



**Highways England Company Limited**

# **NEC4 Term Service Short Contract**

**(June 2017 with amendments January 2019)**

## **Contract Data**

in relation to *services* for

**Skid Resistance Surveys, 2020-2023**

# Contract Data

## The *Client's* Contract Data

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

The *Client* is

Name

Highways England Company Limited

Address for  
communications

Bridge House,  
1 Walnut Tree Close  
Guildford  
Surrey GU1 4LZ  
Registered number 09346363

Address for  
electronic  
communications

REDACTED

If the *Client* appoints a *Client's Agent*, the *Client's Agent* is

Name

NOT USED

Address for  
communications

NOT USED

Address for  
electronic  
communications

NOT USED

The authority of the *Client's Agent* is

NOT USED

The *service* is

The collection of skid resistance Raw Condition Data (RCD) and Base Condition Data (BCD) for use in pavement condition assessment.

The *starting date* is

As confirmed in the award letter

The *service period* is

36 months with option to extend for a further 24 months at the discretion of The *Client*

The *period for reply* is

1 weeks

The *assessment day* is the

First day

of each month

Are the rates and Prices in the contract adjusted for inflation

Yes

If Yes the *index* is

Retail Price  
Index

provided by

Office of National Statistic

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does not apply.

The *Adjudicator* is

Name

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 arbitrator
  - if the Parties cannot agree a choice or
  - f the *arbitration procedure* does not state who selects an arbitrator is the President for the time being of the Institution of Civil Engineers or his nominee.

Address for  
communications

London

Address for  
electronic  
communications

The interest rate on late payments is

0.25%

% per complete week of delay

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

£10 million

The *Client* provides this insurance

NOT USED

The minimum amount of cover for the second insurance stated in the Insurance Table is, for any one event

£10 million

The minimum amount of cover for the third insurance stated in the Insurance Table is, for any one event

£10 million

The *Adjudicator* nominating body is

The Institution of Civil Engineers

The *tribunal* is

arbitration

The arbitration procedure is

The latest version of the Institute of Civil Engineers Arbitration Procedure in force when the arbitrator is appointed.

These are additional compensation events:

#### Z14 - Project Bank Account

NOT USED

#### Z54 - Extension to the Service Period

The extension period is

The *Employer* has the option to extend the Contract for an additional 24 months

The *conditions of contract* are the NEC4 Term Service Short Contract June 2017, as amended January 2019, and the following additional *conditions of contract*:

- The *incentive schedule* for Key Performance Indicators is in the Collaborative Performance Framework.

A report of performance against each Key Performance Indicator is provided at intervals of 6 months.

- clauses Z1 to Z62

### The Contractor's Contract Data

Completion of the data in full is essential to create a complete contract.

The *Contractor* is

Name

W.D.M. Limited

Address for  
communications

North View, Staple Hill, Bristol BS16 4NX

Address for electronic  
communications

REDACTED

The quality statement is in

Technical Envelope

The *fee percentage* is

REDACTED %

The *people rates* are

category of person **NOT USED**

unit

rate

The *published list of Equipment* is

N/A

The *percentage for adjustment for Equipment* is

N/A

### Contract Data entry relating to Data Protection Legislation

The contact details of the *Contractor's* Data Protection Officer or Data Protection nominated lead are:

REDACTED

Contract Data entries relating to Z Clauses

Z14 - Project Bank Account

NOT USED

Z9 - Change of Control and financial distress

The *credit ratings* at the Contract Date and rating agencies issuing them are

party	rating agency	credit rating
Contractor		
Consortium Member		
Guarantor		

Z Clauses Contents	
Number	Title
Z1	Changes to Core clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Contractor</i> .
Z4	Assignment and transfer
Z5	Confidentiality
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Not Used
Z15	Tax Non – Compliance
Z16	Value Added Tax Recovery
Z17	Termination and removal of part of the <i>service</i>
Z18	Corruption or loss of data
Z19 – Z50	Not Used
Z51	Changes to the Price
Z52	Not Used
Z53	Not Used
Z54	Extension to the Service Period
Z55	Not Used
Z56	Not Used
Z57	Infrastructure Act 2015
Z58	Not Used
Z59	Indemnified claims
Z60	Not Used
Z61	Not Used
Z62	Third Party Rights



Z1	Changes to core & Secondary Option clauses
11	Identified and defined terms
11.2	<p>Add the following defined terms:</p> <p>(16) Associated Company is any of</p> <ul style="list-style-type: none"> <li>• A Consortium Member or</li> <li>• 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 <i>Contractor</i> or a Consortium Member.</li> </ul> <p>(17) The Authorisation is a document authorising the project bank to make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(18) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the <i>Contractor</i> or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the <i>Contractor</i> 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 <i>Contractor</i> or a Consortium Member.</p> <p>(19) Consortium Member is an organisation which is a member of the group of economic operators comprising the <i>Contractor</i>, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.</p> <p>(20) The Contract Date is the date when the contract came into existence.</p> <p>(21) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.</p> <p>(22) Controller is the single person (or group of persons acting in concert) that</p> <ul style="list-style-type: none"> <li>• has Control of the <i>Contractor</i> or a Consortium Member or</li> <li>• holds or controls the largest direct or indirect interest in the relevant share capital of the <i>Contractor</i> or a Consortium Member.</li> </ul> <p>(23) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the <i>Client</i> in respect of the <i>Contractor</i>, a Consortium Member or any Guarantor.</p> <p>(24) Data Protection Legislation is the General Data Protection Regulation (EU 2016/679), the LED (Law Enforcement Directive (EU2016/680)), Data Protection Act 2018 and any data protection laws or regulations applicable in England and Wales.</p> <p>(25) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.</p> <p>(26) Documentation has the meaning defined in the Scope.</p> <p>(27) 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).</p> <p>(28) Financial Standing Test is the financial test for the <i>Contractor</i>, a Consortium Member or a proposed guarantor used in the tender stage of the competition for this contract.</p> <p>(29) General Anti-Abuse Rule is</p>

- 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.

(30) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.

(31) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(32) Incoming Contractor is any contractor appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Contractor*.

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

(34) Indemnified Person has the meaning defined in the Scope.

(35) 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.

(36) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

(37) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope

(38) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.

(39) 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.

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

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

(42) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.

(43) RIDDOR Incident is an incident occurring under any contract between

- The *Contractor* or an Associated Company and
- The *Client* or any other person

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

(44) The Secretary of State is the Secretary of State for Transport.

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

(46) Threshold Level is the threshold level of Quality Management Points stated in the Scope.

Amend the following terms

### **51 Payment**

In clause 51.1 of the *conditions of contract*, delete “three weeks” and insert “14 days”.

### **60 Compensation events**

In clause

60.1(1) delete the full stop and insert

or a change to the Information Systems or the introduction of a new Information System or, a change to the method of or requirements for performance measurement.

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

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

## **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; and
- the words “includes” or “including” are construed without limitation.

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

Z3.1 Where, under the contract a 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

the contract or any other contract with the *Client*.

<b>Z4</b>	<b>Assignment and transfer</b>
Z4.1	The <i>Contractor</i> 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 <i>Client</i> .
Z4.2	If the <i>Contractor</i> wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the <i>Client's</i> agreement to do so. The <i>Contractor</i> explains the reasons for the proposed transfer and provides the <i>Client</i> with all such information as the <i>Client</i> may require in order to make its decision. If the <i>Client</i> (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 <i>Client</i> may reasonably require.
Z4.3	<p>If requested by the <i>Client</i>, the <i>Contractor</i> executes a novation agreement in the form specified in the Scope (or such other form as the <i>Client</i> may reasonably require) transferring the benefit and burden of the contract to</p> <ul style="list-style-type: none"> <li>• an organisation established to take over the <i>Client's</i> functions or part of them,</li> <li>• another public body exercising similar functions,</li> <li>• a Department or Office of Her Majesty's Government or</li> <li>• a local authority</li> </ul>
<b>Z5</b>	<b>Confidentiality</b>
Z5.1	<p>The <i>Contractor</i> keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person</p> <ul style="list-style-type: none"> <li>• the terms of this contract and</li> <li>• any confidential or proprietary information (including Personal Data) provided to or acquired by the <i>Contractor</i> in the course of Providing the Service</li> </ul> <p>except that the <i>Contractor</i> may disclose information</p> <ul style="list-style-type: none"> <li>• to its legal or other professional advisers,</li> <li>• to anyone employed by it or acting on its behalf as needed to enable the <i>Contractor</i> to Provide the Service</li> <li>• 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 <i>Contractor</i> consults the <i>Client</i> and takes full account of the <i>Client's</i> views about whether (and if so to what extent) the information should be disclosed,</li> <li>• which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,</li> <li>• which is in the public domain at the time of disclosure other than due to the fault of the <i>Contractor</i> or</li> <li>• with the consent of the <i>Client</i></li> </ul>
Z5.2	The <i>Contractor</i> does not (and ensures that anyone employed by it or acting on its

behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

<b>Z6</b>	<b>Adjudication</b>
Z6.1	<p>The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:</p> <p>Any information concerning the contract obtained by either the <i>Adjudicator</i> or any person advising or aiding him is confidential, and is not used or disclosed by the <i>Adjudicator</i> or any such person except for the purposes of this Agreement. The <i>Adjudicator</i> complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Acts 1911 to 1989.</p>
Z6.2	<p>If a dispute under the contract raises issues that are substantially the same as or 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 <i>Adjudicator</i>.</p>
<b>Z7</b>	<b>Termination - Public Contract Regulations 2015</b>
Z7.1	<p>The <i>Client</i> may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the <i>Contractor</i> at the Contract Date.</p>
Z7.2	<p>The <i>Client</i> may terminate the contract with immediate effect</p> <ul style="list-style-type: none"> <li>• if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or</li> <li>• 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.</li> </ul>
Z7.3	<p>The procedure and amount due on termination are the same as for</p> <ul style="list-style-type: none"> <li>• R2 if the modification or infringement was due to a default by the <i>Contractor</i>,</li> <li>• R5 if the modification or infringement was due to a default by the <i>Client</i> and</li> <li>• R8 if the modification or infringement was due to any other reason</li> </ul>
<b>Z8</b>	<b>Subcontracting</b>
Z8.1	<p>The <i>Contractor</i> assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.</p>
Z8.2	<p>If the <i>Contractor</i> subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the <i>Client</i>.</p>
Z8.3	<p>Not Used</p>
Z8.4	<p>The <i>Client</i> may terminate if a key subcontractor or another key resource needed for the <i>service</i> is no longer available and the <i>Contractor</i> is unable to propose an alternative resource acceptable to the <i>Client</i>. In the event of a termination under Z8.4,</p>

the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

Z8.5 Before

- appointing a proposed subcontractor or
- allowing a subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Client* for acceptance

- either
  - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor or
  - other means of proof 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
- details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor]

Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015
- the *Client* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

Z8.7 If requested by the *Client*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5

Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that

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

the *Client* may instruct the *Contractor* to

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

Z8.9 The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that his appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed subcontractor until the *Client* has accepted him.

- Z8.10 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Client* for acceptance unless the *Client* has agreed that no submission is required.
- Z8.11 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Client* has accepted them. A reason for not accepting them is that
- they will not allow the *Contractor* to Provide the Service or
  - they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

**Z9 Change of Control and financial distress**

- Z9.1 The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.
- Z9.2 The *Contractor* notifies the *Client* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor* (or a Consortium Member), or
  - the composition of the *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
- Z9.3 The *Contractor* notifies the *Client* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.
- Z9.4 The *Contractor* notifies the *Client* immediately if any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor
- its Credit Rating falls below the relevant *credit rating*,
  - there is a further fall in its Credit Rating below the relevant *credit rating*,
  - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
  - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
  - it commits a material breach of its covenants to its lenders or
  - its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
- Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Service with

immediate effect. In the event of a termination under Z9.5, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

Z9.6 If as a result of a Change of Control

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

the *Client* may terminate the *Contractor's* obligation to Provide the Service with immediate effect. In the event of a termination under Z9.6, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

Z9.7 If a Change of Control occurs, the *Contractor* provides to the *Client*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
- any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
- any other information requested by the *Client* in order to satisfy itself that the *Contractor* remains in a position to perform its obligations under this contract.

Z9.8 If a Change of Control or any of the events listed in clauses Z9.2 to Z9.4 occurs, the *Client* may require the *Contractor* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Contractor* and accepted by the *Client*.

Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9.13 or

have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.

Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.

Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.



- Z9.12 If
- the *Contractor* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
  - neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
  - the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
  - the *Contractor* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will meet the Financial Standing Test within 18 months of the *Client's* acceptance

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

- Z9.13 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England, the *Contractor* provides a legal opinion from a lawyer or law firm which is

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

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

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

## Z10 Joint ventures

- Z10.1 This clause applies if the *Contractor* is an unincorporated joint venture.
- Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under this contract.
- Z10.3 The *Contractor* 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 *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.
- Z10.4 The *Contractor* 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 *Contractor*.
- 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 of the joint venture arrangement for any reason is treated as a substantial failure by the *Contractor* to comply with its obligations.

Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 & 90.2 of the conditions of contract are amended by inserting after “the other Party” the words “or in the case of the *Contractor*, any Consortium Member”.

## **Z11 Parent Company Guarantee**

Z11.1 If required by the *Client*, the *Contractor* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the date of award of the contract, or of the *Client*’s request, whichever is later.

Parent Company Guarantees are given for:

- a standalone company – from its Controller, or
- a joint venture (whether incorporated or unincorporated) – from the Controller 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.

Z11.2 A failure to comply with this condition is treated as a substantial failure by the *Contractor* to comply with its obligations.

## **Z12 Discrimination, Bullying and Harassment**

Z12.1 The *Contractor* 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 *Contractor* 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 this contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Contractor* 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 *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.

Z13.2 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Contractor* or its assignees or any third party. The *Contractor* provides to the *Client* the documents which license these IPRs to the *Client*.

The *Contractor's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.

Z13.3 The *Contractor* 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.

Z13.4 The *Contractor* warrants to the *Client* that

- the Software does not contain any Open Source Software other than OSS,
- the OSS is licensed upon terms which permit the use of such Open Source Software by the *Contractor*, the *Client* and the *Client's* end users for all purposes contemplated by the contract and
- all components of the Software:
  - are free from material design and programming errors,
  - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
    - the Scope,
    - the quality statement,
    - the Documentation and
- do not infringe any Intellectual Property Rights

Z13.5 The *Contractor* at all times, during and after the *service period*, indemnifies the *Client* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

Z14 **Not Used**

<b>Z15</b>	<b>Tax Non – Compliance</b>
Z15.1	The <i>Contractor</i> warrants that it has notified the <i>Client</i> of any Tax Non-Compliance or any litigation in which the <i>Contractor</i> (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.
Z15.2	<ul style="list-style-type: none"> <li>• The <i>Contractor</i> notifies the <i>Client</i> within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of</li> <li>• the steps the <i>Contractor</i> is taking to address the Tax Non-Compliance and to prevent a recurrence,</li> <li>• any mitigating factors that it considers relevant and</li> <li>• any other information requested by the <i>Client</i>.</li> </ul>
Z15.3	<p>The <i>Contractor</i> is treated as having substantially failed to comply with its obligations if</p> <ul style="list-style-type: none"> <li>• the warranty given by the <i>Contractor</i> under clause Z15.1 is untrue,</li> <li>• the <i>Contractor</i> fails to notify the <i>Client</i> of a Tax Non-Compliance or</li> </ul> <p>the <i>Client</i> decides that any mitigating factors notified by the <i>Contractor</i> are unacceptable.</p>
<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.
<b>Z17</b>	<b>Termination and removal of part of the service</b>
Z17.1	<p>The <i>Client</i> may instruct the <i>Contractor</i> that</p> <ul style="list-style-type: none"> <li>• part of the <i>service</i> is to be permanently removed from the contract or</li> <li>• for urgent reasons of health and safety, part of the <i>service</i> is to be temporarily removed from the contract.</li> </ul> <p>In either case the <i>Contractor</i> acknowledges that the <i>Client</i> may itself, or may appoint another supplier in place of the <i>Contractor</i> to provide works similar to the removed <i>service</i> (or part of it).</p>
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-R4, R6 or R8, the assessment includes a deduction of the forecast of the additional cost to the <i>Client</i> of completing the removed <i>works</i> .
Z17.3	If the <i>Contractor's</i> obligation to Provide the Service is terminated for any reason, the <i>Contractor</i> if instructed by the <i>Client</i>

- 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 Contractor so as to ensure a smooth transfer of functions.

Z18	<b>Corruption or loss of data</b>
Z18.1	<p>If any data of the <i>Client</i> is corrupted, lost, stolen or sufficiently degraded as a result of the <i>Contractor</i> default so as to be unusable, the <i>Contractor</i> immediately reports this to the <i>Client</i> and</p> <ul style="list-style-type: none"> <li>• the <i>Client</i> may instruct the <i>Contractor</i> to restore the data in accordance with the <i>Client's</i> requirements or</li> <li>• the <i>Client</i> may itself restore the data (and the <i>Contractor</i> pays to the <i>Client</i> any reasonable expenses which the <i>Client</i> incurs in so doing).</li> </ul>
Z19-Z50	<b>Not Used</b>
Z51	<b>Changes to Prices</b>
Z51.1	The Parties may at any time agree a reduction to the Prices.
Z51.2	The reduced Prices apply to any work carried out after the reduction is agreed.
Z51.3	If the <i>Contractor</i> does not agree a reduction requested by the <i>Client</i> , the <i>Client</i> may terminate the <i>Contractor's</i> obligation to Provide the Service by notifying the <i>Contractor</i> .
Z52	<b>Not Used</b>
Z53	<b>Not Used</b>
Z54	<b>Extension to the service period</b>
Z54.1	The <i>Client</i> may notify the <i>Contractor</i> that the <i>service period</i> is to be extended by the extension period or such lesser period as the <i>Client</i> may specify.
Z54.2	If the <i>service period</i> is extended by less than the extension period, the <i>Client</i> may further extend the <i>service period</i> so that the total period of extension does not exceed the extension period.
Z54.3	The <i>Client</i> does not notify the <i>Contractor</i> of any extension or further extension to the <i>service period</i> later than [6 months] before the expiry of the <i>service period</i> .
Z55	<b>Not Used</b>
Z56	<b>Not Used</b>

Z57	<b>Infrastructure Act 2015</b>
Z57.1	<p>The <i>Contractor</i> Provides the Service in compliance with, and so as not to put the <i>Client</i> in breach of</p> <ul style="list-style-type: none"> <li>the Licence and</li> </ul> <p>any other directions and guidance issued by The Secretary of State to the <i>Client</i> under section 6 of the Infrastructure Act 2015 (and notified by the <i>Client</i> to the <i>Contractor</i>).</p>
Z57.2	<p>The <i>Client</i> notifies the <i>Contractor</i> of any notice issued by the Office of Rail and Road to the <i>Client</i> under section 11(2)(a) of the Infrastructure Act 2015 that relates to the service. The <i>Contractor</i> complies with the terms of any such notice and indemnifies the <i>Client</i> against any associated fine imposed on the <i>Client</i> under section 11(2)(b) of that Act.]</p>
Z58	<b>Not Used</b>
Z59	<b>Indemnified claims</b>
Z59.1	<p>The <i>Client</i> notifies the <i>Contractor</i> as soon as practicable of any notice or demand which it receives in respect of a matter for which the <i>Contractor</i> is liable under the contract (an Indemnified Claim).</p>
Z59.2	<p>The <i>Contractor</i> may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the <i>Client</i>. The <i>Client</i> co-operates with and gives reasonable assistance to the <i>Contractor</i> in defending the Indemnified Claim.</p>
Z59.3	<p>The <i>Contractor</i> keeps the <i>Client</i> fully and regularly informed and consults with the <i>Client</i> as appropriate in relation to the conduct of any Indemnified Claim.</p>
Z59.4	<p>Where the <i>Contractor</i> is diligently conducting the defence of an Indemnified Claim, the <i>Client</i> does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the <i>Contractor</i>.</p>
Z59.5	<p>The <i>Contractor</i> bears the costs which it incurs in defending an Indemnified Claim. The <i>Contractor</i> indemnifies the <i>Client</i> against any costs incurred by the <i>Client</i> arising out of the <i>Contractor's</i> defence of the Indemnified Claim.</p>
Z59.6	<p>The <i>Client</i> may, at any time prior to the settlement of an Indemnified Claim, give the <i>Contractor</i> notice that it is taking over the conduct of an Indemnified Claim. On receipt of the <i>Client's</i> notice the <i>Contractor</i></p> <ul style="list-style-type: none"> <li>takes all the steps necessary to transfer the conduct of the Indemnified Claim to the <i>Client</i> and</li> <li>co-operates with and gives reasonable assistance to the <i>Client</i> in defending the Indemnified Claim.</li> </ul> <p>Where the reason for the <i>Client's</i> notice is not due to the fault of the <i>Contractor</i> in conducting the Indemnified Claim, the <i>Contractor</i> is released from its indemnity to the <i>Client</i> in respect of it.]</p>

Z60	<b>NOT USED</b>
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Z61	<b>Not Used</b>
Z62	<b>Third Party Rights</b>

- Z62.1 A subcontractor and subsubcontractor have the right to enforce the terms of clause Z8 Subcontracting and Fair payment.
- Z62.2 NOT USED
- Z62.3 Otherwise a person or organisation who is not a Party has no right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999.