Highways England Term Service Contract

National Logistics and Technology Centre

Contract Data

Part one – Data provided by the *Employer*

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| **1 General** | * The *conditions of contract* are the core clauses and the clauses for main **Option A,** dispute resolution **Option W1** and secondary Options **X1**, **X19**, **Y(UK) and Z clauses Z1 – Z45** of the NEC3 Term Service Contract (April 2013).
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|  | * The *service* is to provide and manage a service to provide a National Technology and Logistics Centre (NTLC) to primarily support the storage and distribution of components for roadside technology maintenance on our strategic road network.
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|  | * The *Employer* is Highways England Company Limited a company incorporated in and in accordance with the laws of England and Wales having its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ
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|  | * The *Service Manager* is Matthew Bayliss
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|  | * The *Adjudicator* is the person chosen by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators.
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|  | * The Affected Property is the NTLC site.
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|  | * The Service Information is included with this pack of documents.
* The language of the contract is English.

The law of the contract is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales.* The period for reply is as per the IfT & Bravo
* The Adjudicator nominating body is the Chartered Institute of Arbitrators.
* The tribunal is arbitration.
* The arbitration procedure is the Chartered Institute of Arbitrators’ Arbitration Rules (2000).
* The place where arbitration is to be held would be agreed by both parties (if required).
* The person or organisation will choose an arbitrator
* if the Parties cannot agree a choice, or
* if the arbitration procedure does not state who selects an arbitrator

who is the President or Vice President of the Chartered Institute of Arbitrators |
| 1. **Time**
 | * The starting date is 3 January 2017
* The service period is 3 years (plus an additional 3 months mobilisation) and with two one year options to extend
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| **5 Payment** | * The assessment interval is 4 weeks.
* The currency of this contract is the pound sterling (£).
* The interest rate is 3% per annum above the Bank of England base rate in force from time to time.
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|  | * The Contractor prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than 1 month.
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| 8 Risks and insurance | * The minimum amount of cover for insurance against loss of or damage caused by the Contractor to the Employer’s property is £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited during the annual period of insurance, but in the annual aggregate in respect of products or pollution liability.
* The minimum amount of cover for insurance in respect of loss of or damage to property (except the Employer’s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor’s Providing the Service for any one event is £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited during the annual period of insurance, but in the annual aggregate in respect of products or pollution liability.
* The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited during the annual period of insurance.
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| Optional Statements: | **If no plan is identified in part two of the Contract Data*** The *Contractor* submits a first plan for acceptance within 4 weeks of the Contract Date
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|  | **If there are additional *Employer’s* risks*** These are additional *Employer’s* risks: None.

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|  | **If the *Employer* is to provide Plant and Materials*** The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of £100,000 (see also insurance clause 8 above).
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| Option X1 | * The proportions used to calculate the Price Adjustment Factor are:
* Linked to the Consumer Price Index (CPI) (series CBZW)
* The *base date* *(B)* for indices is 1 October 2016.
* The indices are those prepared by the Central Statistical Office.
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| Option X19 | * The *Contractor* submits a Task Order programme to the *Service Manager* within 21 days of receiving the Task Order*.*
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| Option Y(UK)1 | * The *Employer* is to pay any charges made and is paid any interest paid by the *project bank.*
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| Option Z | The *additional conditions of contract* are clauses **Z1 – Z45:**  |

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| Clause Z1 | Not used for this procurement  |
| Clause Z2 | **Interpretation of law**Z2.1 In this contract, except where the context shows otherwise:* references to a document include any revision made to it in accordance with this 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 will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and

the words “includes” or “including” are construed without limitation |
| Clause Z3  | **Corrupt practices**Z3.1 The *Contractor* does not * offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or
* enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z3.2 A failure to comply with this clause is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| Clause Z4 | **Recovery of sums due from *Contractor***Z4.1 Where under this contract or any other contract between the *Contractor* and the *Employer* any sum of money is recoverable from or payable by the *Contractor,* 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 *Contractor* under this contract or any other contract with the *Employer* or any part of the Crown if the benefit and burden of the contract is novated to any Department of Her Majesty’s Government. |
| **Clause Z5**  | **Assignment**Z5.1 The *Contractor* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer.* Z5.2 The *Employer’s* ability to assign this contract or any part of it or any benefit or interest under it is unrestricted. Z5.3 If requested by the *Employer,* the *Contractor* executes a novation agreement transferring the benefit and burden of this contract or any *Task Order* to* another Department or Office of Her Majesty's Government,
* a local authority,
* an organisation established to take over the *Employer’s* functions or part of his functions or
* any other body (including private sector body) exercising similar functions

The novation agreement is in the form set out in the Service Information of such other form as the *Employer* may reasonably require. |
| **Clause Z6** | **Discrimination** Z6.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “Discrimination Acts”).Z6.2 In Providing the Service, the *Contractor* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.Z6.3 Where any employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Employer’s* or *Service Manager’s* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer’s* employment policies and codes of practice relating to discrimination and equal opportunities.Z6.4 The *Contractor* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this contract and* provides any information requested by the investigating body, court or tribunal in the timescale allotted,
* attends (and permits a representative from the *Employer* to attend) any associated meetings,
* promptly allows access to any relevant documents and information and
* cooperates fully and promptly with the investigatory body, court or tribunal.

Z6.5 The *Contractor* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor* or any of his staff*.*Z.6.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.Z6.7 A failure to comply with this condition is treated as the *Contractor* having substantially failed to Provide the Service (Reason 11) 2)*.* |
| **Clause Z7** | **Conflict of interest**Z7.1 In accordance with paragraph SI211 of the Service Information, if the *Contractor* or Subcontractor (at any stage of remoteness from the Employer) notifies the *Service Manager* of a conflict of interest, the *Service Manager* may require the *Contractor* to stop Providing the Service until any conflict of interest is resolvedZ7.2 Any steps taken in accordance with clause Z7.1 above, paragraph SI211 in the Service Information, or an instruction from the Service Manager to the *Contractor* to restart work once the conflict of interest is resolved is not a compensation event.Z7.3  A failure to comply with paragraph SI211 in the Service Information is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z8**  | **Appointment of a Adjudicator**Z8.1 The *Adjudicator*’s appointment under the NEC3 Adjudicator’s Contract (April 2013) includes the following additional condition of contract*“*The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement.” |
| **Clause Z9** | **Project Bank Account**Z9.1 Option Y(UK)1 from the NEC3 Term Service Contract (April 2013) applies to this contract. Z9.2 Clause Y1.6 is amended by inserting the following after the second sentence: “The *Employer* may propose that a Supplier or a Subcontractor is added to the Named Suppliers. The *Contractor* accepts the proposal if the addition of the Supplier or Subcontractor to the Named Suppliers is practicable.”Z9.3 The *Employer* may notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer’s* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts. |
| **Clause Z10**  | **Prevention of fraud & bribery** Z10.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/orbeen listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.Z10.2 In this clause Z10, Prohibited Act means any of the following:to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to:* + 1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;

to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; committing any offence:* + 1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
		2. under legislation creating offences concerning fraud; or
		3. at common law concerning fraud; or

committing (or attempting or conspiring to commit) fraud. |
| **Clause Z11** | ***Employer’s* Codes of Conduct**Z11.1 The *Contractor* and anyone employed by him or acting on his behalf complies with the *Employer’s* Anti Bribery Code of Conduct and the Employer’s Anti Fraud Code of Conduct, collectively the “Codes”. The *Contractor* complies with the Codes throughout the service period and with:* paragraph 4 of the *Employer’s* Anti Bribery Code of Conduct and
* paragraph 3 of the *Employer’s* Anti Fraud Code of Conduct

for a period of not less than 6 years after the end of the service period.Z11.2 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z12** | **Payment for subcontracted service**Z12.1 In assessing the amount due at an assessment date, the amount due for the service provided by a Subcontractor (other than a Named Supplier) is retained from the *Contractor* unless, at the assessment date, the *Contractor* has paid the Subcontractor for the service.Z12.2 An amount retained is included in the amount due at the assessment date after the *Contractor* has paid the Subcontractor for the service.Z12.3 When submitting an invoice, the *Contractor* demonstrates that payment has been made for the amount due included in the invoice in respect of the service provided by a Subcontractor. |
| **Clause Z13** | **Fair payment** Z13.1 The *Contractor a*ssesses the amount due to a Subcontractor without taking into account the amount assessed under this contract.Z13.2 The *Contractor* includes in the contract with each Subcontractor* a period for payment of the amount due to the Subcontractor not greater than three weeks after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
* a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all subcontractors (at any stage of remoteness from the *Employer*) are to be paid within three weeks after the date on which payment becomes due under this contract.
* a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.
* a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all Subcontractors (at any stage of remoteness from the *Employer*) include the same provision.

Z13.3 The *Contractor* notifies non-compliance with the timescales for payment* to the *Employer* and
* through the Efficiency and Reform Group Supplier Feedback Service.

The *Contractor* includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract with the intention that all subcontractors (at any stage of remoteness from the *Employer*) include the same provision. Z13.4 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z14** | **Confidentiality** Z14.1 “The *Contractor* keeps (and ensures that anyone employed by him and Subcontractors (at any stage of remoteness from the *Employer*) confidential and does not * disclose to any person the terms of this contract nor
* use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Service

except that the *Contractor* may disclose information* to his legal or other professional advisers,
* to his employees and Subcontractors as needed to enable the *Contractor* to Provide the Service,
* where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Contractor* consults the *Service Manager* and takes full account of the *Service Manager’s* views about whether (and if so to what extent) the information should be disclosed,
* which he receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
* which is in the public domain at the time of disclosure other than due to the fault of the *Contractor* or
* with the consent of the *Service Manager*.

Z14.2The *Contractor* may only disclose the *Employer’s* confidential information to its personnel who are directly involved in Providing the Service and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality. Z14.3 The *Contractor* does not (and ensures that its employees and Subcontractors (at any stage of remoteness from the Employer)) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service. |
| **Clause Z15** | **Official Secrets Act**Z15.1 The Official Secrets Act 1989 applies to this contract from the starting date until the end of the service period or earlier termination. Z15.2 The *Contractor* notifies his employees and Subcontractors of their duties under the Official Secrets Act 1989.Z15.3 A failure to comply with this clause is treated as the *Contractor* having substantially hindered the *Employer* or Others.Z15.4 The *Contractor* complies with the staff vetting and training requirements stated in the Service Information*.* |
| **Clause Z16** | **Quality Management points**Z16.1 Quality Management Points are points accrued by the *Contractor* in accordance with the Quality Table. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Contractor*, the *Employer* or the relevant accreditation body: Z16.2 If the *Contractor* fails to comply with his quality management system, the *Contractor* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table.Z16.3 The *Contractor* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.Z16.4 If the number of Quality Management Points in effect at any time is more than 25 points, the *Contractor* and the *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Contractor* submits a report to the *Employer* within one week of the meeting setting out* the actions agreed at the meeting and
* any other actions which the *Contractor* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.

Z16.5 If the *Employer* does not accept the *Contractor*’s proposals or the *Contractor* does not take the agreed actions, the *Employer* serves a quality warning notice on the *Contractor*. Within one week of receipt of the quality warning notice, the *Contractor* submits a report to the *Employer* setting out the actions which the *Contractor* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.Z16.6 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Contractor* takes the actions detailed in his reports and submits weekly update reports to the *Employer* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.Z16.7 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as a substantial failure by the *Contractor t*o comply with his obligations.**Quality Table**

| Failure | Quality Management Points | Period of effect |
| --- | --- | --- |
| Failure to have a complete Quality Plan in place and operating | 25 | Until audit confirms that Quality Plan complete and operating |
| The Quality Plan does not comply with the requirements of this contract | 10 per failure | Until audit confirms that Quality Plan complies |
| Failure to raise a Non-Conformity report | 5 per Non-Conformity | 6 months |
| Failure to raise a corrective action report | 5 per Non-Conformity | 6 months |
| Failure to correct Quality Plan in manner set out in a corrective action report *(see note 1 below)* | 10 per failure | Until failure corrected |
| Failure to implement recommendations in audit report *(see note 1 below)*  | 5 per recommendation | Until audit confirms that recommendation implemented |
| Failure to carry out internal audit | 25 per audit | Until audit carried out |
| Carrying out work without release of hold point | 10 per item | 6 months |
| Failure to make records available for inspection by the *Employer* | 10 per failure | Until the records are made available |
| Failure to allow access for *Employer* audits | 10 per failure | Until *Employer* audit is carried out |
| Failure by *Contractor* to accrue Quality Management Points that, should have been accrued | The number of Points that should have been accrued | Applicable to the failure that should have accrued Points |
| plus an additional number of Points equivalent to the Points that should have been accrued | 6 months |
| Note 1: For these failures additional Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place. |

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| **Clause Z17** | **Data Protection** Z17.1 (1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.(2) Personal Data is information collected by the *Contractor* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified* from that information or
* from that information combined with other details in (or likely to come into) the possession of the *Employer.*

Z17.2 For the purposes of this contract and the Data Protection Acts * the *Employer* is the Data Controller and
* the *Contractor* is the Data Processor.

Z17.3 The *Contractor* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.Z17.4 The *Contractor* has in place for as long as he holds the Personal Data* appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
* adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z17.5 The *Contractor* immediately notifies the *Employer* through *the Service Manager* if he receives * a request from any person whose Personal Data he holds to access his Personal Data or
* a complaint or request relating to the *Employer’s* obligations under the Data Protection Acts.

Z17.6 The *Contractor* assists and co-operates with the *Employer* and the *Service Manager* in relation to any complaint or request received, includingproviding full details of the complaint or request,complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the Employer andpromptly providing the Employer with any Personal Data and other information requested by him.Z17.7 The *Contractor* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.Z17.8 The *Contractor* immediately notifies the *Employer* through the *Service Manager* on becoming aware of any breach of this clause or of the Data Protection Acts.Z17**.**9 The *Contractor* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Employer*. Z17.10 If the *Contractor* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Contractor* sends the *Employer* details of: * the Personal Data which will be processed outside the EEA;
* the countries where the Personal Data will be processed;
* any Subcontractors or other third parties who will be processing and/or receiving Personal Data outside the EEA; and
* proposals to ensure the *Contractor* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.

Z17.11 Where the *Employer* agrees to the *Contractor* processing or transferring Personal Data outside the EEA the *Contractor* complies with the instructions of the *Employer* and provides an adequate level of protection to any PersonalZ17.12 A failure to comply with this condition is treated as the Contractor having substantially failed to Provide the Service (Reason 11).  |
| **Clause Z18** | **Disclosure of information** Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise. Z18.2 The *Contractor* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Contractor* before doing so in accordance with the relevant Code of Practice. The *Contractor* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.Z18.3 When requested to do so by the *Employer*, the *Contractor* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.Z18.4 The *Contractor* promptly passes any Disclosure Request which it receives to the *Employer.* The *Contractor* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer.*Z18.5 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.Z18.6 The *Contractor* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Procurement Policy Note entitled “Published guidance on implementing requirements for greater transparency in central Government procurement and contracting” (Information Note 02/11 dated 18 January 2011, or any later revision), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Contractor* before deciding whether information is exempt, but the *Contractor* acknowledges that the *Employer* has the final decision. The *Contractor* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer*’s obligation. |
| **Clause Z19** | **Intellectual Property Rights**Z19.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.Z19.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Employer* in connection with the contract are the property of the *Employer* or the Crown. Z19.3  The *Contractor* hereby assigns to the *Employer* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Contractor* or any Subcontractorin performing its obligations under, or otherwise in connection with, the contract.  The *Contractor* obtains from Subcontractors equivalent rights over the documents and other materials prepared by the Subcontractors.  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate. Z19.4  Background IPR means Intellectual Property Rights owned by the *Contractor*, a Subcontractor or a third party and which are not assigned to the *Employer* pursuant to clause Z19.3.  In respect of Background IPR, the *Contractor* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for all purposes of the *Employer*.  Each licence granted under this clause Z19.4 by the *Contractor* survives the termination or expiry of this contract and cannot be terminated by the *Contractor* or its assignees.  The *Contractor* obtains from the Subcontractors or third parties equivalent rights over Background IPR owned by the Subcontractors or third parties.Z19.5   The *Employer* grants to the *Contractor,* or procures the direct grant to the *Contractor* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Employer* and reasonably required by the *Contractor* in order to Provide the Service.  Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract. |
| Clause Z20 | **Records and Audit Access**Z20.1 The *Contractor* keeps documents and information obtained or prepared by the *Contractor* or any Subcontractor in connection with the contract for a period of 6 years after the *service period.* Z20.2 The *Contractor* permits the *Employer,* Comptroller, Auditor General and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Contractor* or any Subcontractor.Z20.3 The *Contractor* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary. Z20.4 The *Contractor* acknowledges that, for the purpose of examining and certifying the *Employer’s* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Contractor* or any Subcontractor and may require the *Contractor* to provide such oral or written explanations as he considers necessary. The *Contractor* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Contractor* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Contractor* is not a function exercisable under this contract. The *Contractor* permits the Comptroller and Auditor General to examine documents held or controlled by the *Contractor* or any Subcontractor. The *Contractor* provides such oral or written explanations as the Comptroller and Auditor General considers necessary. |
| Clause Z21  | **Reporting Small and Medium Enterprises**Z21.1 In this clause Z21 SME is* a Subcontractor or
* a subcontractor to a Subcontractor
* and
* is autonomous,
* is a European Union enterprise not owned or controlled by a non-European Union parent company,
* for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
* for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
* for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z21.2 For each SME employed on the service, the *Contractor* reports to the *Service Manager* each quarter from the starting date and throughout the service period: * the name of the SME,
* the class of SME (medium, small or micro),
* the value of the contract undertaken by the SME,
* the monthly amounts paid to each SME in the quarter and
* the aggregated value paid to paid to each SME since the starting date.

Z21.3 The *Contractor* acknowledges that the *Employer* may * publish the information supplied in accordance with Z21.1, along with the names of the SMEs, the *Contractor’s* name and this contract name and
* pass this information supplied under this clause to any Government Department who may then publish it along with the names of the SMEs, the *Contractor’s* name and this contract name.

Z21.4 The *Contractor* ensures that the conditions of contract for each Subcontractor who is an SME include * a term allowing the *Employer* to publish the information supplied under Z21.2 and
* obligations substantially similar to those set out in this clause Z21.

Z21.5 The *Contractor* further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any subsubcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in clause Z21.4.Z21.6 The *Contractor* keeps accounts and records of his charges and expenses and allows the *Employer* to inspect them at any time within working hours. |
| Clause Z22 | **Changes to rates and prices**Z22.1 The Parties may at any time agree to a reduction to the rates or Prices in the Price List.Z22.2 The reduced rates or Prices apply to any part of the *service* provided after the reduction is agreed.Z22.3 If the *Contractor* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Contractor’s* obligation to Provide the Service by notifying the *Contractor* |
| Clause Z23 | **Euro functionality**Z23.1 The *Contractor* Provides the Service in such a way that the service* would not be prejudiced by the implementation of the Euro,
* comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97,
* are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
* are in accordance with the *Employer’s* requirements both for Sterling and for the Euro.
 |
| Clause Z24 | Not used for this procurement |
| Clause Z25 | Not used for this procurement |
| Clause Z26 | **Tax Non-Compliance**Z26.1 (1) Tax Non-Compliance is where a tax return submitted by the *Contractor* 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 *Contractor* 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 *Contractor* 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.

(2) 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). (3) 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.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction. Z26.2 The *Contractor* warrants that he has notified the *Employer* of any Tax Non-Compliance or any litigation in which he is involved relating to any Tax Non-Compliance prior to the Contract Date.Z26.3 The *Contractor* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of * the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,
* any mitigating factors that he considers relevant and
* any other information requested by the *Employer.*

Z26.4 The *Contractor* is treated as having substantially hindered the *Employer* or Others if* the warranty given by the *Contractor* under clause Z26.2 is untrue,
* the *Contractor* fails to notify the *Employer* of a Tax Non-Compliance or
* the *Employer* decides that any mitigating factors notified by the *Contractor* are unacceptable.
 |
| Clause Z27  | **TUPE**Z27.1 The *Contractor* provides to the *Employer* within 10 days of the *Employer’s* request such information in connection with TUPE as the *Employer* may require. The *Contractor* promptly notifies the *Employer* of any later change to information provided by it.Z27.2 The *Contractor* acknowledges that the *Employer* may disclose information provided by the *Contractor* to• any replacement provider of a service similar to the service and• any person tendering to become a replacement provider.The *Employer* 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).Z27.3 During the 8 month period immediately prior to the end of the service period, the *Contractor* submits for the acceptance of the *Employer* any proposals to• materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this contract, • materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or • move or deploy any key person away from the performance of the service.The *Employer* may withhold acceptance if the proposal would increase the cost to the *Employer* of this or any future contract for the service.Z27.4 The *Contractor* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the service.Z27.5 The *Contractor* complies with, and ensures that any Subcontractor complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty’s Government. |
| Clause Z28  | **Extension of the *service period***Z28.1 Subject to clause Z28.3, the *Employer* may notify the *Contractor* that the *service period* is to be extended by the *extension period* or such lesser period as the *Employer* may specify.Z28.2 If the *service period* is extended by less than the *extension period*, the *Employer* may further extend the *service period* so that the total period of extension does not exceed the *extension period*.Z28.3 The *Employer* does not notify the *Contractor* of any extension or further extension to the *service period* later than 6 months before the expiry of the *service period*.  |
| Clause Z29 | **Parent Company Guarantee**Z29.1 If required by the *Service Manager*, the *Contractor* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. Parent Company Guarantees are given by* for a standalone company – the Controller,
* for an unincorporated JV (“more than one party”) – the Controller of each Consortium Member or
* for an incorporated JV – the Controller of each Consortium Member.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.Z29.2 failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| Clause Z30 | **Use of equipment, Plant and Materials**Z30.1 *Employer’s* Stocks are• the items of equipment and Plant and Materials listed in the Service Information provided free of charge by the *Employer* to the *Service Manager* for use by the *Contractor* in Providing the Service [and• any items which replace those items referred to above when the items referred to above are used to Provide the Service, such replacement being by the *Employer* in accordance with the Service Information].Z30.2 Delete clause 70.1 and replace with:“The *Contractor* has the right to use the *Employer’s* Stocks only to Provide the Service. ….Z30.2 Delete the first bullet of clause 70.2 and replace with:“returns to the *Employer* all unused *Employer’s* Stocks,” |
| Clause Z31 | **Termination and omission of work**Z31.1 If the *Service Manager* instructs a change to the Service Information which involves the omission of part of the *service*, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Contractor*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the *service*.Z31.2 The following are treated as a the *Contractor*  having hindered the *Employer* or Others:• a key resource needed by the *Contractor* to Provide the Service is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Employer*, or• the *Contractor*’s performance as measured in accordance with the Collaborative Performance Framework (or any replacement for it) is below the *failure level*. |
| Clause Z32 | Not used for this procurement |
| Clause Z33 | **Quality Statement**Z33.1 The *Contractor* Provides the Service in accordance with the Quality Statement. The Quality Statement is the statement of that name referred to in the Contract Data setting out the *Contractor’s* proposals for the management and resourcing of the service. |
| **Clause Z34** | **Termination – PCRs, Regulation 73**Z34.1 The *Employer* may terminate the *Contractor*’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 *Contractor* at the Contract Date. This is treated as a termination because of a substantial failure of the *Contractor* to comply with his obligations.Z34.2 The *Employer* may terminate the *Contractor*‘s obligation to Provide the Service if* this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
* the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Contractor*, this is treated as a termination because of the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z35** | **Value Added Tax (VAT) Recovery** Z35.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment. |
| **Clause Z36** | **Tax Arrangements of Public Appointees**Z36.1   For the purposes of this clause* **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Contractor*.  The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity.
* **Staff** are individuals (other than direct employees of the *Contractor*, an Associated Company or any Subcontractor) made available by the *Contractor* to the *Employer* for the purpose of Providing the Service.

Z36.2   Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Contractor* 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. Z36.3   Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Contractor* 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. Z36.4    The *Employer* may, at any time during the term of this contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it. Z36.5   If the *Contractor* fails to provide information in response to a request under clause Z36.4* within the *period for reply* or
* which adequately demonstrates either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it

the *Employer* may* treat such failure as a substantial failure by the *Contractor* to comply with his obligations or
* instruct the *Contractor* to replace the relevant member of Staff

Z36.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z36.2 and Z36.3, the *Employer* may treat such non-compliance as the *Contractor* having substantially hindered the *Employer* or Others.Z36.7   The *Contractor* acknowledges that the *Employer* may * supply any information which it receives under clauses Z36.4 or Z36.6 or
* advise the non-supply of information

to the Commissioners of Her Majesty’s Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible. |
| **Clause Z37**  | **Subcontracting** Z37.1 Before: * appointing a proposed Subcontractor or
* allowing a Subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Employer* for acceptance * a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
* other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor (at any stage of remoteness from the *Employer*).

Z37.2 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor (at any stage of remoteness from the *Employer*)). until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor (at any stage of remoteness from the *Employer*). under regulation 57 of the Public Contracts Regulations 2015.Z37.3 If requested by the *Employer*, the *Contractor* provides further information to support, update or clarify a submission under clause Z37.1. Z37.4 If, following the acceptance of a submission under clause Z37.2, it is found that one of the grounds for excluding the Subcontractor or subsubcontractor (at any stage of remoteness from the *Employer*) under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Contractor* to * replace the Subcontractor or
* require the Subcontractor to replace the subsubcontractor (at any stage of remoteness from the *Employer*).
 |
| **Clause Z38** | **Merger, take-over or change of control**Z38.1 In clauses Z38, Z39 [Financial Distress], Z40 [Change of Control – new guarantee], and Z29 [Parent Company Guarantee]* **Change of Control** is an event where a single person (or group of persons acting in concert)
* acquires Control of the *Contractor* or
* acquires a direct or indirect interest in the relevant share capital of the *Contractor* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor*,
* **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Contractor*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
* **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
* **Controller** is the single person (or group of persons acting in concert) that
* has Control of the *Contractor* or a Consortium Member or
* holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member,
* **Financial Standing Test** is financial test for the *Contractor*, a Consortium Member or a proposed guarantor used in this tender stage of the competition for this contract.
* **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
* **Parent Company Guarantee** is a guarantee of the *Contractor’s* performance in the form set out in the Service Information.

Z38.2 A Change of Control does not happen without the prior agreement of the *Service Manager* and if a Change of Control occurs without the *Service Managers* prior consent, then the *Employer* may treat the Change of Control as the Contractor having substantially hindered the *Employer* or Others.Z38.3 The *Contractor* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.Z38.4 If the Change of Control will not allow the *Contractor* to perform its obligations under this contract, the *Employer* may treat the Change of Control as having substantially hindered the *Employer* or Others.Z38.5 The *Contractor* notifies the *Service Manager* immediately of any material change in * the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor*, or
* the composition of the *Contractor*. A change is material if it
* directly or indirectly affects the performance of this contract by the *Contractor* or
* is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.

Z38.6 The *Contractor* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Contractor*. Z38.7 If the *Contractor* fails to notify the *Service Manager* as required by clauses Z38.5 or Z38.6, the *Employer* may treat that failure as the *Contractor* having substantially hindered the *Employer* or Others.Z38.8 In this clause Z38 a * Change of Control in relation to
* material change in the ownership of shares in, or
* change in the name or status of

a Consortium Member is treated as a change relating to the *Contractor*. |
| **Clause Z39** | **Financial Distress**Z39.1 In this clause Z39 **Credit Rating** is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Service Manager* in respect of the *Contractor*, a Consortium Member or any Guarantor.Z39.2 The *Contractor* notifies the *Service Manager* within one week if any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor* its Credit Rating falls below the relevant *credit rating*,
* a further fall in its Credit Rating below the relevant *credit rating*,
* it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
* it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
* it commits a material breach of its covenants to its lenders or
* its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

Z39.3 If any of the events listed in clause Z39.2 occurs, the *Service Manager* may require the *Contractor* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* and accepted by the *Service Manager* who (in either case)* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the credit rating for the person to whom the event listed in clause Z39.2 has occurred.

Z39.4 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with clause Z39.3 if the *Contractor* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within 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 so comply by the end of that period.Z39.5 If* the *Contractor* fails to notify the *Service Manager* that an event listed in clause Z39.2 has occurred,
* neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with clause Z39.3,
* the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
* the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will comply with clause Z39.3 within 18 months of the *Service Manager*‘s acceptance

the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z40** | **Change of Control – new guarantee**Z40.1 If a Change of Control occurs, the *Contractor* provides to the *Service Manager* * certified copies of the audited consolidated accounts of the Controller for the last three financial years,
* a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Service Manager* and
* any other information required by the *Service Manager* in order to determine whether the Controller
* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Contractor* (if there is not).

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Contractor* may propose an alternative guarantor to the *Service Manager* for acceptance. The *Contractor* provides to the *Service Manager* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.Z40.3 If so required by the *Service Manager*, the *Contractor* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager.*Z40.4 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with the tests in clause Z40.1 if the Contractor gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within 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 so comply by the end of that period*.*Z40.5 If* neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
* the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
* the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will comply with the tests in clause Z55.1 within 18 months of the *Service Manager‘s* acceptance

the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others.Z40.6 If the Controller, or any alternative guarantor proposed by the *Contractor*, is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is* qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
* accepted by the *Service Manager.*

The legal opinion is addressed to the *Employer* 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 is valid and binding under applicable local law and in particular covers the matters listed in the Service Information. |
| **Clause Z41**  | **Consortia**Z41.1 Where two or more Consortium Members comprise the *Contractor,* each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Contractor’s* obligations under this contract.Z41.2 If the joint venture arrangement is terminated for any reason, the *Employer* may * terminate this contract with immediate effect and
* treat the termination of this contract as the *Contractor* having substantially hindered the *Employer* or Others.

Z41.3 Clause 91.1 of the *conditions of contract* is amended by inserting after “the other Party” in each place where it appears (three times) the words “(or, in the case of the *Contractor*, any Consortium Member)”. |
| **Clause Z42** | **Compliance with statutory requirements**Z42.1 The *Contractor* Provides the Service in compliance with all relevant: * acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;
* European Directives or Regulations legally enforceable in England and Wales;
* rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
* permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *service*.
 |
| **Clause Z43** | **Offshoring of data**Z43 1 In this clause**Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with [HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 – Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement.Z43.2 The *Contractor* does not store any of the *Employer*‘s data that is classified as Official or higher in accordance with “Government Security Classifications” dated April 2014 (or any later revision or replacement) * offshore or
* in any way that it could be accessed from an offshore location

until the *Service Manager* has confirmed to the *Contractor* that eitherthe *Employer* has gained approval for such storage in accordance with “Offshoring information assets classified as OFFICIAL” dated November 2015 (or any later revision or replacement) or such approval is not requiredZ43.3 The *Contractor* ensures that no premises are used in Providing the Service until * such premises have passed a Risk Assessment or
* the *Service Manager* confirms to the *Contractor* that no Risk Assessment is required.

Z43.4 The *Contractor* complies with a request from the *Service Manager* to provide any information required to allow the *Employer* to* gain approval for storing data or allowing access to data from an offshore location in accordance with Z43.2 or
* conduct a Risk Assessment for any premises in accordance with Z43.3

Z43.5 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause. Z34.6 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others.  |
| **Clause Z44** | Not used for this procurement |
| **Clause Z45** | **Health and Safety Reporting**Z45.1  The *Contractor* includes in the conditions of contract for each Subcontract similar obligations to those set out in the Service Information including SI1005.Z45.2   The *Contractor* does not* appoint a Subcontractor or
* allow a Subcontractor to appoint a sub-subcontractor (at any stage of remoteness from the *Employer*)

until the *Contractor* has demonstrated to the *Service Manager* that the subcontract (at any stage of remoteness from the *Employer*) complies with this clause. |

|  |  |
| --- | --- |
| Z28 | **Contract Data related to Z clauses:**The *extension period* is 2 years (in one year increments)  |
| Z31 | The *failure level* is 6. |

Highways England Term Service Contract

National Logistics and Technology Centre

Contract Data

**Part two – Contract Data provided by the *Contractor***

|  |  |
| --- | --- |
| **1 General** | * The *Contractor* is

Name ………………………………….Address …………………………………. |
|  |

|  |
| --- |
| * The key people are [....]
 |
| * The following matters will be included in the Risk Register:

………………………………….. |

 |
|  | * The plan identified in the Contract Data is [....]
 |
|  | * The *price list* is [....]
 |
|  | * The tendered total of the Prices is [....]
 |
|  | * The *project bank* is [....]
 |
|  | * The *named suppliers* are […]
 |
|  | **Contract Data related to Z clauses:** |
| **Z33** | * The Quality Statement is in [………]
 |
| **Z39 & Z40** | * The *credit ratings* at the Contract Date and the rating agencies issuing them are

|  |  |  |
| --- | --- | --- |
| party | rating agency | credit rating |
| [Consultant] |  |  |
| [Consortium Member] |  |  |
| [Guarantor] |  |  |

 |