arises from the Alliance Manager, Alliance Board or *Client* giving an instruction or notification or issuing a certificate, the Alliance Manager notifies the Alliance of the compensation event at the time of the communication unless the event arises from a fault of the Alliance.
- 61.2 A member of the Alliance notifies the Alliance Manager of an event which has happened or which is expected to happen as a compensation event if
 - the member of the Alliance believes that the event is a compensation event and
 - the Alliance Manager has not notified the event to the Alliance.

- 61.3 The Alliance Manager replies to the notification of a compensation event within one week. If the event
- arises from a fault of the Alliance,
 - has not happened and is not expected to happen or
 - is not one of the compensation events stated in the contract.

the Alliance Manager notifies the Alliance that the Scheme Budget, the Performance Targets and the Completion Date are not to be changed and states the reasons in the notification. Otherwise, the Alliance Manager notifies the Alliance that the event is a compensation event.

- 61.4 A compensation event in relation to a Scheme is not notified by the Alliance Manager or a member of the Alliance after Scheme Completion.

Assessments of compensation events

62

- 62.1 The *Client* assesses changes to the Scheme Budget, the Fee payable to any Responsible Partner and the Expenditure Profile arising from a compensation event.

- 62.2 The Alliance Manager assesses changes to the Performance Targets and any delay to the Completion Date arising from a compensation event in consultation with the Alliance. If the programme for remaining work is altered by the compensation event, the Alliance Manager includes the alterations to the Issued Programme in the assessment.

- 62.3 The *Client* and the Alliance Manager issue their assessments to the Alliance within three weeks of the notification.

Assessing compensation events

63

- 63.1 Subject to clause 63.2, the changes to the Scheme Budget and the Expenditure Profile for a compensation event are assessed in accordance with the Quotation Information.

- 63.2 If the event is a change to the technical specifications comprised in the Client's Requirements instructed by the *Client* following a recommendation from the Alliance Board and the assessment of the event in accordance

with clause 63.1 would result in a reduction to the Scheme Budget, the Scheme Budget is not changed.

63.3 Subject to clause 63.4, the change to the Fee payable to any Responsible Partner affected by a compensation event is assessed in accordance with the Quotation Information.

63.4 The Fee payable to any Responsible Partner is not changed where the event is an instruction changing the Scope in order to avoid or reduce the effects of a compensation event.

63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Issued Programme current at the date of notification of the compensation event.

The assessment takes into account

- any delay caused by the compensation event already in the Issued Programme and
- events which have happened between the date of the Issued Programme and the date of notification of the compensation event.

63.6 A change to the Performance Targets is assessed as the effect of the compensation event upon the Performance Targets.

63.7 The rights of the Alliance to changes to the Scheme Budget, the Expenditure Profile, the Fee payable to any Responsible Partner, the Performance Targets and the Completion Date are their only rights in respect of a compensation event.

Implementing compensation events

64

64.1 A compensation event is implemented when the *Client* and the Alliance Manager have issued their assessments.

64.2 When a compensation event is implemented the Scheme Budget, the Expenditure Profile, the Fee payable to any Responsible Partner, the Completion Date and the Performance Targets are changed accordingly.

64.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

7 Title

The *Client's* title to Plant and Materials

70

70.1 Whatever title a Partner has to Plant and Materials which are outside the Working Areas passes to the *Client* if the Alliance Manager has marked them as for the contract.

70.2 Whatever title a Partner has to Plant and Materials passes to the *Client* if they have been brought within the Working Areas. The title to Plant and Materials passes back to the Partner if they are removed from the Working Areas with the Alliance Manager's permission.

Marking Equipment, Plant and Materials outside the Working Areas

71

71.1 The Alliance Manager marks Equipment, Plant and Materials which are outside the Working Areas if

- the contract identifies them for payment and
- a member of the Alliance has prepared them for marking as the Scope requires.

Objects and materials within the Site

72

72.1 The Partners have no title to an object of value or of historical or other interest within the Site. The Alliance Manager informs the Alliance Board when such an object is found and the Alliance Board instructs the Alliance Manager how to deal with it. The Alliance does not move the object without instructions.

72.2 The Alliance has title to materials from excavation and demolition unless the Scope states otherwise.

The Partner's use of material

73

73.1 The Partners have the right to use material provided by the *Client* only to Provide the Works. The Partners may make this right available to a Subcontractor.

8 Liabilities and Insurance

Client's liabilities 80

- 80.1 The following are *Client's* liabilities.
- Claims and proceedings from Others and compensation and costs payable to Others which
 - arise from or in connection with the *Client* providing a part of the *works* and
 - are a result of an intentional act or omission to not comply with the *Client's* obligations stated in these *conditions of contract*.
 - Loss of or damage to the parts of the *works* taken over by the *Client*, except loss or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect which existed at take over,
 - an event occurring before take over which was not itself a *Client's* liability or
 - the activities of the Alliance in Providing the Works on the Site after take over.
 - Loss of or damage to property owned or occupied by the *Client* other than the *works*, unless the loss or damage arises from or in connection with the Alliance Providing the Works.

Partners' liabilities 81

- 81.1 The following are a Partner's liability unless they are stated as *Client's* liabilities.
- Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the Partner Providing a Scheme.
 - A Defect in any part of a Scheme for which the Partner is responsible under the contract which becomes apparent after the *defects date*.
 - Loss of or damage to a Scheme in the course of construction for which the Partner is the Principal Contractor, or to Equipment, Plant and Materials intended for use in a Scheme.
 - Loss of or damage to property owned or occupied by the *Client* other than the *works*,

and death or bodily injury to the employees of the *Client*, arising from or in connection with the Partner Providing a Scheme.

- A breach of the intellectual property rights of a member of the Alliance or Others.
- A breach of clause Z18 (non-solicitation).
- Death or bodily injury to the employees of the Partner.

Other liabilities 82

82.1 Liabilities other than those stated as being *Client's* or Partners' liabilities are an Alliance Cost unless recovered from an insurer.

Recovery of costs 83

83.1 Any cost which the *Client* has paid or will pay and any loss suffered or incurred by the *Client* as a result of an event for which a Partner is liable is paid by that Partner.

83.2 Any cost which a Partner has paid or will pay to Others and any loss suffered or incurred by a Partner as a result of an event for which the *Client* is liable is paid by the *Client*.

83.3 Any cost which a Partner has paid or will pay to Others and any loss suffered or incurred by a Partner as a result of an event for which another Partner is liable is paid by the other Partner.

83.4 The right of the *Client* or a Partner to recover these costs or losses is reduced if an event for which they were liable contributed to the costs or losses. The reduction is in proportion to the extent that the event for which that party is liable contributed, taking into account each party's responsibilities under the contract.

83.5 Where two or more Partners are indivisibly liable to the *Client* for any costs or losses paid or incurred by the *Client*, each Partner may join the other Partners in any action brought by the *Client* against the Partner.

Insurance cover 84

Each Partner provides the insurances stated in, and to comply with the requirements set out in, S211 of and Annex C to the Scope.

Insurance by the Partners 85

- 85.1 Before the Alliance Start Date and on each renewal of the insurance policies until Alliance Completion, each Partner submits to the Alliance Manager for acceptance certificates which state that the insurances required by the contract are in force. The certificates are signed by the Partner's insurer or insurance broker. The Alliance Manager accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
- 85.2 The *Client* may insure an event or liability which the contract requires a Partner to insure if the Partner does not submit a required certificate. The cost of this insurance to the *Client* is paid by the Partner.
- 85.3 The Alliance Manager's acceptance of an insurance certificate provided by a Partner does not change the responsibility of the Partner to provide the insurances stated in the Contract Data, nor the Partner's liability for the matters to which the insurances relate.

Insurance policies 86

- 86.1 The insurance policies described in Annex C to the Scope include waivers by the insurers of their subrogation rights against
- in the case of the Contractor's All Risks Insurance, the members of the Alliance and
 - in the case of the Public Liability and Professional Indemnity Insurances, the *Client*
- and the directors and other employees of every insured except where there is fraud.
- 86.2 The members of the Alliance comply with the terms and conditions of the insurance policies to which they are a party.

9 Termination, Resolving and Avoiding Disputes

Termination 90

- 90.1 If the Alliance Board wishes to terminate the obligation of all Partners to participate in Providing the Works, it notifies the Alliance Manager, the *Client* and the Partners giving details of the reason for terminating. The Alliance Manager issues a termination certificate if the reason complies with the contract.
- 90.2 [Number Not Used]
- 90.3 The Alliance Board may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination to a Partner whose obligation to participate in Providing the Works is terminated are in accordance with the Termination Table.

Termination Table

Terminating Party	Reason	Procedure	Amount due (excluding Fee adjustments)	Fee adjustment
The Alliance Board	R1 – R3	P2 and P5	A1, A2 and A4	F2, F3, F4 and F5
	R4	P2 and P5	A1 and A2	F2, F3, F4 and F5
The <i>Client</i>	R5 – R11	P1, P3, P4 and P6	A1 and A3	F1, F3 and F5
	R12	P1, P3, P4 and P6	A1 and A2	F2, F3, F4 and F5
	R13 – R24	P1, P3, P4 and P6	A1 and A3	F1, F3 and F5
	R25 or R26	P2 and P5	A1 and A2	F2, F3, F4 and F5
	R27 - R29	P2 and P5	A1 and A3	F1, F3 and F5
	A reason other than R5 – R29	P1, P3, P4 and P6 apply if the <i>Client</i> terminates the obligation of a Partner to participate in Providing the Works and P2 and P5 apply if	A1, A2 and A4	F2, F3, F4 and F5

		the <i>Client</i> terminates the obligations of all members of the Alliance to participate in Providing the Works.		
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90.4 The *Client* may terminate the obligation of a Partner or all Partners to participate in Providing the Works for any reason. The *Client* informs the Alliance Board and the Alliance Manager of the *Client*'s decision to terminate, the reason for terminating, the procedure to be followed and the amount due on termination in accordance with the Termination Table. The Alliance Manager issues a termination certificate.

90.5 The procedures for termination are implemented immediately after

- the Alliance Manager has issued a termination certificate and
- any work referred to in Option T2 or T3 in clause Z19.9 or Option T5 or T6 in clause Z19.10 has been completed.

90.6 After a termination certificate has been issued, subject to clauses Z19.9 and Z19.10, a Partner whose obligations have been terminated does no further work necessary to Provide the Works and it is no longer a member of the Alliance.

Reasons for 91 Termination

91.1 The Alliance Board may terminate the obligation of all the Partners to participate in Providing the Works if all members of the Alliance agree, other than the *Client* and

- the *Client* has incurred an Insolvency Event (R1),
- the *Client* has not paid an amount due under the contract within 26 weeks of the date that it should have been paid (R2) or
- the *Client* has instructed the Alliance to stop or not to start substantially all work under the contract for a reason which does not arise from a fault of the Alliance, and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within 26 weeks (R3).

- 91.2 The Alliance Board may terminate the obligation of all members of the Alliance to participate in Providing the Works if the Alliance has been released under the law from further performance of the whole of the contract (R4).
- 91.3 The *Client* may terminate the obligation of a Partner to participate in Providing the Works if
- the Alliance Manager has notified the Alliance Board that the Partner has substantially broken a health or safety regulation and has not put the default right within four weeks of the date when the Alliance Manager notified the Partner of the default (R5),
 - the Alliance Manager has notified the Alliance Board that the Partner has committed a Partner Performance Failure or Partner Underperformance and has failed to achieve an improved level of performance in the relevant area (as required by the Partner Performance Improvement Process) within the relevant time period stated in the Partner Performance Improvement Process (R6),
 - the Partner does not take action to reduce the total number of Quality Management Points in effect for that Partner (or for any Scheme where it is a Responsible Partner) to below the respective Threshold Level following the issue of a quality warning notice in accordance with the Partner or Scheme quality improvement process described in the Scope (R7),
 - the Partner or a Consortium Member has incurred an Insolvency Event (R8),
 - the Partner has not provided a guarantee which the contract requires and has not put the default right within four weeks of the date when the *Client* notified the Partner of the default (R9),
 - the Partner fails to notify the *Client* that a Financial Distress Event has occurred (R10),
 - following a Change of Control or a Financial Distress Event in relation to the Partner
 - either the Controller or an alternative guarantor proposed by the Partner does not meet the Financial Standing Test within the timescale stated in clause Z5.8 or fails to provide the legal opinion required by clause Z5.9 or
 - where clause Z5.8 applies, the Partner 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 (R11),

- as a result of a Change of Control
 - an actual or potential conflict of interest arises and the Partner has not taken actions acceptable to the *Client* to overcome or mitigate the conflict,
 - 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 Partner and made appropriate inquiries) that the Partner is no longer in a position to Provide the Works (R12),
- a Material Subcontractor is no longer available and the Partner is unable to propose an alternative resource acceptable to the *Client* (R13),
- the Partner has appointed a Subcontractor for work which should have been done by a Material Subcontractor without obtaining the *Client's* acceptance to do so (R14),
- the Partner has appointed a Subcontractor for substantial work before the Alliance Manager has accepted the Subcontractor, other than the appointment of a Material Subcontractor to carry out the work specified in the Contract Data (R15),
- the Partner or a Consortium Member does a Corrupt Act, unless it was done by a Subcontractor or supplier and the Partner
 - was not and should not have been aware of the Corrupt Act or
 - informed the Alliance Manager of the Corrupt Act and took action to stop it as soon as the Partner became aware of it (R16),
- the Partner fails to process Personal Data in accordance with (or otherwise puts the *Client* in breach of) the Data Protection Legislation (R17),
- one of the mandatory or discretionary grounds for exclusion listed in Regulation 57 of the Public Contracts Regulations 2015 applied to the Partner at the Contract Date (R18),
- if a Partner is an unincorporated joint venture,

the joint venture arrangement is terminated for any reason (R19),

- the warranty given by the Partner under clause Z9.1 (Tax Non-Compliance) is untrue (R20),
- the Partner fails to notify the *Client* of a Tax Non-Compliance or the *Client* decides that any mitigating factors notified by the Partner are unacceptable (R21),
- the Partner fails to notify its employees and Subcontractors of their duties under the Official Secrets Acts (R22),
- the Partner fails to comply (or to ensure that any person employed by the Partner or acting on the Partner's behalf complies) with the *Client's* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct (R23) or

the Partner fails to comply (or to ensure that any Subcontractor complies) with the *Client's* policies relating to bullying and harassment (R24).

91.4 The *Client* may terminate the obligation of all members of the Alliance to participate in Providing the Works if

- the 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 (R25),
- 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 (R26),
- the Alliance Manager has notified the Alliance Board that the Alliance has committed an Alliance Performance Failure or Alliance Underperformance and has failed to achieve an improved level of performance in the relevant area (as required by the Alliance Performance Improvement Process) within the relevant time period stated in the Alliance Performance Improvement Process (R27),
- the Alliance does not take action to reduce the total number of Quality Management Points in effect for the Alliance to below the respective Threshold Level following the issue of a quality warning notice in accordance with the Alliance quality improvement process described in the

Scope (R28) or

- the Alliance Manager has notified the Alliance Board that two or more of the Partners have colluded to do a Corrupt Act or with a view to distorting competition (R29).

Procedures on 92 Termination

92.1 The procedure on termination is one or more of the following as set out in the Termination Table.

- P1 On termination, the Alliance continues to Provide the Works.
- P2 On termination, the *Client* may complete the *works* and may use any Plant and Materials to which it has title. If a Partner is providing the Alliance Manager, the *Client* appoints a replacement Alliance Manager and notifies the Partners of the name of the replacement.
- P3 The Alliance Board may instruct the Partner whose obligation to participate in Providing the Works has been terminated to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of the contract to another member of the Alliance. The Partner gives to the Alliance Manager information resulting from work carried out to date and information the Partner has obtained which it has a responsibility to provide under the contract.
- P4 The Alliance may use any Equipment to which the Partner whose obligation to participate in Providing the Works has been terminated has title to complete the *works*. The Partner promptly removes the Equipment from the Site when the Alliance Manager informs the Partner that the Alliance no longer requires it to complete the *works*.
- P5 The Partners leave the Working Areas and remove Equipment.
- P6 The *Client* may appoint a replacement Partner.

Payment on 93 Termination

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials
 - within the Working Areas or
 - to which the *Client* has title and of which the Partner has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing any Awarded Schemes and
 - any amounts retained by the *Client* (other than amounts deducted pursuant to clause 93.4).
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table:
- A2 The forecast Defined Cost of removing Equipment.
- A3 A deduction of the forecast additional cost to the Alliance of completing any Awarded Schemes.
- A4 For a Digitally Enabled Design Partner or an On-site Assembly Partner, an amount equal to ten per cent of the difference between
- the total Partner Fee Projection up to the end of the PCF Stage in which termination occurs and
 - the Partner Fee paid up to the date of termination
- in relation to any Awarded Schemes, or for the Production Management Partner an amount equal to ten per cent of the difference between
- the total Partner Fee Projection up to the end of the Periodic Instruction in which termination occurs and
 - the Partner Fee paid in relation to that Periodic Instruction up to the date of termination.
- 93.3 If included in the amount due on termination, amounts A2 and A4 are not part of the Alliance Cost.
- 93.4 The amount due on termination also includes one or more of the following as set out in the Termination Table:
- F1 A deduction of the difference between the

Partner Goals Performance Cap and any Partner Goals Performance Deduction Portions previously deducted from the Partner in respect of the Performance Period in which the termination occurs.

- F2 An amount equal to any Partner Goals Performance Deduction Portions previously deducted from the Partner in respect of the Performance Period in which the termination occurs.
- F3 A deduction of any Partner Budget Deduction, assessed using the Alliance Cost incurred or committed and the Alliance Earned Value accrued as at the date of termination, less any amounts previously deducted on account of a Partner Budget Deduction.
- F4 Any Partner Budget Incentive, assessed using the Alliance Cost incurred or committed and the Alliance Earned Value accrued as at the date of termination.
- F5 A deduction of any amounts previously paid to the Partner on account of the Partner Budget Incentive.

No Claims 94

- 94.1 The members of the Alliance agree that any failure by a member of the Alliance to comply with their obligations stated in these *conditions of contract* does not give rise to any enforceable right or obligation at law except for an event which is a *Client's* or Partner's liability. Any disputes between the members of the Alliance arising out of or in connection with the contract are only resolved in accordance with these *conditions of contract*.

Resolving and Avoiding Disputes 95

- 95.1 A dispute between members or past members of the Alliance arising under or in connection with the contract is referred to the Alliance Board.
- 95.2 The Alliance Board
- refers the dispute to an independent expert for an opinion or
 - refers the dispute to the *Senior Representatives* of each member of the Alliance in dispute.

95.3 Unless and until the Alliance Board fully resolves the dispute, the members of the Alliance proceed as if the matter disputed was not disputed.

**Independent
Expert**

96

96.1 If a dispute is referred to an independent expert, the Alliance Board agrees who will act as the independent expert within one week of the referral. The members of the Alliance who are in dispute jointly appoint the independent expert within a further one week.

96.2 The Alliance Board submits a statement of the issue on which an opinion is required within one week of the appointment of the independent expert. The independent expert has three weeks to issue its opinion to the Alliance Board which can be extended by agreement.

The Alliance Board uses the opinion of the independent expert to assist in finally resolving the dispute.

96.3 The independent expert may

- use any procedure it considers necessary to provide its opinion,
- take the initiative in ascertaining the facts and the law related to the dispute and
- instruct a member of the Alliance to provide information related to the dispute within a stated time.

96.4 The independent expert and the independent expert's employees and agents are not liable to a member of the Alliance for any action or failure to take an action unless the action or failure to take action was in bad faith.

96.5 The members of the Alliance that appoint the independent expert share its costs equally. The cost of the independent expert is not an Alliance Cost.

**Senior
Representatives**

97

- 97.1 If a dispute is referred to the *Senior Representatives*, they try to resolve it over a period of no more than four weeks, or a longer period to which the Alliance Board agrees. The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed and submit this to the Alliance Board. The Alliance Board resolves the issues not agreed.
- 97.2 The *Senior Representatives* may jointly appoint a mediator to assist them in the resolution of any issues.
- 97.3 The mediator and the *Senior Representatives* agree the form of the mediation. At the end of the mediation, the *Senior Representatives* produce a list of the issues agreed and not agreed and submits this to the Alliance Board.
- 97.4 The proceedings of the mediation are private and are not disclosed to anyone who did not take part in the mediation.
- 97.5 The mediator and the mediator's employees and agents are not liable to a member of the Alliance for any action or failure to take an action unless the action or failure to take action was in bad faith.
- 97.6 The members of the Alliance that appoint the *Senior Representatives* share the cost of the mediator equally. The cost of the mediator is not an Alliance Cost.
- 97.7 No materials produced in, or for the purpose of, any discussions between the *Senior Representatives* or any mediation are disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal*.

W2: Dispute Resolution

The Adjudicator

W2.1 (1) A dispute arising under or in connection with the contract is referred to and decided by the *Adjudicator*. A member of the Alliance may refer a dispute to adjudication at any time, whether or not the dispute has been referred to the *Senior Representatives*.

(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

(3) The members of the Alliance who are in dispute appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*. The NEC Dispute Resolution Service Contract includes the following additional condition of contract:

“Any information concerning the contract obtained by either the Adjudicator or any person advising or aiding the Adjudicator is confidential, and is not used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement. The Adjudicator complies, and takes all reasonable steps to ensure that any persons advising or aiding the Adjudicator comply, with the Official Secrets Acts 1911 to 1989.”

(4) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(5) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* chosen for a dispute resigns or becomes unable to act

- the members of the Alliance who are in dispute may choose an adjudicator jointly or
- a member of the Alliance may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator* for the dispute.

(6) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*.

(7) A member of the Alliance does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been decided by an adjudicator.

(8) The *Adjudicator*, and the *Adjudicator's* employees and agents are not liable to a member of the Alliance for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication

W2.2

(1) Before a member of the Alliance refers a dispute to the *Adjudicator*, it gives a notice of adjudication to the members of the Alliance with whom it is in dispute, with a brief description of the dispute and the decision which it wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the member of the Alliance sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* informs the members of the Alliance who are in dispute that the *Adjudicator*

- is able to decide the dispute in accordance with the contract or
- is unable to decide the dispute and has resigned.

If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, a member of the Alliance may act as if the *Adjudicator* had resigned.

(2) Within seven days of a member of the Alliance giving a notice of adjudication it

- refers the dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which it relies, including any supporting documents and
- provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the members of the Alliance with whom it is in dispute.

Any further information from a member of the Alliance to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the members of the Alliance who are in dispute agree.

(3) If a matter disputed by a Partner under or in

connection with a subcontract is also a matter disputed under or in connection with the contract, the Partner may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the members of the Alliance for the purposes of the dispute are interpreted as including the Subcontractor.

(4) The *Adjudicator* may

- review and revise any action or inaction related to the dispute and alter a matter which has been treated as accepted or correct,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a member of the Alliance to provide further information related to the dispute within a stated time and
- instruct a member of the Alliance to take any other action which is considered necessary to reach a decision and to do so within a stated time.

(5) If a member of the Alliance does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

(6) A communication between a member of the Alliance and the *Adjudicator* is communicated to the other members of the Alliance who are in dispute at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to a Partner, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.

(8) The *Adjudicator* decides the dispute and informs the members of the Alliance who are in dispute and the Alliance Board of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring member of the Alliance or by any other period agreed by the members of the Alliance who are in dispute. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and

expenses between the members of the Alliance who are in dispute. The *Adjudicator's* fees and expenses are not an Alliance Cost.

(9) Unless and until the *Adjudicator* has informed the members of the Alliance who are in dispute and the Alliance Board of the decision, the Alliance and the Alliance Board proceed as if the matter disputed was not disputed.

(10) If the *Adjudicator* does not inform the members of the Alliance who are in dispute and the Alliance Board of the decision within the time provided by the contract, the members of the Alliance who are in dispute and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, a member of the Alliance may act as if the *Adjudicator* has resigned.

(11) The *Adjudicator's* decision is binding on the Alliance unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the members of the Alliance and not as an arbitral award. The *Adjudicator's* decision is final and binding if no member of the Alliance has notified the other members of the Alliance within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(12) The *Adjudicator* may, within five days of giving the decision to the members of the Alliance who are in dispute and the Alliance Board, correct the decision to remove a clerical or typographical error arising by accident or omission.

The tribunal

W2.3 (1) A member of the Alliance does not refer any dispute under or in connection with the contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with the contract.

(2) If, after the *Adjudicator* makes a decision, a member of the Alliance is dissatisfied, it may notify the other members of the Alliance with whom it is in dispute of the matter which is disputed and state that it intends to refer the disputed matter to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of being informed of the *Adjudicator's* decision.

(3) The *tribunal* settles the dispute referred to it. The *tribunal* has the power to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction related to the dispute. A member of the Alliance is not limited in *tribunal* proceedings to the

information, evidence or arguments put to the *Adjudicator*.

(4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the *arbitration* is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(5) A member of the Alliance does not call the *Adjudicator* as a witness in *tribunal* proceedings.

X Clauses

X10: INFORMATION MODELLING

Information Model	X10.1	The Alliance creates the Information Model.
Collaboration	X10.2	The Alliance collaborates with other Information Providers as stated in the Information Model Requirements.
Early warning	X10.3	A member of the Alliance or the Alliance Manager give an early warning by notifying all other members of the Alliance as soon as they become aware of any matter which could adversely affect the creation or use of the Information Model.
Information Execution Plan	X10.4	<p>(1) If an Information Execution Plan is not identified in the Contract Data, the Alliance Manager issues a first Information Execution Plan to the Alliance within the period stated in the Contract Data.</p> <p>(2) The Alliance Manager revises the Information Execution Plan and issues it to the Alliance when the Alliance Manager or a member of the Alliance requests that the Information Execution Plan is changed and the Alliance Manager in consultation with the Alliance decides to change it.</p> <p>(3) The Alliance provides the Project Information in the form stated in the Information Requirements and in accordance with the accepted Information Execution Plan.</p>
Compensation events	X10.5	If the Information Execution Plan is altered by a compensation event, the Alliance Manager includes the alterations to the Information Execution Plan in the assessment of the compensation event.
Use of the model	X10.6	At Scheme Completion, the Alliance gives to the <i>Client</i> the Information Model and the Partners give to the <i>Client</i> their rights over Project Information except as stated otherwise in the Information Requirements. The Partners obtain from a Subcontractor equivalent rights for the <i>Client</i> over information prepared by the Subcontractor. The Partners provide to the <i>Client</i> the documents which transfer these rights to the <i>Client</i> .

X18: LIMITATION OF LIABILITY

Limitation of liability

- X18.1 Each of the limits to a Digitally Enabled Design Partner's or the Production Management Partner's liability in this clause apply if a limit is stated in the Contract Data.
- X18.2 A Partner's total liability for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- X18.3 The Partners are not liable for a matter unless details of the matter are notified to the Partners before the *end of liability date*.
- X18.4 An On-site Assembly Partner's or a Digitally Enabled Design Partner's total liability for all matters arising under or in connection with a Scheme, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- X18.5 The Production Management Partner's total liability for all matters arising under or in connection with a Periodic Instruction, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- X18.6 The excluded matters are amounts payable by a Partner as stated in the contract for
- loss of or damage to the *Client's* property,
 - amounts to be paid by Partners assessed in accordance with the Performance Table,
 - fraud or fraudulent misrepresentation,
 - in relation to the On-site Assembly Partners only, events for which the contract requires the Partners to insure (but only up to the required level for each type of insurance stated in the Scope),
 - infringement of the rights of Others,
 - loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations,
 - interest on debt and
 - losses caused by a Partner's illegal acts,

deliberate default, deliberate abandonment or reckless misconduct.

- X18.7 An On-site Assembly Partner's liability for indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.8 For any one event, an On-site Assembly Partner's liability for loss or damage to the *Client's* property is limited to the amount stated in the Contract Data.
- X18.9 An On-site Assembly Partner's liability for Defects due to its design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.

Y Clauses

Y(UK)1: PROJECT BANK ACCOUNT

Definitions	Y1.1	<p>(1) Named Suppliers are <i>named suppliers</i> and other Suppliers who have signed the Joining Deed.</p> <p>(2) Project Bank Account is the account for a Scheme used to receive payments from the <i>Client</i> and the Partners and to make payments to the Partners and Named Suppliers.</p> <p>(3) A Supplier is a person or organisation who has a contract to</p> <ul style="list-style-type: none"> • construct or install part of a Scheme, • provide a service necessary to Provide the Scheme or • supply Plant and Materials for the Scheme. <p>(4) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.</p> <p>(5) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.</p>
Project Bank Account	Y1.2	The PBA Administrator establishes the Project Bank Account with the <i>project bank</i> within six weeks of the <i>starting date</i> .
	Y1.3	The PBA Administrator pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
	Y1.4	The PBA Administrator makes available to the Alliance Board details of the banking arrangements for the Project Bank Account. The PBA Administrator provides to the Alliance Board copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
Named Suppliers	Y1.5	The Partners include in their contracts with Named Suppliers the arrangements in the contract for the operation of the Project Bank Account and Trust Deed. The Partners inform the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
	Y1.6	A Partner includes all Suppliers and sub-contractors as Named Suppliers. If a Partner fails

to do so, the *Client* may instruct the Partner to add a Supplier or sub-subcontractor as a Named Supplier and the Partner complies with the instruction. The *Client*, the Partner and the Supplier sign the Joining Deed after acceptance.

Payments	Y1.7	The Alliance Manager shows in the application for payment the amounts due to Named Suppliers in accordance with their contracts.
	Y1.8	Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the Partners and Named Suppliers in accordance with the contract, the <i>Client</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract.
	Y1.9	The Partners and Named Suppliers receive payment from the Project Bank Account of the sums set out in the application for payment as soon as practicable after the Project Bank Account receives payment.
	Y1.10	A payment which is due from a Partner to the <i>Client</i> is not made through the Project Bank Account.
Effect of payment	Y1.11	Payments made from the Project Bank Account are treated as payments from the <i>Client</i> to the Partner in accordance with the contract or from a Partner or Subcontractor to Named Suppliers in accordance with their contracts as applicable.
Trust Deed	Y1.12	The <i>Client</i> , the Partners and <i>named suppliers</i> sign the Trust Deed before the first assessment date in relation to which the amount due includes an amount in respect of the Scheme.
Termination	Y1.13	If the Alliance Manager issues a certificate terminating the obligation of a Partner to participate in Providing the Works, no further payment is made into the Project Bank Account in respect of amounts due to that Partner or its Suppliers.
Cessation of Project Bank Account	Y1.14	The Alliance Board may at any time notify the Partners that payments under the contract for the Scheme will no longer be made using the Project Bank Account. Within one week of the Alliance Board's notice, the Partners notify the Named Suppliers for the Scheme that the Project Bank Account is no longer to be used and propose an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

TRUST DEED

This agreement is made between the *Client*, the Partners and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between
. . . and for (the *works*) pursuant to which the *Client* has
issued an order to the Alliance for (the Scheme).

The PBA Administrator is

Background

The *Client* has issued an order to the Alliance for the Scheme.

The Named Suppliers have entered into contracts with a Partner or a Subcontractor
in connection with the Scheme.

The PBA Administrator has established a Project Bank Account to make provision for
payment to the Partners and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the Partners and Named Suppliers and set out in the application for payment are held in trust in the Project Bank Account by the PBA Administrator for distribution to the Partners and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Client* and Partners. The agreement of the *Client* and Partners is treated as agreement by the Named Suppliers who are parties to this deed,
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (*Client*)

..... (Partners)

.....

.....

..... (Named Suppliers)

.....

JOINING DEED

This agreement is made between the *Client*, the Partners and (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between and for (the *works*) pursuant to which the *Client* has issued an order to the Alliance for (the Scheme).

Background

The *Client* has issued an order to the Alliance for the Scheme.

The Named Suppliers have entered into contracts with a Partner or a Subcontractor in connection with the Scheme.

The PBA Administrator has established a Project Bank Account to make provision for payment to the Partners and the Named Suppliers.

The *Client*, the Partners and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement

The parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (*Client*)

..... (Partners)

..... (Additional Supplier)

Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

Definitions	Y2.1	In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
Dates for payment	Y2.2	<p>Each Partner submits an invoice on or before each <i>invoice date</i>. Invoices are in the format and contain all the details specified in the Scope or required by the Alliance Manager. The Partner submits such information as the Alliance Manager requires to show that the amount stated as due in each invoice has been correctly assessed.</p> <p>The date on which a payment becomes due is the next <i>invoice date</i> after the date when the Partner submits an invoice for the amount due (as certified by the Alliance Manager's application) and certifies the relevant details in accordance with the <i>Client's</i> electronic invoicing system (or the <i>invoice date</i>, if the Partner submits its invoice and certifies the details on that date). The final date for payment is fourteen days after the date on which payment becomes due.</p> <p>The Alliance Manager's application is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated.</p>
Notice of intention to pay less	Y2.3	If the <i>Client</i> or a Partner intends to pay less than the notified sum, they notify the other and the Alliance Manager not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. The <i>Client</i> or a Partner do 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.
	Y2.4	<p>If the <i>Client</i> terminates for reason R8 and a payment has not been made at the date of the termination certificate, the <i>Client</i> makes the payment unless</p> <ul style="list-style-type: none">• it has notified the Partner and the Alliance Manager in accordance with the contract that it intends to pay less than the notified sum or• the reason for termination occurred after the last date on which it could have notified the Partner in accordance with the contract that it intends to pay less than the notified sum.

Suspension of performance Y2 .5 If a Partner exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance in relation to a Scheme, it is a compensation event.

Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Third party right Y(UK)3

- Y3.1 A *beneficiary* may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.
- Y3.2 Other than the members of the Alliance or a *beneficiary*, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.
- Y3.3 If a *beneficiary* is identified by class or description and not as a named person or organisation, the *Client* notifies the Alliance of the name of the *beneficiary* once they have been identified.



Highways England Company Limited

Smart Motorways Alliance

Volume 1

3 - Z Clauses

Z Clauses

Interpretation

Z1

Z1.1 In the contract, 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.

Z1.2 The Partners do not enter into the contract in reliance on any undertakings, promises or representations (including replies to tender queries) made or given by or on behalf of the *Client*. Any statements, representations or warranties made or given by a member of the Alliance in the course of negotiations which do not form part of the contract have no legal effect and the other members of the Alliance may not rely on them, nor make any claim based on them.

Recovery of sums due from a Partner

Z2

Z2.1 Where under the contract a sum of money is recoverable from or payable by a Partner, 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 Partner under the contract or any other contract with the *Client*.

Assignment and transfer

Z3

- Z3.1 A Partner does not assign, transfer or charge the benefit of the contract or any part of it, nor any benefit or interest under it, without the prior agreement of the *Client*.
- Z3.2 If requested by the *Client*, the Partners execute a novation agreement in the form specified in the Scope (or in such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to
- an organisation established to take over the *Client's* functions or part of them,
 - another public body exercising similar functions,
 - a Department or Office of Her Majesty's Government or
 - a local authority.

Subcontracting

Z4

- Z4.1 A Partner assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.
- Z4.2 If a Partner subcontracts work to another Partner or to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the Alliance Board.
- Z4.3 The Alliance Board may, having stated the reasons, instruct a Partner to remove a Subcontractor (other than a Material Subcontractor). The Partner then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.
- Z4.4 Before appointing a proposed Subcontractor, a Partner submits to the Alliance 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
 - 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 and

- details of any RIDDOR Incident under any contract for which the proposed Subcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor.

Z4.5 The Partner does not appoint the proposed Subcontractor until the Alliance Manager has accepted the submission. Reasons for not accepting the submission include that

- it shows that there are grounds for excluding the proposed Subcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the Alliance Manager is not satisfied that the proposed Subcontractor 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.

Z4.6 If requested by the Alliance Manager, the Partner provides further information to support, update or clarify a submission under clause Z4.4.

Z4.7 If, following the acceptance of a submission under clause Z4.5, it is found that

- one of the grounds for excluding the Subcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subcontractor 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 Alliance Manager may instruct the Partner to replace the Subcontractor.

**Merger, take-over,
change of control and
financial distress** **Z5**

Z5.1 A Partner notifies the Alliance Manager immediately if a Change of Control has occurred or is expected to occur, except only 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.

Z5.2 A Partner notifies the Alliance Manager immediately if a Financial Distress Event occurs.

Z5.3 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the affected Partner and the Alliance Manager meet within one week to discuss the actions to be taken by either of them in order to overcome or mitigate the conflict.

Z5.4 If a Change of Control occurs, the affected Partner provides to the Alliance Manager

- 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* or the Alliance Manager in order to determine whether the Controller meets the Financial Standing Test and
- any other information requested by the *Client* or the Alliance Manager in order to satisfy itself that the affected Partner remains in a position to perform its obligations under the contract.

Z5.5 If a Change of Control or a Financial Distress Event occurs, the *Client* may require the affected Partner 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 Partner and accepted by the *Client*.

Z5.6 A reason for not accepting an alternative Guarantor proposed by the affected Partner is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z5.9 or
- have a Credit Rating at least equal to the *credit rating* for the original Guarantor of the affected Partner.

Z5.7 If so required by the *Client*, the affected Partner

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*.

Z5.8 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative Guarantor proposed by the affected Partner who does not meet the Financial Standing Test if the Partner 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 Partner and the *Client* 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.

Z5.9 If a Partner, a Guarantor or an alternative Guarantor proposed by a Partner (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 Partner 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 Scope.

Joint ventures

Z6

Z6.1 This clause applies if a Partner is an unincorporated joint venture.

Z6.2 Each Consortium Member is jointly and severally liable for the performance of the Partner's obligations under the contract.

Z6.3 The Partner nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The Partner

acknowledges that receipt of a communication by the Partner's nominated representative constitutes receipt by all the Consortium Members. The Partner notifies the Alliance Manager in advance of any change to the identity of the Partner's nominated representative.

Z6.4 The Partner acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the Partner.

Z6.5 A Consortium Member gives not less than four weeks' notice to the Alliance Manager of any proposed termination of the joint venture arrangement.

Parent Company Guarantee

Z7

Z7.1 If required by the *Client*, a Partner gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Client's* request, whichever is later.

Subject to clause Z7.2, Parent Company Guarantees are given for

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

Z7.2 If a Partner is required to give a Parent Company Guarantee and

- no parent company structure exists,
- the Controller's commercial position is not strong enough to carry the Parent Company Guarantee or
- the Controller is not willing or not legally able to give a Parent Company Guarantee (in which case the Partner must give reasons for not providing a Parent Company Guarantee)

the Partner gives to the *Client* an equivalent alternative guarantee of the Partner's potential liabilities under the contract. The *Client* in its discretion decides whether it will accept a guarantee from an entity other than the Controller.

**Discrimination,
bullying and
harassment**

Z8

- Z8.1 A Partner 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 Partner in connection with the contract.

Tax Non-Compliance Z9

- Z9.1 Each Partner warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the Partner or a Consortium Member is involved relating to any Tax Non-Compliance prior to the Contract Date.
- Z9.2 A Partner notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the Partner 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*.

**Value Added Tax
(VAT) recovery**

Z10

- Z10.1 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.

**Corruption or loss of
data**

Z11

- Z11.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of a Partner's default so as to be unusable, the Partner immediately reports this to the Alliance Manager and

- the Alliance Manager may instruct the Partner to restore the data in accordance with the *Client's* requirements (and any cost incurred by the Partner in so doing is Disallowed Cost) or
- the *Client* may itself restore the data (and the Partner pays to the *Client* any reasonable costs which the *Client* incurs in so doing).

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

Z12

Z12.1 The members of the Alliance acknowledge that TUPE may apply to any transfer of an undertaking in connection with the *works* so as to transfer the employment of the Transferring Employees.

Z12.2 The Outgoing Provider provides the TUPE Information to the Incoming Provider no later than 6 months prior to the Transfer Date. The Outgoing Provider warrants that the TUPE Information is complete and accurate as at the date it is disclosed.

Z12.3 After the TUPE Information has been provided, the Outgoing Provider

- informs the Incoming Provider of any change to any part of the TUPE Information and
- co-operates with any reasonable request made by the Incoming Provider concerning the TUPE Information

within 7 days of a change or receipt of a request.

Z12.4 So far as reasonably practicable, the Outgoing Provider does not make or promise to make any changes affecting the TUPE Information which would increase the costs of employing the Transferring Employees in the six months before or at any time after the Transfer Date without the prior consent of the Incoming Provider unless such change is required by law. The Outgoing Provider supplies to the Incoming Provider full particulars of any proposed changes and the Incoming Provider responds within a reasonable time.

Z12.5 The Outgoing Provider does not increase the number of Staff nor dismiss or transfer to duties unconnected with the *works* more than five per cent of the Staff in the six months before the

Transfer Date without the prior consent of the *Client*.

Z12.6 Before the Transfer Date, the Outgoing Provider informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The Incoming Provider provides to the Outgoing Provider the information required under regulation 13(4) of TUPE.

Z12.7 The Outgoing Provider indemnifies the Incoming Provider in respect of any claims, costs (including employment costs), expenses, payments and liabilities arising from

- any claim by any of the Transferring Employees or by a third party or trade union or body representing any of the Transferring Employees in relation to any act or omission by the Outgoing Provider which allegedly occurred before the Transfer Date,
- any failure by the Outgoing Provider to comply with its obligations under regulations 11 and 13 of TUPE (save to the extent that a failure to comply with regulation 13 of TUPE is as a result of failure by the Incoming Provider to comply with regulation 13(4) of TUPE),
- any claim by any employee or former employee of the Outgoing Provider in respect of the termination of their employment by the Outgoing Provider prior to the Transfer Date and
- the employment and termination of employment of any person who is not identified in the TUPE Information as a Transferring Employee but who alleges to TUPE transfer from the Outgoing Provider to the Incoming Provider as result of the transfer of the *works* from the Outgoing Provider to the Incoming Provider, subject to such termination of employment taking place within 28 days of such allegation and in accordance with the lawful and reasonable instructions of the Outgoing Provider.

Construction Industry Z13 Scheme

Z13.1 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).

Z13.2 Insofar as it relates to construction operations (as defined in the Act) the contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z13.3 A Partner undertaking construction operations provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the Partner 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.

Z13.4 If a Partner is registered for payment under deduction or is neither registered nor exempt from registration

- the Partner submits an application for payment which separately identifies the cost of labour and
- the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

**Infrastructure Act
2015**

Z14

Z14.1 The Alliance 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 *Client* to the Alliance Manager).

Z14.2 The *Client* notifies the Alliance Manager 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 Responsible Partners comply with the terms of the notice and indemnify the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

Commitments

Z15

- Z15.1 In accordance with the Implementation Plan, the Alliance Manager notifies each Partner from time to time of those commitments listed in the Commitment SLA Register with which the Partner must comply. The Partner complies with any commitments notified to it.
- Z15.2 The Alliance Manager proposes (for acceptance by the *Client*) how the commitments listed in the Commitment SLA Register are reflected in the Performance Targets.
- Z15.3 The other members of the Alliance co-operate with and support the Partner in complying with the commitments as directed by the Alliance Manager.

Indemnified Claims

Z16

- Z16.1 The *Client* notifies a Partner as soon as practicable of any notice or demand which it receives in respect of a matter for which the Partner is liable under the contract (an "Indemnified Claim").
- Z16.2 The Partner 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 Partner in defending the Indemnified Claim.
- Z16.3 The Partner keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z16.4 Where the Partner 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 Partner.
- Z16.5 The Partner bears the costs which it incurs in defending an Indemnified Claim. The Partner indemnifies the *Client* against any costs incurred by the *Client* arising out of the Partner's defence of the Indemnified Claim.
- Z16.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the Partner notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the Partner
- 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.

Where the reason for the *Client's* notice is not due to the fault of the Partner in conducting the Indemnified Claim, the Partner is released from its indemnity to the *Client* in respect of it.

Intellectual Property Rights **Z17**

Ownership and rights in contract IP Z17.1

The *Client* owns (or will own) all IPRs in all materials prepared in connection with the contract, including any Scheme except as stated otherwise in the Scope and (for the avoidance of doubt) excluding any Partner Background IPR, Partner Software or Third Party Software (which will be licensed to the Client on the terms of the contract). To the extent that these IPRs do not automatically vest in and belong to the *Client*, each Partner hereby assigns (by way or present and future assignment of rights) to the Client all such rights and will enter into such documents and do such acts as the *Client* requests and which are required to transfer the IPRs to the *Client*, and procures that any Associated Companies and Subcontractors (at any stage of remoteness) do the same. Each Partner and any Associated Companies and Subcontractors provide to the *Client* the documents which transfer these IPRs to the *Client*.

Z17.2 Each Partner waives or procures a waiver of any moral rights in any IPRs to be owned by the *Client* under the contract, within the meaning of Chapter IV Part 1 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent in any territory of the world.

Z17.3 Each Partner grants to each other member of the Alliance a perpetual, royalty-free, non-exclusive, assignable and irrevocable licence (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of all other IPRs not already covered under clause Z17.1 and as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the Partner, its assignees or any third party. Each Partner provides to the Alliance the documents which license these IPRs to the

		Alliance.
	Z17.4	Each Partner ensures that any subcontract (at any stage of remoteness from the <i>Client</i>) contains a right for each member of the Alliance (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.
Rights in Client Background IPR	Z17.5	<p>All Intellectual Property Rights in</p> <ul style="list-style-type: none">• Client Background IPR,• Client Software and• documents and other materials created by or on behalf of the <i>Client</i> in connection with the contract <p>are and remain the property of the <i>Client</i>, and the Partners do not acquire any right, title or interest in them other than as expressly set out under the contract.</p>
Rights in Partner Background IPR	Z17.6	<p>All Intellectual Property Rights in</p> <ul style="list-style-type: none">• Partner Background IPR and• Partner Software <p>are and remain the property of the Partners, and the <i>Client</i> does not acquires any right, title or interest in them other than as expressly set out under the contract.</p>
Licence to Partner Background IP and Software	Z17.7	<p>Each Partner grants to the other members of the Alliance, or procures the direct grant to the other members of the Alliance of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use (including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display))</p> <ul style="list-style-type: none">• the Partner Software,• the Partner Background IPR and• the Third Party Software <p>for any purpose relating to the <i>works</i> (or substantially equivalent works) or the exercise of the <i>Client's</i> business or function. The licence granted under this clause Z17.7</p> <ul style="list-style-type: none">• in favour of the <i>Client</i> survives the termination or expiry of the contract and cannot be terminated by the Partners, its assignees or any third party and

		<ul style="list-style-type: none"> in favour of each Partner ceases on Alliance Completion or (if earlier) termination of that Partner's obligation to participate in Providing the Works.
	Z17.8	The <i>Client</i> may sub-license the rights granted to it under clause Z17.7 to any third party on terms no broader than those granted to the <i>Client</i> and may permit the sub-licensee to further sub-license the sub-licensed rights.
Licence to Client Background IPR and Software and Relevant IPR	Z17.9	The <i>Client</i> grants to the Partners, or procures the direct grant to the Partners of, a royalty-free, non-exclusive, non-transferable, revocable licence to use all Client Software, Client Background IPR, Relevant IPR and Specially Written Software reasonably required by the Partners in order to Provide the Works. The licence granted under this clause Z17.9 is granted for the duration of the contract only and solely to enable the Partners to comply with its obligations under the contract.
IPR Warranties	Z17.10	<p>The Partners each warrant to the other members of the Alliance that</p> <ul style="list-style-type: none"> the Software does not contain any Open Source Software other than OSS and the OSS is licensed upon terms which permit the use of such Open Source Software by the Partner, the other members of the Alliance and end users for all purposes contemplated by the contract.
	Z17.11	<p>The Partners each warrant to the <i>Client</i> that all components of the Software</p> <ul style="list-style-type: none"> are free from material design and programming errors, provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in <ul style="list-style-type: none"> the Scope, the Implementation Plan and the contract documents and do not infringe any Intellectual Property Rights.
Protection of IPR	Z17.12	<p>If an IPRs Claim is made, or a Partner anticipates that an IPRs Claim may be made, the Partner at its own expense either</p> <ul style="list-style-type: none"> procures for the <i>Client</i> or the other Indemnified Person a licence to continue

using the item which is subject to the IPRs Claim or

- replaces or modifies the item with a non-infringing substitute

provided that

- the performance and functionality of the replaced or modified item is at least equivalent to those of the original item,
- the replaced or modified item does not have an adverse effect on any other services, the Client System or the Partners' Systems,
- there is no additional cost to the *Client* or the other Indemnified Person and
- the terms of the contract apply to the replaced or modified item.

Z17.13 If a Partner

- procures a licence or
- modifies or replaces an item

in accordance with clause Z17.12 but this does not resolve the IPRs Claim, the Partner pays all reasonable and unavoidable costs of the substitute item including the additional cost of procuring, implementing and maintaining it.

Non-solicitation

Z18

Z18.1 From the Contract Date and until 12 months after Alliance Completion or earlier termination, neither a member of the Alliance nor an Associated Company solicits, or attempts to solicit, any Restricted Person to join its employment, other than by means of a national advertising campaign open to all applicants.

Z18.2 A member of the Alliance who breaches clause Z18.1 (either itself or through an Associated Company) pays on demand to the member of the Alliance who suffers from the breach a sum equal to one year's basic salary (or equivalent earnings) for the Restricted Person, plus any recruitment costs incurred in replacing the Restricted Person.

Delivery of Schemes Z19

Z19.1 Following Optimisation by the Alliance, the *Client* issues an Order to the Alliance for a Scheme in accordance with the Implementation Plan. An Order for a Scheme includes

- the Scheme Scope setting out the Client's

Requirements for the Scheme, any specific constraints applicable to the Scheme and details of the Core Responsibilities and Agile Responsibilities to be undertaken by each member of the Alliance, including

- which Partners are the Responsible Partners,
- which Partners are to act as Principal Designer and Principal Contractor and
- which member of the Alliance is to act as the PBA Administrator,
- the additional Contract Data to identify the *boundaries of the site, starting date, access date, completion date, key persons*, any matters to be included in the Early Warning Register and the limits of each Partner's liability for the Scheme,
- the Scheme Budget and the *expenditure profile* assessed in accordance with the Quotation Information,
- the Partner Fee payable to each Responsible Partner for the Scheme (other than the Production Management Partner) assessed in accordance with the Quotation Information and
- if clause Z19.4 applies, the extent to which each Responsible Partner is expected to take responsibility for previous work carried out by Others.

Z19.2 The Scheme Budget is adjusted for inflation at the times and in accordance with the process set out in the Quotation Information.

Z19.3 The Alliance Provides the Scheme in accordance with the terms of the Order, the Scope and the Implementation Plan.

Z19.4 A Responsible Partner is responsible for all the work specified in an Order as being its responsibility, including any of the specified work carried out by Others before the Order was issued and all such work is treated for the purposes of the contract as having been carried out by the Responsible Partner.

Z19.5 The Alliance Board may recommend to the *Client* that the roles of the Responsible Partners in a Scheme be changed in accordance with, and subject to any constraints set out in, the Implementation Plan. If the *Client* agrees to

change the roles of the Responsible Partners, the *Client* issues a supplemental Order to the Alliance detailing the changed roles and any resulting changes agreed between the relevant Partners to the lump sum Fee payable to each Responsible Partner, but the total of the Fees, the Scheme Budget and the Performance Targets are not changed. The issue of a supplemental Order is not a compensation event.

Z19.6 The Responsible Partners prepare a first programme for each Scheme and issue it to the Alliance Manager within the period stated in the Scheme Contract Data. The programme is in the form stated in the Scheme Scope and shows all the information listed in clause 32.3 in relation to the Scheme.

Z19.7 The Responsible Partners revise the programme for a Scheme and issue it to the Alliance Manager

- when the Alliance Manager requests it, and in any case
- at no longer interval than the interval stated in the Scheme Contract Data from the *starting date* until Scheme Completion.

Each revised programme shows all the information listed in clause 33.1 in relation to the Scheme.

Z19.8 The *Client* may at any time notify the Alliance Manager of the cancellation of a Scheme. On receipt of a notification of cancellation

- the Alliance does no further work necessary to Provide the Scheme,
- the Partners leave the Working Areas and remove Equipment,
- the amount due to each Responsible Partner for the Scheme includes amounts A1, A2 and A4 as defined in clause 93,
- the Budget is changed by deducting the Scheme Budget and adding the sum of the Partner Earned Values for the Scheme as at the date of cancellation and
- the Alliance Board agrees any resulting changes to the Performance Targets in accordance with the Implementation Plan.

Z19.9 If a Partner's obligation to participate in Providing the Works is terminated, the *Client* decides which of the following options applies in relation to any Awarded Scheme which has not yet reached

Scheme Completion and notifies its decision to the Alliance Manager and the Partner:

Option T1 - the Partner immediately ceases its work on the Scheme.

Option T2 - the Partner continues its work on the Scheme until (but not beyond) the end of the PCF Stage in which termination occurs.

Option T3 - the Partner completes its work on the Scheme.

If **Option T1** applies, the *Client* decides in accordance with the Implementation Plan whether a new Partner or an existing Partner is to replace the Partner whose obligation to participate in Providing the Works has been terminated. If the Partner is a Responsible Partner and is to be replaced by a new Partner, the *Client* countermands the Order and issues a replacement Order to the Alliance in accordance with clause Z19.1, but the Scheme Budget is not changed. If the Partner is a Responsible Partner and is to be replaced by an existing Partner, the roles of the Responsible Partners are changed in accordance with clause Z19.5 or (if the Alliance Board cannot agree how the roles of the Responsible Partners should be changed) the *Client* countermands the Order and issues a replacement Order using the default allocation mechanism described in the Implementation Plan. If the Partner is not a Responsible Partner, a new Partner (if appointed) automatically accedes to the Order on its appointment.

If **Option T2** applies, the Alliance continues to Provide the Scheme as if termination had not occurred until the end of the PCF Stage in which termination occurs. At that time, the *Client* decides in accordance with the Implementation Plan whether a new Partner or an existing Partner is to replace the Partner whose obligation to participate in Providing the Works has been terminated and the provisions of Option T1 apply.

If **Option T3** applies, the Alliance continues to Provide the Scheme as if termination had not occurred.

Z19.10 If the *Client* terminates the obligation of all members of the Alliance to participate in Providing the Works, the *Client* decides which of the following options applies in relation to any Awarded Scheme which has not yet reached Scheme Completion and notifies its decision to the Partners:

Option T4 - the Alliance immediately ceases its work on the Scheme.

Option T5 - the Alliance continues its work on the Scheme until (but not beyond) the end of the PCF Stage in which termination occurs.

Option T6 - the Alliance completes its work on the Scheme.

Z19.11 The *Client* does not issue an Order after the *end date*.

**Production
Management Partner**

Z20

Z20.1 The *Client* issues Periodic Instructions to the Production Management Partner in accordance with the Implementation Plan.

Z20.2 A Periodic Instruction includes

- the scope of service to which it relates,
- except for the first Periodic Instruction, the Partner Fee payable to the Production Management Partner and the associated Partner Fee Projection, assessed in accordance with the Quotation Information and
- details of any Schemes to which the Periodic Instruction applies and how the resources deployed by the Production Management Partner (and the associated Partner Fee) are allocated among those Schemes.

Z20.3 The *Client* may issue an instruction removing all or part of the work in a Periodic Instruction. An instruction issued under this clause Z20.3 is not a compensation event.

Z20.4 The *Client* does not issue a Periodic Instruction after the *end date*.