



**National Highways Company Limited**  
**A303 Stonehenge (Amesbury to Berwick Down)**  
**Delivery Assurance Partner**

**NEC4 Professional Service Contract**  
**(June 2017 with amendments January 2019 and October 2020)**

**Volume 1**

**Contract Data Parts 1 and 2**

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

**1 General**

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 with amendments January 2019 and October 2020.

Main Option	E	Option for resolving and avoiding disputes.	W2
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Secondary Options	X2, X11, X20 Y(UK)1, Y(UK)2, Y(UK)3 Z1 to Z104
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The <i>service</i> is	the provision of services as Delivery Assurance Partner in relation to the A303 Stonehenge (Amesbury to Berwick Down) Project including the Mobilisation Activities and other services instructed in Task Orders.
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The <i>Client</i> is	
Name	National Highways Limited

Address for communications	Bridge House, 1 Walnut Tree Close Guildford Surrey GU1 4LZ Registered number 09346363
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Address for electronic communications	<a href="mailto:GeneralCounselDirectorate@highwaysengland.co.uk">GeneralCounselDirectorate@highwaysengland.co.uk</a>
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The *Service Manager* is

Name

To be notified on award

Address for  
communications

To be notified on award

Address for  
electronic  
communications

To be notified on award

The Scope is in

The document entitled "Volume 2 Scope" and its associated Annexes including the Services and Systems Schedules.

The *affected property* is

as defined in the Main Works Contract Scope ("Volume 2 Scope Part 4 (Maintenance Period Requirements)")

The *language of the contract* is

English

The *law of the contract* is the law of

England, subject to the jurisdiction of the Courts of England and Wales

The *period for reply* is

two weeks

except that

The *period for reply* for

documents required by the Scope

is

as stated in the Scope

The *period for retention* is 12 year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register

- there is a delay in the approval of permit conditions / Development Consent Order (DCO) requirements required as part of the Main Works Contractor mobilisation phase which delays the start of works on site,
- there is a delay in the approval of detailed design required as part of the Main Works Contractor mobilisation phase which delays the start of works on site,
- breach of permit or DCO results in receipt of enforcement action which may impact reputation and ability to undertake future tasks,
- there is a shortage of skilled staff required to undertake the service,
- defective construction products are produced as a result of inadequate supervision and quality checking,
- insufficient time is allowed for tunnel systems commissioning activities which delays the open to traffic date,
- poor independent certification of tunnel systems leads to poor quality tunnel systems leading to operational issues and
- poor alignment between tunnel systems and the *Client's* systems leads to delay in the acceptance of systems by the *Client's* operations team.

Early warning meetings are to be held at intervals no longer than one month

## 2 The *Consultant's* main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*, the *key dates* and *conditions* to be met are

*condition* to be met

*key date*

(1)

all plans required under all of the Systems and Services Schedules are accepted by the *Service Manager*

30 Working Days after the *starting date*

(2)	the <i>Consultant's</i> quotations for the Core Services and Phase Specific Services for Phase 2 are accepted by the <i>Service Manager</i> .	30 Working Days after the <i>starting date</i>
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(3)	Completion of all Mobilisation Activities	45 Working Days after the <i>starting date</i>

The <i>Consultant</i> prepares forecasts of the total Time Charge at intervals no longer than	one month
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### 3 Time

The <i>starting date</i> is	The date notified by the <i>Service Manager</i> .
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The *Client* provides access to the following persons, places and things

access	access date
(1) persons, places and things set out in the Scope	the <i>starting date</i> or as otherwise set out in the Scope or a Task Order, or agreed in accordance with the provisions of the Services and Systems Schedules
(2) Project office space at Bristol City centre, sufficient for the <i>Consultant</i> to provide the Mobilisation Activities	the <i>starting date</i>
(3) Project office space to be located in the Stonehenge area.	as instructed in a Task Order

The first programme is provided as part of the *mobilisation plan* identified in Contract Data Part Two

The *Consultant* submits revised programmes at intervals no longer than

one month

The *completion date* for the whole of the *service* is

7 years after the *starting date*.

The *extension period* is

5 years.

#### 4 Quality management

The *threshold level* is 25 Quality Management Points.

The period after the *starting date* within which the *Consultant* is to submit a quality policy statement and quality plan is

30 Working Days

The *quality table* is

in Annex 10 to the Scope

The *defects date* is 52 weeks after the Completion of the whole of the *service*.

#### 5 Payment

The *currency of the contract* is the

pound sterling (£)

The first assessment date is

on the last day of the calendar month in which the *starting date* falls or, in respect of any Task Orders, on the last day of the calendar month in which the relevant Task Starting Date falls but, where the *starting date* or Task Starting Date falls after the 15<sup>th</sup> of

the month, then on the last day of the following calendar month.

The *assessment interval* is

monthly

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

3 % per annum above the

base

rate  
of  
the

Bank of England

in force from time to time

The *staff rates* are

as stated in Annex E of the Pricing Documents

The *index* is

EARN03: Average Weekly Earnings by Industry “Not Seasonally Adjusted Average Weekly Earnings – Index figures include Bonuses, including Arrears” Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY published by the Office for National Statistics

The *base date value* is

201.8<sup>1</sup>

The *base date* is

March 2021

## 6 Compensation events

These are additional compensation events

(17) The *Service Manager* issues an instruction changing a Task Order.

<sup>1</sup> To be updated to reflect the confirmed index.

(18)	The <i>Consultant</i> receives a Task Order after the Task Starting Date.
(19)	A Task Completion Date is later than the Completion Date.
(20)	The <i>Service Manager</i> gives an instruction correcting a mistake in the Task Schedule which arises from an ambiguity or inconsistency in or between the documents which are part of the contract.
(21)	<p>The <i>Consultant</i> encounters Protester Action which</p> <ul style="list-style-type: none"> <li>○ is within the site as defined in the Main Works Contract,</li> <li>○ prevents the <i>Consultant</i> from Providing the Service in accordance with the Accepted Programme,</li> <li>○ is not anticipated by the accepted Main Works Contractor's security management plan,</li> <li>○ requires the Main Works Contractor to <ul style="list-style-type: none"> <li>▪ seek assistance of a Relevant Authority or</li> <li>▪ ask the <i>Client</i> to use its rights to remove any Protester from the site as defined in the Main Works Contract and</li> </ul> </li> <li>○ are not due to the actions or inactions of the <i>Consultant</i>.</li> <li>○ only the difference between the Protester Action encountered and those anticipated by the accepted Main Works Contractor's security management plan is taken into account in assessing a compensation event.</li> </ul>
(22)	<p>The <i>Consultant</i> encounters COVID-19 Related Action which affects the <i>Consultant's</i> ability to Provide the Service which results in</p> <ul style="list-style-type: none"> <li>• delays in performing the service in accordance with the Accepted Programme,</li> <li>• a change to the Lump Sum for Mobilisation Activities or</li> <li>• a change in Cost Build-Up for a Task Order's Time Charge or Lump Sum.</li> </ul> <p>Only the difference between the COVID-19 Related Action and those for which it would have been reasonable to have allowed for, including any best industry practice, is taken into account in assessing a compensation event.</p> <p>If the effect of the COVID-19 Related Action is to reduce the cost of Providing the Service, the affected Pricing Parameters are reduced.</p>

## 8 Liabilities and insurance

### *Client's* liabilities

These are additional *Client's* liabilities

(1) None

### *Consultant's* liabilities



The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, £20,000,000 (twenty million pounds) in the aggregate.

### Insurance

The minimum amount of cover (required level) and the periods for which the *Consultant* maintains insurance are

Event	Minimum amount of cover (required level)	Period following Completion of the whole of the service or termination
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	A limit of indemnity of not less than twenty million pounds (£20,000,000) in respect of any one claim and in aggregate per annum.	Twelve (12) years
loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i> ) arising from or in connection with the <i>Consultant</i> Providing the Service	Limit of indemnity ten million pounds (£10,000,000) in respect of any one occurrence, without limit to the number of occurrences in any annual policy period, but ten million pounds (£10,000,000) in respect of any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).	None
Death of or bodily injury to employees of	A limit of indemnity of not less than ten	None

the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	million pounds (£10,000,000)  in respect of any one occurrence, the number of occurrences being unlimited during any annual policy period of insurance, or such greater amount as is required by the applicable law for the duration of the contract or such greater period as required by law	
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The *Client* provides these insurances from the Insurance Table

None

The *Client* provides these additional insurances

None

The *Consultant* provides these additional insurances

None

## Resolving and avoiding disputes

The *tribunal* is

arbitration.

The *arbitration procedure* is

The latest Institution of Civil Engineers Arbitration Procedure current at the date of the notification that a Party intends to refer a disputed matter to the *tribunal*.

The place where arbitration is to be held is

London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

the President for the time being of the Institution of Civil Engineers or its nominee

The *Senior Representatives* of the *Client* are

Name (1)

[Highways England Dispute Resolution Lead]

Address for communications

[to be notified on award]

Address for electronic  
communications

[to be notified on award]

Name (2)

[Senior Representative from Business Area]

Address for communications

[to be notified on award]

Address for electronic  
communications

[to be notified on award]

The *Adjudicator* is

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

The person or organisation who  
will choose an *Adjudicator* if the  
Parties cannot agree a choice is

the President for the time being of the Institution  
of Civil Engineers or its nominee.

The *Adjudicator nominating  
body* is

the Institution of Civil Engineers

**X2: Changes in the law**

The *law of the project* is

England, subject to the jurisdiction of the Courts of England.

**X20: Key Performance Indicators**

The *incentive schedule* for Key Performance Indicators is in

the document entitled Incentive Schedule in Annex 1 to the Contract Data.

A report of performance against each Key Performance Indicator is provided at intervals of

1month

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

Charges made and interest paid by the *project bank*

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

The *account holder* is the *Consultant*.

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

Not Applicable.

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

If Option Y(UK)3 is used	term		<i>beneficiary</i>	
	The provisions of Option Y(UK)1		Named Suppliers	
	Fair Payment section S827 of the Scope		subcontractors (at any stage of remoteness from the <i>Client</i> )	
	Subcontracting section S825 of the Scope		subcontractors (at any stage of remoteness from the <i>Client</i> )	
	Incoming Consultant, any Incoming Consultant Subcontractor		Z52.9, Z53.1	

**Z: Additional conditions of contract**

The *additional conditions of contract* are clause Z1 to Z104.

**Contract Data entries relating to Z Clauses**

Z1 Additional definitions and amendments to core and Secondary Option clauses

**Contract Data entries relating to the Scope**

None

**PART TWO – DATA PROVIDED BY THE CONSULTANT**

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

**1 General**

The *Consultant* is

Name

[•]

Address for communications

[•]

Address for electronic  
communications

[•]

The *key persons* are the people listed in the *key persons schedule*

The *key persons schedule* is  
in the

[•]

The following matters will be included in the Early Warning Register

[•]

**2 The *Consultant's* main responsibilities**

Contract Data		
If the <i>Consultant</i> is to provide Scope	The Scope provided by the <i>Consultant</i> is in	Not Applicable
<b>3 Time</b>		
If a programme is to be identified in the Contract Data	The programme identified in the Contract Data is	Not Used.

#### 4 Quality Management

The *quality statement* is in

the document called Quality Statement

the following *outline documents* listed below

The *outline health, safety and wellbeing advice and assurance plan* is in

the document called Quality Statement

The *outline integrated project controls implementation plan* is in

the document called Quality Statement

The *outline consents management plan* is in

the document called Quality Statement

The *outline design assurance plan* is in

the document called Quality Statement

The *outline construction delivery plan* is in

the document called Quality Statement

The *outline Tunnel Systems assurance plan* is in

the document called Quality Statement

5 Payment		
Resolving and avoiding disputes		
The <i>Senior Representatives</i> of the <i>Consultant</i> are		
Name (1)	[•]	
Address for communications	[•]	
Address for electronic communications	[•]	
Name (2)	[•]	
Address for communications	[•]	
Address for electronic communications	[•]	
Contract Data entry relating to Data Protection Legislation		
The contact details of the <i>Consultant's</i> Data Protection Officer or Data Protection nominated lead are		



**Contract Data entries relating to Z Clauses**

Z9	The <i>credit ratings</i> at the Contract Date and the rating agencies issuing them are		
	party	rating agency	<i>credit rating</i>
	[Consultant]	[•]	[•]
	[Consortium Member]	[•]	[•]
	[Guarantor]	[•]	[•]

Z102

The *task schedule* is the document entitled

"Task Schedule" at Volume 2 of the Scope

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

The *project bank* is

[•]

*named suppliers* are

[•]

**Contract Data entries relating to Z Clauses and Scope**

Not Used.

**Z clauses (NEC4 Professional Service Contract – June 2017 edition including the amendments dated January 2019 and October 2020)**

No.	Title	
<b>Z1 - Z49 Mandatory</b>		
Z1	Changes to Core and Secondary Option Clauses	
Z2	Interpretation	
Z3	Recovery of sums due from <i>Contractor</i>	
Z4	Assignment and transfer	
Z5		Not Used.
Z6	Adjudication	
Z7	Termination – Public Contract Regulations 2015	
Z8	Subcontracting	
Z9	Merger, take-over, Change of Control and financial distress	
Z10	Joint ventures	
Z11	Parent Company Guarantee	
Z12	Discrimination, Bullying and Harassment	
Z13	Intellectual Property Rights (IPRs)	
Z14	Project Bank Account	
Z15	Tax Non - Compliance	
Z16	Value Added Tax Recovery	
Z17	Termination and removal of part of the service	
Z18	Corruption or loss of data	
Z19	Conflict of interest	
Z20 – Z49 – Not Used.		

No.	Title	
Z50	Health and Safety Plan	
Z51	Changes to lump sum and target cost prices	
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)	
Z53	Pensions	
Z54	Extension to the Completion Date	
Z55		Not Used.
Z56		Not Used.
Z57	Infrastructure Act 2015	
Z58	Revisions to Quality Statement	
Z59	Indemnified claims	
Z60	Tax Arrangements of <i>Consultant's</i> Staff	
Z61	Audit of staff rates	
Z62-Z99		Not Used.
Z100	Indexation	
Z101	The final accounting assessments	
Z102	Tasks	
Z103	Audit, Quality Management Points and Nonconformities	
Z104	Basis of contract and compensation events	

## Z CLAUSES

### Clause Z1 Additional definitions and amendments to core and Secondary Option clauses

#### 11 Identified and defined terms

11.2(8) Delete and insert "Not Used"

11.2(13) Insert an additional bullet point after "and is either"

- in a Task Order.

#### 11.2 Add the following defined terms

- (24) Affected Property is the *affected property* unless changed in accordance with the Main Works Contract.
- (25) Agreement means the agreement signed by the parties to which these *conditions of contract* are attached.
- (26) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client* or the *Service Manager*.
- (27) Associated Company is any of
  - a Consortium Member or
  - any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of, or is under common Control with the *Consultant* or a Consortium Member.
- (28) Baseline Price Estimate is the estimated price for each Task Order from Pricing Schedules appended to the Form of Agreement at Appendix B and is used by the *Service Manager* in accepting a Service Plan. The Staff Rates and any Lump Sums within the Baseline Price Estimate are used to assess a quotation for a Task Order in accordance with clause Z102 (whether based on a Target Cost or Lump Sum).
- (29) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Consultant* or a Consortium Member, or acquires a direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant* or a Consortium Member.
- (30) Consortium Member is an organisation or person which is a member of a group of economic operators comprising the

*Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company.

- (31) Consultant Employee means any person employed or engaged or formerly employed or engaged by the *Consultant* or any of its subcontractors (at any stage of remoteness from the *Client*) in Providing the Services.
- (32) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (33) Controller is the single person (or group of persons acting in concert) that
- has Control of the *Consultant* or a Consortium Member or
  - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member.
- (34) Cost Build-Up as the meaning given in clause 63.1.
- (35) Coronavirus means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) including any mutation thereof recognised by the World Health Organisation and government of the United Kingdom as a mutation.
- (36) COVID-19 means the official designation by the government of the United Kingdom of the disease which can be caused by Coronavirus.
- (37) COVID-19 Related Action is any
- action taken,
  - restriction imposed,
  - restriction lifted or
  - change in any restriction
- by the government of the United Kingdom after the Contract Date to control Coronavirus and COVID-19.
- (38) Credit Rating is the credit rating or any revised long term *credit rating* issued by a rating agency accepted by the *Client* in respect of the *Consultant*, a Consortium Member or any Guarantor. Rating agencies accepted by the *Client* are Moody's Investor Service Inc., Standard & Poor's Financial Services LLC., Fitch Ratings Inc.) unless agreed otherwise by the *Client*.
- (39) The Data Protection Legislation is
- the General Data Protection Regulation (EU 2016/679)<sup>1</sup>,
  - the Law Enforcement Directive (LED) (Directive EU 2016/680)<sup>1</sup>,
  - the Data Protection Act 2018 and
  - any other data protection laws and regulations applicable in

England.

- (40) Development Consent Order (DCO) is the overarching document which provides the consenting framework for the Project and grants the *Client* permission to construct and operate the Project.
- (41) Delivery Assurance Partner Risk and Opportunities Register has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (42) Not Used.
- (43) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (44) 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).
- (45) Enforcement Action is enforcement action brought by a regulatory authority against the *Consultant* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.
- (46) Not Used.
- (47) EU Reference is any European Union
  - regulation,
  - decision,
  - tertiary legislation or
  - provision of the European Economic Area agreement.
- (48) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (49) Exit Transferring Employees means any Consultant Employee who is assigned to Providing the Services whose employment (or Employment Liabilities in respect of whom) will transfer to the *Client*, an Incoming Consultant or an Incoming Consultant Subcontractor under TUPE at a relevant Transfer Date and whose name is set out in the Final Exit List and provided in accordance with clause Z52.6.
- (50) Final Exit List means the updated list of the Exit Transferring Employees provided pursuant to clause Z52.8 provided that there shall be no changes to the Exit Transferring Employees other than by agreement between the *Client* and the *Consultant*.
- (51) Financial Standing Test is the financial test for the *Consultant*, a Consortium Member or a proposed guarantor used in the evaluation stage of the competition for the contract.

- (52) General Anti-Abuse Rule is
- the legislation in Part 5 of the Finance Act 2013 and
  - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (53) Government is Her Majesty's Government of the United Kingdom.
- (54) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.
- (55) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (56) Health and Safety Plans are
- a completed Supply Chain Health and Safety Maturity Matrix (SCMM) (as defined in **Annex 15** to Volume 2 of the Scope) for the *Consultant* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
  - an implementation plan, setting out the actions to be taken by the *Consultant* or each 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 the contract by the *Consultant* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Consultant* or each Consortium Member.
- (57) Incentive Amount is the maximum amount for incentivisation in a Phase as stated in the Incentive Schedule.
- (58) Incoming Consultant is any consultant appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Consultant*.
- (59) Incoming Consultant Subcontractor means any subcontractor (at any stage of remoteness from the *Client*) of the Incoming Consultant providing services which are fundamentally the same as any or all of the service.
- (60) Indemnified Claim is a matter for which the *Consultant* is liable under the contract.
- (61) Not Used.
- (62) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the service

or any revised systems introduced by the *Client* from time to time.

- (63) Integrated Project Programme has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (64) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trademarks), 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.
- (65) Leadership Team has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (66) Licence is the document entitled "Highways England: Licence" dated April 2015 listed in **Annex 02** to Volume 2 of the Scope.
- (67) Lump Sum for
- a potential Task Order, is the total of the lump sum items stated in the Baseline Price Estimate for that Task or
  - an instructed Task Order, is the total of the lump sum items stated in the Task Order,
- in each case it may be adjusted in accordance with the contract.
- (68) Main Works Contractor is the contractor engaged or to be engaged by the *Client* to deliver the main works package described in section S110.2 and the Main Works Contract is interpreted accordingly
- (69) Measurement is the basis of calculation as set out in the column entitled "Measurement" in the Incentive Table.
- (70) Metric is the basis for Measurement as stated in the column entitled "Basis of Metric" in the Incentive Table.
- (71) Mobilisation Activities has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (72) Mobilisation Phase has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (73) Not Used.
- (74) Not Used.
- (75) Not Used.
- (76) Pay is all emoluments and outgoings relating to employment including to PAYE, National Insurance Contributions, remuneration and benefits.



- (77) Parent Company Guarantee is a parent company guarantee of the *Consultant's* performance in the form set out in **Annex 16** to Volume 2 of the Scope.
- (78) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.
- (79) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the Data Protection Legislation.
- (80) Phase has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (81) Pricing Parameters to be adjusted under clause 6 in respect of any compensation event are the Prices and one or more of the following
- Lump Sum for a Task (or part thereof),
  - Target Cost for a Task
- as applicable to the relevant Task Order.
- (82) Pricing Schedules are the schedules at Appendix B to the Agreement including the pricing spreadsheets tendered by the *Consultant* being
- Annex A: DAP Mobilisation,
  - Annex B: "Stakeholders and Consents",
  - Annex C: "Technical Assurance",
  - Annex D: "Project Office (PMO)",
  - Annex E: Staff Rates and
  - Summary Work Book.
- (83) Not Used.
- (84) Not Used.
- (85) Not Used.
- (86) Project has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (87) Not Used.
- (88) Project Road means the A303 trunk road within the site as defined in the Main Works Contract.
- (89) Protester is any person or persons engaged in Protester Action.
- (90) Protester Action is any action taken by any person or persons protesting against the carrying out of any part of the A303 Amesbury to Berwick Down Improvement (Stonehenge) project or use of the Project Road, or users of the Project Road, or of roads in general which directly or indirectly affects performance

of the works including action or threatened action which results in

- increases in the Defined Cost of performing the *works*, both as defined in the Main Works Contract, (including increased security costs) and
- delays in performing the *service*.

(91) Quality Management Points are points accrued by the *Consultant* in accordance with the *quality table* in **Annex 10** of the Scope.

(92) Quality Statement is the *quality statement* unless later changed in accordance with the contract.

(93) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.

(94) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.

(95) Relevant Authority is any

- court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, (or of the Welsh Ministers or the National Assembly for Wales) and
- other person whose authority is or may be required for the carrying out of all or any part of the works or which has any authority or right in respect of any part of any of the works under any law.

(96) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* or a Consortium Member is established in another jurisdiction, the tax authority in that jurisdiction.

(97) RIDDOR Incident is an incident occurring under any contract between the *Consultant*, an Associated Company and subcontractor (at any stage of remoteness from the *Client*) and

- the *Client* or
- any other person

which results in death or serious injury to any worker or non-worker and for which the *Consultant*, an Associated Company or subcontractor (at any stage of remoteness from the *Client*) is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it) or equivalent laws outside England applicable to such a contract.

(98) Secretary of State is the Secretary of State for Transport.

(99) Service Plan is any service plan relating to the delivery of any Mobilisation Activities or any Core Service, Phase Service in any Phase in accordance with the relevant Scope (including any amendments thereto accepted by the *Service Manager* in accordance with the contract).

- (100) Services and Systems Schedules has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (101) Staff has the meaning defined in **Annex 01** to Volume 2 of the Scope.
- (102) Staff Rates are the *staff rates* unless later changed in accordance with the contract.
- (103) Target Cost for a Task Order is the amount stated in the Task Order as the target for the Time Charge (as adjusted in accordance with the contract).
- (104) A Task is work within the *service* which the *Service Manager* may instruct the *Consultant* to carry out within a stated period of time.
- (105) Task Brief is a detailed description of the work required for a Task
- (106) Task Completion is when the *Consultant* has done all the work which the Task Order requires it to do by the Task Completion Date and corrected Defects which would have prevented the *Client* or Others from using the *service* and Others from doing their work.
- (107) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.
- (108) Task Order is the *Service Manager's* instruction to carry out a Task and may contain a Lump Sum or a Time Charge or both. A Task Order with a Time Charge contains a Target Cost in relation to the Time Charge, unless otherwise stated in the Task Order.
- (109) Task Schedule is the *task schedule* set out in Contract Data Part Two unless later changed in accordance with the contract.
- (110) Task Starting Date is the date on which the *Consultant* is required to start the work required by a Task Order.
- (111) Tax Non-Compliance is where a tax return submitted by the *Consultant* 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 *Consultant* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
    - the failure of an avoidance scheme in which the *Consultant* 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 Contract Date or to a civil penalty for fraud or evasion.

(112) Not Used.

(113) Time Charge is, in respect of any period and for any one of the following

- Core Services,
- Phase Services or
- Systems and Processes,

the amount determined by multiplying the relevant *staff rates* by the total number of days appropriate to that rate (or pro rata for any half day, rounded to nearest half day) for all Staff properly engaged on providing that activity or task in that period.

Threshold Level is the threshold level of Quality Management Points in the Scope.

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

(115) Working Day is a weekday, but not an English public holiday, bank holiday, Saturday or Sunday. A “working day” would include Christmas Eve where it falls on a weekday.

## **12 Interpretation and the law**

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

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

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

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

## **21 People**

### **21.1 Replace clause with**

- (1) “The *Consultant* provides each *key person* named to do the job stated in the Contract Data.

- (2) The *Consultant* does not remove or replace any *key person* unless
- a *key person* resigns, retires, is on maternity, paternity or equivalent leave or long-term sick leave or
  - the *key person's* employment or contractual arrangement with the *Consultant*, Consortium Member or subcontractor (at any stage of remoteness from the *Client*) is terminated for material breach of contract by the employee.

The *Consultant* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced.

- (3) The *Consultant* may propose to the *Service Manager* that a *key person* is replaced. The *Consultant* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced."

## **23 Subcontracting**

- 23.3 In clause 23.3, after "A reason for not accepting the subcontract documents is that", insert an additional bullet point

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

## **25 Assignment**

Delete clause 25.

## **26 Disclosure**

Delete clause 26.

## **30 Starting, Completion and Key Dates**

- 30.2 Add at the end of the clause "The *Service Manager* decides the date of completion of Mobilisation Activities and certifies it within one week thereafter."

## **31 The programme**

- 31.1 At the end of the clause insert "The *Consultant* incorporates the programme within the Integrated Project Programme to be developed and submitted for acceptance in accordance with the Scope. From the date on which the first Integrated Project Programme is accepted by the *Service Manager* in accordance with the Scope, the expressions 'Accepted Programme' mean the Integrated Project Programme accepted in accordance with the contract."

- 31.2 In the first bullet point after "*starting date*" insert ", or Task Starting Date as applicable," and after "Completion Date" insert "or Task Completion Date, as applicable,".

In the second bullet point, after "Completion" insert "or Task Completion as applicable,".

## **32 Revising the programme**

32.2 Add a further bullet point

- “with any quotation for a Task submitted in accordance with clause Z102.2,”

**35 Acceleration**

35.1 After “achieve Completion before the Completion Date” insert “or Task Completion before the relevant Task Completion Date.”. In the second bullet point after “Completion Dates”, insert “, Task Completion Dates”.

35.2 After “Completion Date” insert “or Task Completion Date”.

35.3 After “Completion Date” insert “, Task Completion Date”.

**50 Assessing the amount due**

In each of

- clause 50.1 (line 1),
- clause 50.2 (line 2) and
- clause 50.4 (line 2 and bullet points 1 and 2)

after “due at” insert “the last day of the calendar month before”.

In clause 50.1, lines 2 and 3, delete “decided by ... *starting date*” and insert “stated in the Contract Data”.

At the end of the first paragraph of clause 50.2 insert “The *Consultant* makes separate applications for payment in respect of the Mobilisation Activities and each Task and ensures that the Task Order reference is clearly identified in each application for payment relating to a Task.”.

Delete the second bullet point to clause 50.3 and insert “not used,”

**51 Payment**

51.2 Delete “three weeks” in the second bullet point and insert “seven days (subject to clause Y(UK) 2.2)”.

Delete in the second bullet point “, or, if a different period is stated in the Contract Data, within the period stated”.

**52 Defined Cost**

Delete and insert “Not Used”

**60 Compensation events**

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

“or

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

At the end of clause 60.1(4) (before the full stop) insert “, unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise”.

In the second bullet point of clause 61.2 delete “Defined Cost” and insert “any component of the *Consultant*’s costs as set out in Annexes A to E of the Pricing Schedules” and after “Completion” insert “, Task Completion (as applicable), the Mobilisation Activities”.

In clause 61.3 delete “Prices” and insert “Pricing Parameters”. After “Completion Date” insert “Task Completion Date (as applicable), the Mobilisation Activities”.

In both the sixth bullet point of clause 61.4 delete “Defined Cost” and insert “any component of the *Consultant*’s costs forming part of a Time Charge or Lump Sum as derived from the relevant Staff Rates” and after “Completion” insert “Task Completion (as applicable), the Mobilisation Activities”.

In the sentence immediately following the bullet points in clause 61.4

- delete “Prices” and insert “Pricing Parameters” and
- after “Completion Date” insert “or Task Completion Date (as applicable),”.

Insert new clauses 61.8 to 61.13 as follows

“61.8 Notwithstanding clauses 61.1 and 61.3, the *Consultant* notifies the *Service Manager* of a compensation event affecting the Baseline Price Estimate for any potential Task Order (including a compensation event arising from the *Service Manager* giving an instruction or notification or changing an earlier decision) no later than the date the *Consultant* submits its quotation for that potential Task Order.

61.9 A compensation event affecting the Baseline Price Estimate for a potential Task Order is not notified by the *Service Manager* or the *Consultant* after the date the *Consultant* submits its quotation for that potential Task Order.

61.10 A compensation event affecting the Baseline Price Estimate for a potential Task Order (whether or not notified before the date the *Consultant* submits its quotation for that potential Task Order) does not adjust the Pricing Parameters for that Task Order when instructed.

61.11 Whilst a compensation event adjusting the Baseline Price Estimate for a potential Task Order is notified in accordance with clause 61.8, depending on the nature of that compensation event and the surrounding circumstances, an adjustment to the Baseline Price Estimate for that potential Task Order may not be capable of proper assessment

- at the time of notification or



- until the *Service Manager* instructs the *Consultant* to submit a quotation for that potential Task Order and provides the Task Brief.

61.12 The *Consultant* undertakes such enquires, monitoring and reviews as it is entitled under the contract and which an experienced consultant would undertake, to keep itself informed at all times of events affecting the *service* which may be a compensation event adjusting a Baseline Price Estimate for a potential Task Order and notifies the *Service Manager* accordingly in accordance with clause 61.8.

61.13 A compensation event for a potential Task Order which ought to have been notified in accordance with clauses 61.8 and 61.12, which is not so notified, is treated as having been taken into account in

- the *Consultant's* accepted quotation for that Task Order in accordance with clause Z102.2 or
- by the *Service Manager's* assessment of the pricing for that Task Order in accordance with clause Z102.5

and no compensation event for a Task Order is notified before the Task Starting Date."

In clause 62.2, delete "Prices" and insert "Pricing Parameters".

Delete the text at clause 63.1 and insert "Subject to clause 63.15, the change to the Pricing Parameters for the

- Mobilisation Activities,
- potential Task Orders and
- instructed Task Orders

is assessed as the effect of the compensation event on each cost element of the build-up of the relevant Time Charge and Lump Sum in the

- potential Task Orders and
- instructed Task Orders,

(referred to as the "Cost Build-Up") as follows

- all cost elements within the Cost Build-Up which are applicable in assessing the effects of the compensation event are used in that assessment at the values in the Cost Build-Up without adjustment or indexation and
- only if a compensation event
  - affects any cost element, that cost element is adjusted in the Cost Build-Up,
  - requires a new cost element not included or allowed for in the Cost Build-Up, that new cost element is added to the Cost Build-Up and



- requires any cost element to be omitted, that cost element is omitted from the Cost Build-Up.

Any such adjusted or new cost element under this clause 63.1 is evaluated on an open book basis using current prices at the date of the compensation event and is then deflated in accordance with indexation under clause Z100 to obtain the equivalent cost at the Contract Date.

The relevant (if any and as applicable)

- existing unadjusted cost elements,
- deflated adjusted or new cost elements and
- omitted cost elements

are then used to change the Pricing Parameters (as applicable) under this clause 63.1.”.

In clause 63.2 delete "Prices" and insert "Pricing Parameters”.

Delete clause 63.3.

In clause 63.4 delete “Defined Cost and the event is” in line 1 and insert “the Pricing Parameters” and delete the two bullet points. Delete in the last line "Prices" and insert "Pricing Parameters”.

At the end of the first paragraph of clause 63.5 insert the following additional paragraph

“A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, the planned Task Completion is later than the planned Task Completion as shown on the Accepted Programme current at the dividing date.”.

In clause 63.6 delete "Prices" and insert "Pricing Parameters” and after “Completion Date” insert “, any Task Completion Date”.

In line 2 of clause 63.9 delete “Defined Cost and time” and insert “*staff rates, lump sums*”.

In clause 63.10, delete "Prices" and insert "Pricing Parameters” and after “Completion Date” insert “or Task Completion Date”.

Insert the following new clause

“63.15 Assessments for changed Pricing Parameters for compensation events are in the form of changes to the Time Charge and Lump Sum in the Baseline Price Estimate or Task Order (as applicable).”.

In line 1 of clause 66.2 delete "Prices" and insert "Pricing Parameters”. After “Completion Date” insert “, the Task Completion Date, the programme for the Task”.

## 83 Insurance cover

Delete clause 83 and insert

“83.1 The *Consultant* provides the insurances at the levels stated in the Contract Data and to comply with the requirements set out in **Annex 03** to Volume 2 of the Scope.”.

**87 Limitation of liability**

At the end of clause 87.1, insert the following additional excluded matters

- any amount due from or paid by the *Consultant* to the *Client* under clause X20.4,
- loss of or damage to the *Client's* property,
- fraud or fraudulent misrepresentation,
- loss or damage due to pollution,
- loss arising from breach of
  - confidentiality or data protection obligations or
  - anti-bribery or anti-corruption obligations,
- interest on debt,
- losses caused by the *Consultant's* illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct and
- other events for which the contract requires the *Consultant* to insure (but excluded only up to the required level for each type of insurance stated in the Contract Data),

Insert the following new clause

"87.2 The *Consultant* is not liable to the *Client* for any delay in Completion of the work by the Completion Date or any Task Completion Date, save to the extent the *Consultant* is required to pay the *Client* an amount under clause X20.4."

**90 Termination**

In the first line of the table in clause 90.2, delete "or R22" and insert ", R22 or R23".

In the second line of the table in clause 90.2 delete "and A3".

**91 Reasons for termination**

Insert new clause 91.9 "The *Client* may terminate in accordance with clause Z9.6 (R23).".

**93 Payment on termination**

In the second bullet point of clause 93.1, delete "Defined Cost" and insert "the Time Charges and Lump Sums (or parts thereof)".

Delete lines 5 to 9 of clause 93.2.

**Option E Cost reimbursable contract**

Delete clauses 11.2(17) and 11.2(18).

Delete the definition of the Price for Service Provided to Date in clause 11.2(21) and insert

"The Price for Service Provided to Date for the Mobilisation Activities is the total of the proportion of the Lump Sum stated in the Baseline Price Estimate (as adjusted in accordance with the contract) for those activities, assessed using the proportion of work completed since the *starting date* for each lump sum item stated in that Baseline Price Estimate and excluding any Time Charge for Staff.

The Price for Service Provided to Date for a Task Order is the total of the

- Time Charge for work which has been completed on time-based items since the Task Starting Date for that Task (if any) and
- proportion of the Lump Sum stated in the Task Order (as adjusted in accordance with the contract), assessed using the proportion of work completed since the Task Starting Date for that Task for each lump sum item stated in the Task Order (if any)

excluding any Time Charge for Staff

- prevented from Providing the Service in accordance with paragraph 1.16 of **Annex 15** to the Scope or
- not permitted access under paragraph 1.22 of **Annex 15** to the Scope,

and any such amounts are excluded from the Price for Service Provided to Date. Some Task Orders have no Time Charge or no Lump Sum and some Task Orders have both."

Delete the definition of the Prices in clause 11.2(23) and insert

"The Prices for the Mobilisation Activities is the forecast of the total of the

Lump Sum for items described as lump sum in the Baseline Price Estimate for those activities.

The Prices for a Task Order is the forecast of the total of the

- Time Charge for items described as time based in that Task Order (if any) and
- Lump Sum for items described as lump sum in that Task Order (if any)."

In line 1 of clause 20.5 delete "Defined Cost and *expenses*" and insert "Time Charges and Lump Sums". At the end of the clause insert. "Forecasts are provided in relation to each Task Order and clearly identify the Task Order to which each forecast relates".

In line 1 of clause 50.8 delete "of Defined Cost" and after "*Consultant*" insert "for Staff whose *staff rate* or items whose Lump Sums are stated in the Task Order".

Delete the second sentence of clause 50.8.

In clause 50.9

- delete “Defined Cost” where it appears in the first line, first bullet point, last bullet point and penultimate line (four instances) and in each case insert “the Time Charge” and
- delete “that part of Defined Cost” in the fourth bullet point and insert “(as appropriate) the *Consultant’s* original or corrected assessment”.

In the first bullet point of clause 52.3 delete “Defined Cost” and insert “the Time Charge or Lump Sum”. Delete “and expenses”.

Add new clause

**“55 Task Schedule**

55.1 Information in the Task Schedule is not Scope. If any items in the Task Schedule do not relate to the Scope, the *Consultant* corrects the Task Schedule.

**Option X2 Changes in the law**

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

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

X11.2 In line 2 delete “are A1 and A3” and insert “is A1.”.

**Option X20 Key Performance Indicators**

Delete clause X20.4 and insert

“X20.4 Save as set out in this clause X20.4, in respect of the *Consultant’s* performance during the period to which a report relates, the amount calculated in accordance with the Incentive Schedule to be

- paid to the *Consultant* if the target stated for CPF is met and a Key Performance Indicator is met or improved upon or
  - paid by the *Consultant* to the *Client* if the target stated for a Key Performance Indicator is not met

is included in the assessment of the amount due at the next assessment date following submission of such report, subject to and in accordance with the provisions of the Incentive Schedule.

Any amounts due in respect of the *Consultant’s* performance against Key Performance Indicators during the Mobilisation Phase are included in the assessment of the amount due at the next assessment following the end of the Mobilisation Phase.”.

Delete clause X20.5 and insert

“X20.5 The *Client* and the *Consultant* may agree amendments to the Incentive Schedule, including by adding, removing or altering a Key Performance Indicator or its associated weighting and metrics, as part of a Task Order issued in accordance with clause Z102.”.

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

After the second sentence of clause Y1.6 insert

“The *Client* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”.

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

Insert new clause Y2.6 to Y2.9 in Option Y(UK)2 as follows

“Y2.6 Following each *assessment date*, the *Consultant* submits separate invoices for the Mobilisation Activities detailing the amount due in respect of the Lump Sum for the Mobilisation Activities.

Y2.7 Following each *assessment date*, the *Consultant* submits separate invoices for each Task Order detailing the amount due in respect of the

- Time Charge for time-based items for that Task Order (identifying the Task Order to which it relates) (if any),

Lump Sum for the lump sum items for that Task Order (identifying the parts of the Task Order to which it relates) (if any) Y2.8 Invoices are in the format and contain all the details specified in the Scope or required by the *Service Manager*.

Y2.9 The *Consultant* submits such information as the *Service Manager* requires to show that the amount stated as due in each invoice has been correctly assessed.”.

### Schedule of Cost Components

Delete

### Short Schedule of Cost Components

Delete.

## Z2

### Interpretation

#### Z2.1

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,
- the words “includes” or “including” are construed without limitation and
- references to an Annex are to the relevant Annex to the Scope unless stated otherwise.

### **Z3**

#### **Recovery of sums due from *Consultant***

##### **Z3.1**

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

### **Z4**

#### **Assignment and transfer**

##### **Z4.1**

The *Consultant* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.

##### **Z4.2**

If requested by the *Service Manager*, the *Consultant* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require), transferring the benefit and burden of the contract to

- a replacement organisation established to take over the *Client's* functions or part of it,
- another public body exercising similar functions,
- a Department or Office of Her Majesty's government or
- a local authority.

##### **Z4.3**

If the *Consultant* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement through the *Service Manager* to do so. The *Consultant*

- explains the reasons for the proposed transfer and
- provides any further information requested by the *Service Manager*.
- If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require.

**Z5** **Not Used.**

**Z6** **Adjudication**

Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017 including January 2019 and October 2020 amendments) includes the following additional condition of contract

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

Z6.2 If a dispute under the contract raises issues which are substantially the same as or are connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

**Z7** **Termination - Public Contract Regulations 2015**

Z7.1 The *Client* may terminate the *Consultant's* obligation to Provide the Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z7.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015.

Z7.3 The procedure and amount due on termination are the same as for

- R18 if the modification or infringement was due to a default by the *Consultant*,
- R19 if the modification or infringement was due to a default by the *Client* and
- R20 if the modification or infringement was due to any other reason.

**Z8** **Subcontracting**



- Z8.1 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Consultant* subcontracts work to an Associated Company, the Time Charge of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z8.3 The *Service Manager* may, having stated its reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.
- Z8.4 Not Used.
- Z8.5 Before
- appointing a proposed subcontractor or
  - allowing a subcontractor to appoint a proposed subcontractor
- the *Consultant* submits to the *Service Manager* for acceptance
- either
    - a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or sub-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 or sub-subcontractor and
  - details of any RIDDOR Incident under any contract for which the proposed subcontractor or sub-subcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or sub-subcontractor.
- Z8.6 The *Consultant* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed sub-subcontractor) until the *Service Manager* has accepted the submission. A reason for not accepting the submission is that
- it shows that there are grounds for excluding the proposed subcontractor or sub-subcontractor under regulation 57 of the Public Contracts Regulations 2015 or
  - the *Service Manager* is not satisfied that the proposed subcontractor or sub-subcontractor has put in place



adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to the Enforcement Action will not reoccur.

- Z8.7 If requested by the *Service Manager*, the *Consultant* provides further information to support, update or clarify a submission under clause Z8.5.
- Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that
- one of the grounds for excluding the subcontractor or sub-subcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
  - the subcontractor or sub-subcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to the Enforcement Action will not reoccur
- the *Service Manager* may instruct the *Consultant* to
- replace the subcontractor or
  - require the subcontractor to replace the sub-subcontractor.
- Z9 Merger, takeover, Change of Control and financial distress**
- Z9.1 The *Consultant* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.
- Z9.2 If a Change of Control occurs without the *Service Manager's* prior consent or will not allow the *Consultant* to Provide the Service, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z9.3 The *Consultant* notifies the *Service Manager* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant* (or a Consortium Member) or
  - the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contract Regulations 2015.

- Z9.4 The *Consultant* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Consultant* or a Consortium Member.
- Z9.5 The *Consultant* notifies the *Service Manager* immediately if
- any of the following events occurs in relation to the *Consultant*, 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, had it been part of the original assessment of Financial Standing Test the outcome of the Financial Standing Test would have been a failure<sup>2</sup> or
  - any Parent Company Guarantee or any Alternative Guarantee becomes invalid or unenforceable for any reason.
- Z9.6 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Service Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1 and P2 and the amounts due on termination are A1 and A2.
- Z9.7 If a Change of Control occurs, the *Consultant* provides to the *Service Manager*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,

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<sup>2</sup> Note to Tenderer: original assessment of Financial Standing are those undertaken as part of the SQ stage and as described in the SQ guidance.

- a certified copy of the board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Service Manager*,
- any other information required by the *Service Manager* in order to determine whether the Controller, had been included in the original Financial Standing Test, it would not have resulted the outcome of the Financial Standing Test being a failure and
- any other information requested by the *Service Manager* in order to satisfy itself that the *Consultant* remains in a position to Provide the Service.

Z9.8

If a Change of Control or any of the events listed in clauses Z9.3 to Z9.5 occurs, the *Service Manager* may require the *Consultant* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller had been part of the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure) a Parent Company Guarantee or Alternative Guarantee (agreed by the *Service Manager*) from an alternative guarantor proposed by the *Consultant* and accepted by the *Service Manager*.

The *Consultant* provides the *Service Manager* with the information listed in clause Z9.7 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Service Manager*) and any further information requested by the *Service Manager* concerning the alternative guarantor and the form of any Alternative Guarantee.

Z9.9

If a Parent Company Guarantee is proposed to be given by an alternative guarantor, a reason for not accepting an alternative guarantor proposed by the *Consultant* is that

- had it been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure,
- it does not provide the legal opinion required in clause Z9.14 or
- it does not have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.5 has occurred.

Z9.10

If an Alternative Guarantee is proposed to be given by an alternative guarantor, a reason for not accepting an alternative guarantor (or an alternative a form of bond agreed by the *Service Manager*) proposed by the *Consultant* is that it

- does not have a Credit Rating at least equal to

Contract Data

- long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
- long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
- long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Service Manager*,

- does not have a commercial position which is strong enough to carry the Alternative Guarantee,
- had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure,
- is not issued by a proposed alternative guarantor registered in England is not subject to the *law of the contract* and a legal opinion in accordance the contract is not received or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom's financial market.

Z9.11

If so required by the *Service Manager*, the *Consultant* within four weeks after the *Service Manager* notifies the requirement gives to the *Client*

- a Parent Company Guarantee from the Controller or
- a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Service Manager* for the *Consultant* or relevant Consortium Member the notification refers to and
- such legal opinions required by the contract.

Z9.12

The *Service Manager* may accept a

- Parent Company Guarantee from the Controller or
- a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor

proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Service Manager's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Service Manager* that it will meet the Financial Standing Test by the end of that period.

Z9.13

If

- the *Consultant* fails to notify the *Service Manager* that an event listed in clause Z9.5 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.14,
- the *Consultant* does not give to the *Client*
  - a Parent Company Guarantee from the Controller or
  - a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Service Manager*within four weeks of a request from the *Service Manager* to do so or
- the *Consultant* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass within eighteen (18) months of the *Service Manager's* acceptance

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

Z9.14

If the *Consultant*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Consultant* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the *law of the contract*, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- independent of the *Consultant*, Consortium Members, Guarantors or alternative guarantors,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Service Manager*.

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 *Service Manager*.

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

Z9.15 If accepted by the *Service Manager*, the alternative guarantor becomes the Guarantor for the *Consultant* or the relevant Consortium Member and the credit ratings become the credit rating for the Guarantor.

Z9.16 A failure to comply with this clause Z9 is treated as a substantial failure by the *Consultant* to comply with its obligations.

**Z10 Joint ventures**

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

Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant's* obligations under the contract.

Z10.3 The *Consultant* 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 *Consultant* acknowledges that receipt of a communication by the *Consultant's* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Client* in advance of any change to the identity of the *Consultant's* nominated representative.

Z10.4 The *Consultant* 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 *Consultant*.

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

Z10.6 Termination or modification of the joint venture arrangement for any reason is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z10.7 Where two or more Consortium Members comprise the *Consultant*, clause 90.1 & 91.1 of the *conditions of contract* are amended by inserting after "the other Party" the words "or in the case of the *Consultant*, any Consortium Member".

**Z11 Parent Company Guarantee**

Z11.1 If required by the *Client*, the *Consultant* gives to the *Client* a Parent Company Guarantee or Alternative Guarantee. If a Parent Company Guarantee or Alternative Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Service Manager's* request, whichever is later.

Parent Company Guarantees are given for

Contract Data

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

for an incorporated joint venture – the Controller of each Consortium Member. In all cases it is for the *Client* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.

Alternative Guarantees are given for

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

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

Z11.2

A breach of clause Z11 is treated as the *Consultant* having substantially hindered the *Client* or Others.

**Z12**

**Discrimination, bullying and harassment**

Z12.1

The *Consultant* 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 *Consultant* in connection with the contract.

**Z13**

**Intellectual Property Rights (IPRs)**

Z13.1

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

Z13.2

The *Consultant* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who also have the right



to grant further sub-licences) of other IPRs for the *Client* 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 *Consultant* or its assignees or any third party. The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client*. The *Consultant's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are general damages as prescribed by law and equitable relief.

Z13.3

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

**Z14**

**Project Bank Account**

Z14.1

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

**Z15**

**Tax Non-Compliance**

Z15.1

The *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z15.2

The *Consultant* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

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

Z15.3

The *Consultant* is treated as having substantially failed to comply with its obligations if

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



<b>Z16</b>	<b>Value Added Tax (VAT) Recovery</b>
Z16.1	An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment.
Z16.2	Not Used.
Z16.3	Reference in this clause Z16 to "applying the reverse charge" (or similar) refers to an arrangement where the recipient of a supply for the purposes of value added tax (VAT), or a member of any tax group of which the recipient of a supply is a member, is responsible for identifying whether it is accountable to Her Majesty's Revenue and Customs for the VAT that is chargeable in respect of the supply.
Z16.4	<p>In relation to each payment made to the <i>Consultant</i> for any supply under the contract</p> <ul style="list-style-type: none"><li>• following issue of the <i>Service Manager's</i> certificate under clause 51.1, the <i>Consultant</i> within two days issues an appropriate VAT invoice for the supply, confirming whether the reverse charge applies to that supply and</li><li>• unless the reverse charge applies, the <i>Client</i> pays to the <i>Consultant</i> the amount of any VAT properly chargeable in relation to the supply.</li></ul>
Z16.5	The <i>Consultant</i> includes within each application for payment a request for the <i>Service Manager</i> to provide the <i>Client's</i> confirmation as to whether the reverse charge applies to the supply that is the subject of the application. The <i>Service Manager</i> provides such <i>Client's</i> confirmation on or before the issue of the relevant <i>Service Manager's</i> certificate relating to the supply.
Z16.6	If the paying party for the final assessment under clause 53 is the <i>Client</i> , the <i>Consultant</i> , not later than the due date in accordance with clause 53.1, requests the <i>Service Manager</i> for the <i>Client's</i> confirmation as to whether the reverse charge applies to the supply that is the subject of the final assessment. The <i>Service Manager</i> provides such <i>Client</i> confirmation on or before the issue of the payment certificate for the final payment.
<b>Z17</b>	<b>Removal of services from the Scope</b>
Z17.1	The <i>Service Manager</i> may at any time issue an instruction that

- part or all of the remaining *services* is to be permanently removed from the Scope or
- for reasons of health and safety, part of the *services* is to be temporarily removed from the Scope

in either case the *Consultant* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Consultant* to provide works and services similar to the removed services (or part of it).

Z17.2

An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18, R22 or R23, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed services. If all of the remaining services is to be permanently removed, the *Consultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another consultant to complete the services or any part of it.

Z17.3

If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant*, if instructed by the *Service Manager*,

- completes the performance of any part of the *service* started prior to the date of termination and
- co-operates with the *Client* or any Incoming Consultant so as to ensure a smooth transfer of functions.

Z17.4

**Not Used.**

**Z18**

**Corruption or loss of data**

Z18.1

If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultant's* default so as to be unusable, the *Consultant* immediately reports this to the *Service Manager* and

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

**Z19**

**Conflict of interest**

Z19.1

The taking of any steps in accordance with section S508 in the Scope is not a compensation event.

Z19.2	A failure to comply with section S508 in the Scope is treated as a substantial failure by the <i>Consultant</i> to comply with its obligations.
<b>Z20 – Z49</b>	<b>Not Used.</b>
<b>Z50</b>	<b>Health and Safety Plans</b>
Z50.1	The <i>Client</i> may terminate if the <i>Consultant</i> has not produced all the Health and Safety Plans in the form which the contract requires within 45 Working Days after the <i>starting date</i> . This is treated as a termination because of a substantial failure of the <i>Consultant</i> to comply with its obligations.
Z50.2	The period for producing the Health and Safety Plans may be extended by not more than four weeks if the <i>Service Manager</i> and the <i>Consultant</i> agree to the extension before the Health and Safety Plans are due. The <i>Client</i> notifies the extension that has been agreed to the <i>Consultant</i> .
Z50.3	If the <i>Client</i> does not terminate, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the <i>Consultant</i> has produced all the Health and Safety Plans in the form which the contract requires.
<b>Z51</b>	<b>Changes to lump sum and target cost prices</b>
Z51.1	The Parties may at any time agree a reduction to any of the lump sum prices in the Task Schedule or the target cost of any Task Order.
Z51.2	<p>If the <i>Consultant</i> does not agree a reduction requested by the <i>Client</i>, the <i>Client</i> may terminate the <i>Consultant's</i> obligation to Provide the Service by notifying the <i>Consultant</i>.</p> <p>The lump sum price of each lump sum item on the Task Schedule is reduced at the conclusion of each Review Stage to reflect the changes agreed between the Parties. The reduced prices apply from the commencement of the next Delivery Phase.</p>
<b>Z52</b>	<b>Transfer of Undertakings (Protection of Employment) Regulations (TUPE)</b>
Z52.1	The inclusion of this clause Z52 does not indicate or confirm that the <i>Client</i> considers or anticipates that TUPE will apply at the termination or expiry of the contract.
Z52.2	The <i>Consultant</i> represents, warrants and undertakes to the <i>Client</i> that no Consultant Employee is assigned to the

works to the extent that his or her employment or any Employment Liabilities in respect of his or her employment will or is likely to transfer to the *Client* or an Incoming Consultant under TUPE in respect of the termination or expiry of the contract.

Z52.3

The *Consultant* provides to the *Client* within 10 days of the *Client's* request such information in relation to Consultant Employees as the *Client* may require including

- an anonymised list of all current Consultant Employees and for each such employee the job description, length of service, age, immigration status, remuneration and the proportion of their working time spent on the provision of the Services, indicating whether any such employee is a Potential Exit Transferring Employee,
- an organisational chart setting out how the Consultant Employees fit within the *Consultant* or the *Consultant* subcontractor organisation as a whole, indicating teams, team leaders, reporting lines and management for the Potential Exit Transferring Employee,
- details of any other terms and conditions of employment of such Potential Exit Transferring Employee,
- details of the current (and, if different, the contractual) place or location of work of the Potential Exit Transferring Employee and
- details of any other agreement or arrangement (including with any trade union or any other representative body) which may affect the employment of any Potential Exit Transferring Employee.

The *Consultant* promptly notifies the *Client* of any later change to information provided by it.

Z52.4

The *Consultant* acknowledges that the *Client* may disclose information provided by the *Consultant* to

- any Incoming Consultant and
- any person tendering to become an Incoming Consultant.

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

Z52.5

During the eight months period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Client* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or

mainly falls within the Scope of the contract,

- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the contract or
- move or deploy any *key person* away from the performance of the *service*.

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

Z52.6

The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *service*.

Z52.7

The *Consultant* complies with and ensures that any subcontractor (at any stage of remoteness from the *Client*) complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's government.

Z52.8

No later than 30 days prior to a relevant Transfer Date, the *Consultant* provides to the *Client*, any Incoming Consultant and Incoming Consultant Subcontractor, as relevant, the information set out in clause Z52.3 in relation to each Potential Exit Transferring Employee such information to include the Final Exit List and such additional information as is required by Regulation 11 of TUPE.

Z52.9

The *Consultant* is responsible for and indemnifies the *Client*, the Incoming Consultant and any Incoming Consultant Subcontractor, in respect of all Pay and other Employment Liabilities

- in relation to the Consultant Employees and payable in respect of any period before any relevant Transfer Date,
- as a result of any failure by the *Consultant* or any direct or indirect subcontractor to comply with regulations 13 and 14 of TUPE except where the failure arises from the failure of the *Client*, Incoming Consultant or any Incoming Consultant Subcontractor to comply with its obligation under regulations 13 and 14 of TUPE and
- the employment and termination of employment whether before or after the Transfer Date of any persons employed or engaged by the *Consultant* or any subcontractors (at any stage of remoteness from the *Client*) (other than any employee who immediately before the Transfer Date is an Exit Transferring Employee and whose name is included on the Final Exit List provided in accordance with the provisions of clause Z52.8) whose

employment or claims or liabilities arising out of their employment or its termination transfers to the *Client* or an Incoming Consultant following the Transfer Date pursuant to or by virtue of TUPE or who claim that their employment or those claims or liabilities transfer.

**Z53**

**Pensions**

**Z53.1**

The *Consultant* indemnifies the *Client*, any Incoming Consultant and any Incoming Consultant Subcontractor and holds it harmless at all times from any Employment Liabilities suffered or incurred by it arising from claims by Exit Transferring Employees or by trade unions, elected Exit Transferring Employee representatives or staff associations in respect of all or any Exit Transferring Employees which

- relate to pension rights benefits or liabilities arising in respect of periods of employment on or before the Transfer Date including any pension rights, benefits or liabilities which are alleged to transfer to the Incoming Consultant, any Incoming Consultant Subcontractor or the *Client* following any such Transfer Date or
- arise out of the failure of the *Consultant*, any of its indirect or direct subcontractors of the Exit Transferring Employees to comply with the relevant provisions of Annex 17 in the Scope prior to the Transfer Date.

**Z54**

**Extension to the Completion Date**

**Z54.1**

The *Client* may notify the *Consultant* that the Completion Date is to be extended by the *extension period* or such lesser period as the *Client* may specify.

**Z54.2**

If the Completion Date is extended by less than the *extension period*, the *Client* may further extend the Completion Date so that the total aggregated period of extension does not exceed the *extension period*.

**Z54.3**

The *Client* does not notify the *Consultant* of any extension or further extension to the Completion Date later than 6<sup>3</sup> months before the Completion Date.

**Z55**

**Not Used.**

**Z56**

**Not Used.**

**Z57**

**Infrastructure Act 2015**

**Z57.1**

The *Consultant* Provides the Service in compliance with and so as not to put the *Client* in breach of

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<sup>3</sup> The decision to extend will be needed some 12 months before completion and time will be required to re-procure the service if it is to continue.

- 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 *Service Manager* to the *Consultant*).

Z57.2 The *Service Manager* notifies the *Consultant* 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 *service*. The *Consultant* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

## **Z58 Revisions to the Quality Statement**

Z58.1 The *Consultant* may submit to the *Service Manager* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that

- it will not enable the *Consultant* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015,
- it will not enable the *Consultant* to achieve the level of performance specified in the Quality Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement.

Z58.2 A revision to the Quality Statement accepted by the *Service Manager* is not a compensation event.

Z58.3 The *Service Manager* may instruct the *Consultant* to amend the Quality Statement where it is not compliant with the Scope provided by the *Client*. This instruction is not a compensation event.

Z58.4 A revision to the Quality Statement agreed by the *Client* in accordance with the Scope is not a compensation event.

## **Z59 Indemnified Claims**

Z59.1 The *Client* notifies the *Consultant* as soon as practicable of any notice or demand which it receives in respect of a matter



for which the *Consultant* is liable under the contract (an Indemnified Claim).

- Z59.2 The *Consultant* 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 *Consultant* in defending the Indemnified Claim.
- Z59.3 The *Consultant* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Consultant* 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 *Consultant*.
- Z59.5 The *Consultant* bears the costs which it incurs in defending an Indemnified Claim. The *Consultant* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Consultant's* defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Consultant* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Consultant*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z59.7 Where the reason for the *Client's* notice is not due to the fault of the *Consultant* in conducting the Indemnified Claim, the *Consultant* is released from its indemnity to the *Client* in respect of it.

## **Z60 Tax arrangements of Consultant's Staff**

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Consultant* complies and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the contract, the *Consultant* complies and procures that the Staff comply, with the Social Security Contributions



and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z60.3 The *Client* may, at any time during the term of the contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.

Z60.4 If the *Consultant* fails to provide information in response to a request under clause Z60.3

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it

the *Client* may

- treat such failure as a substantial failure by the *Consultant* to comply with its obligations or
- instruct the *Consultant* to replace the relevant member of Staff.

Z60.5 If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Consultant* to comply with its obligations.

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

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

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

## **Z61 Audit of staff rates**

Z61.1 Every three months from the *starting date* until Completion of the whole of the *service*, the *Consultant* (or, if the *Consultant* comprises a consortium, each Consortium Member) provides a report of all Staff used to Provide the Service during the preceding three months, their respective grade and *staff rate* and evidence that their salary base (as described in the Staff Rates Annex E) is appropriate for their staff grade (the "Quarterly Salary Report").

Z61.2 On each anniversary of the *starting date*, the chief financial officer or director of finance (or equivalent senior officer agreed with the *Service Manager*) of the *Consultant* (or, if the

*Consultant* comprises a consortium, of each Consortium Member) certifies that all Quarterly Salary Reports provided during the preceding year

- are accurate and not misleading,
- have been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- are a true and fair reflection of the information included within the *Consultant's*
  - books,
  - management and statutory accounts and
  - other documents and records and
- comply with the contract.

Z61.3

If any Staff used to Provide the Service are Staff of a subcontractor (at any stage of remoteness from the *Client*) and the *Consultant* considers that, in order to comply with any law, the relevant subcontractor should submit its own Quarterly Salary Report directly to the *Client*, the *Consultant* submits a request to that effect to the *Service Manager* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the subcontractor to submit its proposal directly to the *Client*. If the *Service Manager* accepts the *Consultant's* request, the *Consultant* directs the relevant subcontractor to submit its Quarterly Salary Report directly to the *Client*.

Z61.4

Where, in order to verify an invoice submitted by the *Consultant*, the *Client* requires a subcontractor (at any stage of remoteness from the *Client*) or Consortium Member to provide

- records of any Time Charge incurred by it or
- a certificate that its invoice and records of any Time Charge incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the relevant subcontractor or Consortium Member should submit its records or certificate (as applicable) directly to the *Client*, the *Consultant* submits a request to that effect to the *Service Manager* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the relevant subcontractor or Consortium Member to submit its records or certificate (as applicable) directly to the *Client*. If the *Service Manager* accepts the *Consultant's* request, the *Consultant* directs the relevant subcontractor or

Consortium Member to submit its records or certificate (as applicable) directly to the *Client*.

Z61.5

The *Consultant* ensures the conditions of contract for each subcontractor (at any stage of remoteness from the *Client*) contain

- provisions substantially similar to those set out in clause Z61,
- a right for the *Client* to audit any records and certificates provided by the subcontractor (at any stage of remoteness from the *Client*) under this clause Z61,
- an obligation on the subcontractor to discuss directly with the *Client* any concerns that the *Client* may have as to the accuracy of any records and certificates provided by the subcontractor (at any stage of remoteness from the *Client*),
- a right for the *Consultant* to recover from the subcontractor (at any stage of remoteness from the *Client*) (or to deduct from any amount that would otherwise be due to the subcontractor (at any stage of remoteness from the *Client*)) the amount of any overpayment identified by the *Client* as a result of its audits and discussions with the subcontractor (at any stage of remoteness from the *Client*) and
- an acknowledgment from the subcontractor (at any stage of remoteness from the *Client*) that the *Client* may enforce these provisions directly against the subcontractor under the Contracts (Rights of Third Parties) Act 1999.

**Z62 – Z99**

**Not Used.**

**Z100**

**Indexation**

Z100.1

On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor, equal to  $(L-B)/B$ , where

- L is the value of the *index* at the relevant anniversary of the *base date* and
- B is [the *base date value*/the value of the *index* at the *base date*].

If an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The price adjustment factor calculated at the Completion Date for the whole of the *service* is used for calculating adjustments after this date.

Z100.2	<p>On each anniversary of the Contract Date, each <i>staff rate</i> is adjusted by the price adjustment factor</p> <ul style="list-style-type: none"><li>the adjusted <i>staff rate</i> = <i>staff rate</i> x (1 + price adjustment factor).</li></ul>
Z100.3	<p>Each amount due after the anniversary includes an amount for price adjustment which is the sum of</p> <ul style="list-style-type: none"><li>for the lump sum items on the Task Schedule, the change in the lump sums included in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary before the assessment and</li><li>the amount for price adjustment included in the previous amount due.</li></ul>
Z100.4	<p>The Time Charge for compensation events relating to lump sum items on the Task Schedule is assessed using the adjusted <i>staff rates</i> current at the time of assessing the compensation event adjusted to the Contract Date by dividing by (1+PAF), where PAF is the price adjustment factor calculated at the last anniversary.</p>
Z100.5	<p>Not Used.</p>
Z100.6	<p>On each anniversary of the Contract Date, each target cost in a Task Order is adjusted by the price adjustment factor</p> <ul style="list-style-type: none"><li>the adjusted target cost = target cost x (1 + price adjustment factor).</li></ul>
Z100.7	<p>On each anniversary of the Contract Date, each lump sum in a Task Order is adjusted by the price adjustment factor</p> <ul style="list-style-type: none"><li>the adjusted lump sum = lump sum x (1 + price adjustment factor).</li></ul>
Z100.8	<p>Notwithstanding clause Z100.1 to Z100.7, there is no adjustment under this clause Z100 to any lump sum item, Time Charge or Mobilisation Profit (including where arising out of any compensation event) in respect of the Mobilisation Activities.</p>
<b>Z101</b>	<b>The final accounting assessments</b>
Z101.1	<p>Within thirteen weeks after the date on which any Task Completion is achieved (or, in the case of Mobilisation Activities, within thirteen weeks of the end of the Mobilisation Phase) the <i>Service Manager</i></p> <ul style="list-style-type: none"><li>makes an assessment of the final amount due for the relevant Task or Mobilisation Activities (as applicable)</li></ul>

and

- notifies the *Consultant* of that assessment and provides details of how the assessment has been made.

Z101.2

The *Service Manager* gives the *Consultant* details of how the amount due has been assessed. The Party to whom payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager's* notification. The final payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date.

Z101.3

The *Service Manager's* assessments are conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable) unless a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

Z101.4

The assessment of the final amount due is changed to include

- any agreement the Parties reach and
- a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due for the relevant Task or Mobilisation Activities (as applicable).

**Z102**

### **Tasks**

Z102.1

The *Service Manager* may issue a Task Order to the *Consultant*. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The instruction includes

- a Task Brief,
- a requirement to assess the pricing for the Task in accordance with the Staff Rates and Lump Sums,

- a requirement to take into account any relevant Service Plan (including any amendments thereto accepted by the *Service Manager*) and
- the Task Starting Date and Task Completion Date.

Z102.2

The *Consultant* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Consultant* submits details of its assessment with the quotation. If the quotation is not the same as the relevant Baseline Price Estimate), the *Consultant* includes details of the reasons for the difference between the quotation and the relevant Baseline Price Estimate including the effects of any COVID-19 Related Action. The *Service Manager* replies within two weeks of the submission. The reply is

- acceptance of the quotation and the issue of the Task Order,
- an instruction to submit a revised quotation,
- that the *Service Manager* will be making the assessment or
- a notification that the Task will not be instructed.

Upon acceptance of a Task Order quotation, the relevant Baseline Price Estimate is adjusted for the purposes of further Service Plans for future Phases to take into account any relevant

- compensation event under clause 6 and
- amendment to the relevant Service Plan accepted by the *Service Manager* in accordance with the contract and any such adjustment is deemed to be assessed as a compensation event under clause 6.

Z102.3

The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three weeks of being instructed to do so.

Z102.4

The *Service Manager* extends the time allowed for

- the *Consultant* to submit quotations for a Task or
- the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.

Z102.5

The *Service Manager* assesses the pricing for the Task if

- the *Consultant* has not submitted a quotation and details of its assessment within the time allowed or
- the *Service Manager* decides that the *Consultant* has not assessed the Task correctly in a quotation and has not instructed the *Consultant* to submit a revised quotation or
- the quotation is not in accordance with the relevant Baseline Price Estimate (as adjusted under clause Z102.1).

The *Service Manager* notifies the *Consultant* of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the *Consultant's* submission of its quotation for the same Task. This period starts when the need for the *Service Manager's* assessment becomes apparent. The *Service Manager* may assess the pricing for a Task using the accepted Service Plan and the Staff rates, by reference to the relevant Baseline Price Estimate (as adjusted under clause Z102.1). The *Service Manager* may issue a Task Order notwithstanding that there is a dispute on the assessment of the pricing for the Task. The *Client* pays the *Consultant* in accordance with the *Service Manager's* assessment pending resolution of the dispute.

Z102.6                      The pricing of each Task as agreed or determined in accordance with this clause Z102 is set out in Task price list.

Z102.7                      When a Task Order is issued

- the Task price list is inserted in the Task Schedule and
- the work involved is added to the Scope.

The issue of a Task Order is not a compensation event.

Z102.8                      The *Consultant* does not start any work included in the Task until the Task Starting Date or (if no Task Starting Date is specified) the date on which it receives the Task Order and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.

Z102.9                      The *Service Manager* decides the date of Task Completion and certifies it within one week thereafter.

Z102.10                    The *Service Manager* may instruct the *Consultant* to carry out a Task in an emergency before the requirements of clauses Z102.1 to Z102.5 have been fully complied with. If so

- the *Service Manager* provides any of the matters listed in clause Z102.1 which it has not provided and



- the *Consultant* submits its quotation for the Task as soon as practical after the Task Order is issued.

Z102.11

The *Consultant* provides information which shows how each item included in a Task and in the Task Schedule relates to the operations on each programme which it submits for acceptance.

### **Z103**

#### **Audit, Quality Management Points and Nonconformities**

Z103.1

Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less, the *Service Manager* does not issue any further Task Orders to the *Consultant* and the *Client* may appoint Others to perform these Tasks.

### **Z104**

#### **Basis of contract and compensation events**

Z104.1

The *Consultant* is deemed to have satisfied itself before entering into the contract

- as to the scope and nature of the *service* and its obligations under the contract
- as to the basis of payment for the *service* and
- that it has all the information necessary to enable it to Provide the Service in accordance with the contract.