

Schedule of Modifications to the Subcontract Conditions

Clause Z1 Changes to Core Clauses and Secondary Option Clauses

11 Identified and defined terms

11.2 Add the following defined terms

(32) Associated Company is 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 *Subcontractor*.

(33) Budget has the meaning set out in the Main Contract.

(36) Change of Control is an event where a single person, or group of persons acting in concert, acquires Control of the *Subcontractor* or acquires a direct or indirect interest in the relevant share capital of the *Subcontractor*, 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 *Subcontractor*.

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

(38) Not used.

(39) Data Protection Acts are the General Data Protection Regulation (EU 2016/679) and any other laws or regulations relating to privacy or personal data.

(39A) Supervisor Authority means any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Acts.

(39B) Data means all Personal Data collected, generated or otherwise processed by the *Subcontractor* in the course of performing its obligations under the framework subcontract.

(39C) Data Subject means an individual who is the subject of Personal Data.

(39D) Sub-Processor means a third party engaged by the *Subcontractor* to process Data.

(39E) Security Incident means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data.

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

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

(42) Framework Contract is the framework contract between the *Contractor* and *Client* for the delivery of schemes forming part of the *Client's* Regional Investment Programme within Lot 3.

(43) High Level Requirements are the *Client's* functional requirements for the Main Contract, as set out in the Subcontract Scope.

(44) Information Systems are the systems specified in the Subcontract Scope for the collection and storage of information regarding the project and the *subcontract works* or any revised systems introduced by the *Contractor* from time to time.

(45) 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 the future in any part of the world.

(46) Main Contract includes any or all of the contracts entered into or to be entered into between the *Client* and the *Contractor* for the Scheme 03A – A66 NTP Penrith to Temple Sowerby project (also known as the Scheme Contract).

(49) Related Dispute is a dispute under or in connection with a contract between the *Contractor*, the *Client* and Others relating to the Client's regional investment programme.

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

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

- the *Subcontractor* or a Subsubcontractor and
- the *Contractor* or any other person

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

(52) Technical Advisor is any person or organisation appointed to provide technical assurance services to the *Contractor* in relation to the part of the *subcontract works* that is being delivered by the *Subcontractor*.

(53) Tax Non-Compliance is where a tax return submitted by the *Subcontractor*

- is found on or after 1 April 2013 to be incorrect as a result of
 - a Relevant Tax Authority successfully challenging the *Subcontractor* 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 *Subcontractor* 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.

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

(55) 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.

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

(57) 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).

12 Interpretation and the law

Insert new core clauses 12.5 to 12.6:

- 12.5 In this contract, except where the context shows otherwise, 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.
- 12.6 An amount due under this contract that is 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.

16 Subcontractor's proposals

Delete 16.1 and 16.2, and insert a new core clause 16A:

"16A.1 The *Subcontractor* may propose to the *Contractor* that the Subcontract Scope provided by the *Contractor* is changed in order to reduce the amount the *Contractor* pays to the *Subcontract* for Providing the Subcontract Works. The *Contractor* consults with the *Subcontractor* about the change.

16A.2 Within six weeks of the *Subcontractor* making the proposal the *Contractor*

- accepts the *Subcontractor's* proposals and issues an instruction change the Subcontract Scope,
- informs the *Subcontractor* that the *Contractor* is considering the proposal and instructs the *Subcontractor* to submit a quotation for a proposed instruction to change the Subcontract Scope or
- informs the *Subcontractor* that the proposal is not accepted.

The *Contractor* may give any reason for not accepting the proposal.

20 The Subcontractor's main responsibilities

Insert a new core clause 20.2

"The Parties shall comply with the Subcontract Agreement, including the Subcontract Data, Attestation and Schedules to the Subcontract Agreement."

21 The Subcontractor's design

In core clause 21.2 in line 3 after "applicable law" insert "or enable delivery of the vision, objectives and approach described in the Framework Contract or coordination and / or integration with the design for the other parts of the *works*."

25 Working with the Client and Others

Insert a new core clause 25.4

"The *Contractor* and the *Subcontractor* provide services and other things as stated in the Subcontract Scope. Any cost incurred by the *Contractor* as a result of the *Subcontractor* not providing the services and other things which it is to provide is assessed by the *Contractor* and paid by the *Subcontractor*."

26 Subsubcontracting

26.2 In line 3 after "Works" insert "or that the Subsubcontractor is not a Subcontract Named Supplier, unless the Subsubcontractor has signed a formal waiver expressly confirming that it does not wish to be a Subcontract Named Supplier".

26.3 On line 1 and 2 delete ", except any pricing information,"

26.3 Insert an additional bullet point before the third bullet point

- “they do not include all the provisions specified in the Subcontract Scope”

28 Assignment

Delete clause 28.

31 The Programme

Insert new clause 31.5:

“The *Subcontractor* acknowledges that failure by the *Subcontractor* to comply with the Accepted Programme may cause delay and/or disruption to the *works* and/or any part thereof and/or may cause the *Contractor* to suffer or incur costs, losses, expenses and/or damages and the *Contractor* shall be entitled to recover such costs, losses, expenses and/or damages from the *Subcontractor*.”

50 Assessing the amount due

50.2 On line 1 after “submits an application for payment to the Contractor” insert “as per the Keltbray – A66 Monthly Commercial Timetable”

50.4 On line 1 after “the Subcontractor does not submit an application for payment” insert “as per the Keltbray – A66 Monthly Commercial Timetable”

60 Compensation events

60.1(1) Insert additional bullet points before the first main bullet point

- a change to the Information Systems or the introduction of a new Information System,
- a change which is stated elsewhere in these *conditions of subcontract* not to be a compensation event,”

In the second main bullet point, after “design” insert “or design for which the *Subcontractor* is responsible under clause Z8.1”.

Insert an additional sub-bullet after the second main bullet point

- “in order to rectify a Defect in the design of the *subcontract works*.”

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

“, unless the instruction relates to a notification from the *Subcontractor* that a conflict of interest may exist or arise or the instruction has been given as a result of any health, safety or environmental incident”

60.1(6) Delete this sub-clause.

60.1(7) Delete this sub-clause.

60.1(8) Delete this sub-clause.

60.1(9) Delete this sub-clause.

60.1(10) Delete this sub-clause.

60.1(11) Delete this sub-clause.

60.1(12) Delete this sub-clause.

60.1(13) Delete this sub-clause.

60.1(19) Delete this sub-clause and replace with the following:

An event which stops the *Subcontractor* completing the *subcontract works* and which

- neither Party could prevent and
- an experienced subcontractor would have judged at the Subcontract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and
- is not one of the other compensation events stated in the subcontract.

60.1(20) Delete this sub-clause.

60.1(21) Delete this sub-clause.

60.3 Delete this clause

60.4 Delete this clause.

60.5 Delete this clause.

60.6 Delete this clause.

60.7 Delete this clause.

Insert new clause 60A:

“60A Notwithstanding any other provision of this subcontract, the *Subcontractor* shall not be entitled to any extension of time to the Subcontract Completion Date or Key Date, or increase in the Prices on account of any circumstances arising by reason of any act, error, omission, negligence or default of the *Subcontractor* or of any of its employees or agents or of any Subsubcontractor, or any of their respective employees or agents whether under this contract or any other contract entered into in relation to the site.”

Notwithstanding any other condition of this subcontract:

- a) In the event that the provision of traffic management is delayed, curtailed or cancelled due to the *Contractor* deeming the prevailing site conditions are unsafe for both the *Subcontractor* and the traffic management subcontractor a compensation event will not apply
- b) In the event that a planned visit is cancelled by the *Contractor* for causes that are within their control and a minimum of 24 hours' notice of the cancellation has been given to the *Subcontractor* a compensation event will not apply.
- c) Compensation events for standing time arising in connection with the *Contractor's* failure to provide setting out or other things necessary for the progression of the *subcontract works* will only be accepted where the *Subcontractor* has provided a minimum of 24 hours written notice of their setting out or other requirements. In any event the assessment of any such compensation events will exclude the first hour of standing time unless the stoppage continues for more than three hours wherein the first hour of standing time will be included in the assessment.
- d) Compensation events arising in connection with the inadequacy of individual works areas which result in abortive visits, standing time or other such matters will only be considered in the event that a joint inspection of the works area had been carried out and the *Contractor* had failed to take reasonable measures to resolve any inadequacies as notified by the *Subcontractor* in writing following the inspection.

74 The *Subcontractor's* use of material

Delete and replace with:

74.1 The *Contractor* owns (or will own) all IPRs in material prepared in connection with this subcontract, except as stated otherwise in the Subcontract Scope. To the extent that these IPRs do not automatically belong to the *Contractor*, the *Subcontractor* enters into such documents and does such acts as the *Contractor* requests to transfer the IPRs to the

Contractor, and procures that its Subsubcontractors (at any stage or remoteness from the *Contractor*) do the same. The *Subcontractor* provides to the *Contractor* the documents which transfer these IPRs to the *Contractor*.

74.2 The *Subcontractor* 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 *Contractor* as stated in the Subcontract Scope. Any licence granted under this clause survives the termination or expiry of this contract and cannot be terminated by the *Subcontractor* or its assignees or any third party. The *Subcontractor* provides to the *Contractor* the documents which license these IPRs to the *Contractor*.

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

80 Client's and Contractor's liabilities

80.1 Insert at the end of the second main bullet point (before the full stop)

“(excluding a fault in any design for which the *Subcontractor* has responsibility under the subcontract)”

80.1 At the end of the third main bullet point, insert a new hanging paragraph “(excluding a fault in any design for which the *Subcontractor* has responsibility under the subcontract)”

83 Insurance cover

Delete clause 83 and insert

83.1 The *Subcontractor* provides the insurances stated in, and to comply with the requirements set out in, Schedule 5.

87 Change of control

Insert new clause 87:

87.1 The *Subcontractor* does not take an action which would cause a conflict of interest to arise in connection with this subcontract. The *Subcontractor* immediately notifies the *Contractor* if it considers that a conflict of interest may exist or may arise.

87.2 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Subcontractor* and the *Contractor* meet within 5 days to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. The Parties implement any actions agreed, including (where appropriate) termination of this contract.

87.3 For the purposes of clause 87.2, a conflict of interest is likely to arise (without limitation) where the *Subcontractor* takes over, merges or is taken over by

- another delivery integration partner within the Framework Contract (or an Associated Company of that delivery integration partner) or
- a Technical Adviser (or an Associated Company of that Technical Adviser).

91 Reasons for termination

Delete clause 91.9 and insert

“91.9 The *Contractor* may terminate if the Main Contract has been terminated (R23). In the event of a termination under this clause, the termination procedure to be followed is P4 and the amounts due on termination is A1 and A2.

After 91.9 Insert new clauses

- “91.10 The *Contractor* may terminate this subcontract if the Main Contract is terminated in accordance with clauses 90.2, 90.3 or 90.4 of the Framework Contract or clause 91.9 or 91.10 of the Main Contract and that termination is caused or contributed to by any act, omission or default by the *Subcontractor*. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
- 91.11 The *Contractor* may terminate this subcontract if an event listed in clause 90.5 of the Framework Contract occurs due to a Change of Control related to the *Subcontractor* and the parties have not agreed and implemented the actions needed to overcome or mitigate any resulting conflict of interest. In the event of a termination under this clause, the termination procedure followed is P1 and P3 the amount due on termination is A1 and A2.
- 91.12 The *Contractor* may terminate this subcontract if the *Contractor* or the *Client* fail to obtain all statutory and other consents needed for the *works* on terms that will enable the Main Contract to be delivered within the Budget and in accordance with the Accepted Programme for the Main Contract. In the event of a termination under this clause:
- if the failure is due to a fault of the *Subcontractor* in managing the consenting process, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3, including any additional costs which may be incurred by the *Contractor* in securing the relevant consents or
 - if the failure is for any other reason, the termination procedure followed is P1 and P3 and the amount due on termination is A1 and A2.
- 91.13 The *Contractor* may at any time issue an instruction removing part of the *subcontract works* from the Subcontract Scope. Following the issue of an instruction under this clause, the *Contractor* may appoint another subcontractor to complete the *subcontract works*. The instruction is assessed as a compensation event, except that if the instruction is given for one of reasons R1-R15, R18 or R22 or following the occurrence of an event listed in clauses 91.10 or 91.12 (where the failure is due to a fault of the *Subcontractor*) the assessment includes amount A3.
- 91.14 The *Subcontractor* provides all cooperation and assistance as may reasonably be required by the *Contractor* to comply with and manage its performance metric obligations in the Main Contract.

Option X11 Termination by the *Contractor*

X11.2 In lines 2 and 3 delete “A1, A2 and A4” and insert “A1 and A2”.

Option X15 The *Subcontractor's* Design

X15.1 Delete this sub-clause

X15.2 Delete this sub-clause

X15.3 Delete this sub-clause

X15.5 Delete this sub-clause

Option X18 Limitation of Liability

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

- loss of or damage to the *Contractor's* or *Client's* property,
- delay damages,
- fraud or fraudulent misrepresentation,

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

Schedule of Cost Components

Delete and replace with the document entitled "Schedule of Cost Components" at Schedule 9.

Clause Z2 Discrimination

Z2.1 The *Subcontractor* indemnifies the *Contractor* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Contractor* arising out of or in connection with

- an investigation or proceedings under the Discrimination Acts or
- an allegation of bullying or harassment

resulting from any act or omission of the *Subcontractor* in connection with the subcontract.

Clause Z3 Subcontracting

Z3.1 The *Subcontractor* assesses the amount due to a Subsubcontractor without taking into account the amount assessed under this subcontract.

Z3.2 Not used.

Z3.3 The *Contractor* may, having stated the reasons, instruct the *Subcontractor* to remove a Subsubcontractor. The *Subcontractor* then arranges the removal of the Subsubcontractor and the appointment of a replacement in accordance with the subcontract.

Z3.4 Before

- appointing a proposed Subsubcontractor

the *Subcontractor* submits to the *Contractor* for acceptance

- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subsubcontractor or
 - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subsubcontractor and
- details of any RIDDOR Incident under any contract for which the proposed Subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subsubcontractor.

Z3.5 The *Subcontractor* does not appoint the proposed Subsubcontractor until the *Contractor* has accepted the submission. A reason for not accepting the submission is that:

- it shows that there are grounds for excluding the proposed Subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Contractor* is not satisfied that the proposed Subsubcontractor has put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur.

Z3.6 If requested by the *Contractor*, the *Subcontractor* provides further information to support, update or clarify a submission under clause Z3.4.

Z3.7 If, following the acceptance of a submission under clause Z3.5, it is found that

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

the *Contractor* may instruct the *Subcontractor* to replace the Subsubcontractor.

Clause Z4 Adjudication

Z4.1 The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:

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

Z4.2 If a dispute under the subcontract 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 subcontract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Clause Z5 Assignment and transfer

The *Contractor* may assign his entire rights and benefits under this contract to any person having or acquiring an interest in the *subcontract works* and such rights and benefits shall be capable of one further assignment by the assignee. The *Subcontractor* shall not assign or charge the benefit of this contract nor any right arising under it without the *Contractor's* prior written consent, which the *Contractor* may withhold at its absolute discretion.

Clause Z6 Tax Non-Compliance

Z6.1 The *Subcontractor* warrants that it has notified the *Contractor* of any Tax Non-Compliance or any litigation in which the *Subcontractor* is involved relating to any Tax Non-Compliance prior to the date of award of this subcontract.

Z6.2 The *Subcontractor* notifies the *Contractor* within one week of any Tax Non-Compliance occurring after the date of award of this subcontract and provides details of:

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

Clause Z7 Construction Industry Scheme

Z7.1 In this clause Z7 (but not otherwise)

- the Act is the Finance Act 2004 and
- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z7.2 This subcontract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z7.3 The *Subcontractor* provides the information required by the Regulations to enable the *Contractor* to verify (in accordance with paragraph 6 of the Regulations) whether the *Subcontractor* under the Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z7.4 If the *Subcontractor* is registered for payment under deduction or is neither registered nor exempt from registration

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

Clause Z8 Single point design responsibility

Z8.1 The *Subcontractor* accepts sole responsibility for the design of the whole of the *subcontract works* as defined in the Subcontract Scope, whether carried out before or after the Subcontract Date and including any design carried out by or on behalf of the *Contractor*, and for any mistake, inaccuracy or discrepancy in or omission from such design and all such design is treated for the purposes of the contract as having been carried out by the *Subcontractor*.

Clause Z9 Indemnified claims

Z9.1 The *Subcontractor* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a claim made by a third party against the *Contractor* in respect of a matter for which the *Subcontractor* is liable under the subcontract (an Indemnified Claim).

Z9.2 The *Subcontractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Contractor*. The *Contractor* co-operates with and gives reasonable assistance to the *Subcontractor* in defending the Indemnified Claim.

Z9.3 The *Subcontractor* keeps the *Contractor* fully and regularly informed and consults with the *Contractor* as appropriate in relation to the conduct of any Indemnified Claim.

Z9.4 Where the *Subcontractor* is diligently conducting the defence of an Indemnified Claim, the *Contractor* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Subcontractor*.

Z9.5 The *Subcontractor* bears the costs which it incurs in defending an Indemnified Claim. The *Subcontractor* indemnifies the *Contractor* against any costs incurred by the *Contractor* arising out of the *Subcontractor's* defence of the Indemnified Claim.

Z9.6 The *Contractor* may at any time prior to the settlement of an Indemnified Claim give the *Subcontractor* notice that the *Contractor* is taking over the conduct of the Indemnified Claim. On receipt of the *Contractor's* notice the *Subcontractor*

- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Contractor* and
- co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.

Z9.7 Where the reason for the *Contractor's* notice is not due to the fault of the *Subcontractor* in conducting the Indemnified Claim, the *Subcontractor* is released from its indemnity to the *Contractor* in respect of it.

Clause Z10 Project Bank Account

Z10.1 The *Subcontractor* includes all Subsubcontractors as Subcontract Named Suppliers.

Z10.2 The *Contractor* may at any time notify the *Subcontractor* that payment under the subcontract will no longer be made using the Project Bank Account. This notice is a compensation event. Within 5 days of the *Contractor's* notice, the *Subcontractor* notifies the Subcontract Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Subcontract Named Suppliers receive payments in accordance with their contracts.

Clause Z11 Corruption or loss of data

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

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

Clause Z12 Not used

Clause Z13 Not used.

Clause Z14 Not used.

Clause Z15 Transparency

Z15.1 The *Subcontractor* acknowledges that the *Contractor* may be obliged by the *Client* to publish information relating to this contract in accordance with Procurement Policy Note 01/17 entitled "The Transparency of Suppliers and Government to the Public" dated 16 February 2017 (or any later revision) (the "PPN"), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000.

Z15.2 The *Subcontractor*:

- a) co-operates with and assists the *Contractor* to comply with its obligation in relation to transparency in the Main Contract.
- b) agrees with the *Contractor* a schedule for the release to the public of information relating to this contract in accordance with the terms of the PPN,
- c) provides information to assist the *Contractor* in responding to queries from the *Client* as required by the PPN; and
- d) supplies the *Contractor* with financial data relating to this contract in the form and at the times specified in the PPN.

Clause Z15A Data Protection

Z15A.1 For the purposes of the subcontract and the Data Protection Acts

- a) the *Contractor* is the Data Controller (as defined in the Data Protection Acts),
- b) the *Subcontractor* is the Data Processor (as defined in the Data Protection Acts); and
- c) this section and Schedule 11 together constitute a data processing agreement where required by the Data Protection Acts.

Z15A.2 The *Subcontractor* processes the Data in accordance with the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under the subcontract.

Z15A.3 The *Subcontractor* does not knowingly do anything or permit anything to be done which might lead to a breach of the Data Protection Acts by either Party.

Z15A.4 The *Subcontractor* obtains and maintains until completion of this subcontract, all registrations and notifications that it is obliged to obtain and maintain pursuant to the Data Protection Acts in respect of performing its obligations under the subcontract.

Z15A.5 The *Subcontractor* only processes Data to the extent it relates to:

- a) the types of Data,
- b) the categories of Data Subject (as defined in the Data Protection Acts); and the nature and purpose set out in Annex 5 and only for the duration specified in Schedule 11.

Z15A.6 Without prejudice to clause Z15A.2, the *Subcontractor* processes the Data only in accordance with the instructions of the *Contractor*, unless the *Subcontractor* is required to process the Data for other reasons under the laws of the European Union (or a member state of the EEA) to which the *Subcontractor* is subject. If the *Subcontractor* is required to process the Data for these other reasons, it informs the *Contractor* before carrying out the processing, unless prohibited by relevant law.

Z15A.7 The *Subcontractor* immediately informs the *Contractor* if it believes that an instruction infringes the Data Protection Acts or any other applicable law.

Z15A.8 The *Subcontractor* has in place and maintains for as long as it holds any Data in accordance with then current good industry practice, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing

- a) appropriate technical and organisational measures (having regard to the nature of the Data) to protect the Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- b) adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Data or to any equipment used to process the Data, in each case to ensure that the *Subcontractor's* processing is in accordance with the Data Protection Acts and protects the rights of the Data Subjects.

Z15A.9 The *Subcontractor* ensures that all persons authorised to process Data are bound by obligations equivalent to those set out in clause Z15A and this section and are aware of the *Subcontractor's* obligations under the contract and the *Contractor's* obligations under the Main Contract and the Data Protection Acts.

Z15A.10 The *Subcontractor* ensures that access to the Data is limited to those persons who need access in order for the *Subcontractor* to perform its obligations under this contract and to such parts of the Data as are strictly necessary for performance of that person's duties.

Z15A.11 On request, the *Subcontractor* takes all necessary actions and provides the *Contractor* with all reasonable assistance necessary for the *Contractor* to comply with its obligations under the Main Contract and Data Protection Acts in relation to the rights of Data Subjects, including

- a) the provision of access to, and information relating to, Data,

- b) the rectification of inaccurate Data,
- c) the permanent erasure of Data,
- d) the restriction of processing of Data,
- e) the provision of a copy of Data in machine readable format; and
- f) the transfer of Data to a third party.

- Z15A.12 The *Subcontractor* immediately notifies the *Contractor* if it receives
- a) a request from any Data Subject whose Personal Data it holds to access their Personal Data,
 - b) a complaint or request relating to the *Contractor's* or the *Client's* obligations under the Data Protection Acts or
 - c) a request from any Supervisory Authority for assistance or information, unless prohibited by relevant law.
- Z15A.13 The *Subcontractor* assists and co-operates with the *Contractor* in relation to any complaint or request received, including
- a) providing full details of the complaint or request,
 - b) complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Contractor*; and
 - c) promptly providing the *Contractor* with any Personal Data and other information requested by it to enable it to respond to the request.
- Z15A.14 The *Subcontractor* does not process the Data outside the EEA (other than in the United Kingdom) without the agreement of the *Contractor*. Where the *Contractor* agrees, the *Subcontractor*:
- a) provides evidence (acceptable to the *Contractor*) of appropriate safeguards as required by the Data Protection Acts; and
 - b) complies with the instructions of the *Contractor*.
- Z15A.15 The *Subcontractor* does not engage any Sub-Processor without the prior consent of the *Contractor*.
- Z15A.16 Prior to allowing a Sub-Processor to process any Data, the *Subcontractor* enters into a written agreement with the Sub-Processor under which the Sub-Processor is obliged to comply with the terms of this section. The *Subcontractor* remains fully liable to the *Contractor* for any acts or omissions of any Sub-Processors.
- Z15A.17 The *Subcontractor* complies with the requirements of the *Contractor* in relation to the storage, dispatch and disposal of Data in any form or medium. Any requirement for the *Subcontractor* to destroy or delete copies of the Data is subject to any law of the European Union (or a member state of the EEA) to which the *Subcontractor* is subject that requires the Data to be retained.
- Z15A.18 The *Subcontractor* notifies the *Contractor* within 24 hours of becoming aware of a Security Incident or any other breach of this section. The notification includes, as far as possible
- a) a description of the nature of the Security Incident, including the categories and approximate number of Data Subjects concerned,
 - b) the likely consequences of the breach; and
 - c) the measures taken or to be taken to address the breach, including measures taken to mitigate any possible adverse effects.
- Z15A.19 In the event of a Security Incident, the *Subcontractor* provides the *Contractor* with full co-operation and assistance in dealing with the Security Incident, in particular in notifying individuals affected by the Security Incident or a Supervisory Authority as required by the Data Protection Acts.

- Z15A.20 On request (but not more than once in any 12-month period) the *Subcontractor* provides to the *Contractor* all necessary information to demonstrate the *Subcontractor's* compliance with this section.
- Z15A.21 The *Subcontractor* promptly provides all assistance and information requested by any Supervisory Authority or required by the *Contractor* in order for the *Contractor* to ensure compliance with its obligations under the Main Contract and Data Protection Acts, including in relation to
- a) security of processing
 - b) preparation of any necessary data protection impact assessments; and
 - c) undertaking any necessary data protection consultations.
- Z15A.22 The *Subcontractor* maintains electronic records of all processing activities carried out on behalf of the *Contractor*, including:
- a) the information described in paragraph Z15A.5,
 - b) the different types of processing being carried out (if applicable),
 - c) any transfers of Data outside the EEA or the United Kingdom, identifying the relevant country or international organisation and any documentation required to demonstrate suitable safeguards; and
 - d) a description of the technical and organisational security measures referred to in paragraph Z15A.8.
- Z15A.23 The *Subcontractor* makes these records available to the *Contractor* promptly on request.
- Z15A.24 If it is or becomes a requirement that, under the Data Protection Acts or other applicable laws, this section must be governed by the laws of a member state of the European Union, and the law of the contract does not or ceases to satisfy this requirement, this section is governed by and construed in accordance with the laws of Ireland.

Clause Z15B Discrimination

- Z15B.1 The *Subcontractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Discrimination Acts.
- Z15B.2 In performing its obligations under the subcontract, the *Subcontractor* co-operates with and assists the *Contractor* to satisfy its duty under the Discrimination Acts to
- a) eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Discrimination Acts;
 - b) advance equality of opportunity between people who share a protected characteristic and people who do not; and
 - c) foster good relations between people who share a protected characteristic and people who do not.
- Z15B.3 Where any employee or Subsubcontractor employed by the *Subcontractor* is required to carry out any activity on the *Contractor's* premises or alongside the *Contractor's* employees on any other premises, the *Subcontractor* ensures that each such employee or Subsubcontractor complies with the requirements of the Discrimination Acts and with the *Contractor's* and *Client's* employment policies and codes of practices relating to discrimination and equal opportunities.
- Z15B.4 The *Subcontractor* notifies the *Contractor* as soon as it becomes aware of any investigation or proceedings brought against the *Subcontractor* under the Discrimination Acts in connection with the *subcontract works* and
- a) provides any information requested by the investigating body, court or tribunal in the timescale allotted,

- b) attends (and permits a representative from the *Contractor* to attend) any associated meetings,
- c) promptly allows access to any relevant documents and information; and
- d) co-operates fully and promptly with the investigatory body, court or tribunal.

Z15B.5 The *Subcontractor* ensures that any subsubcontract (at any stage of remoteness from the *Contractor*) contains provisions to the same effect as this provision.

Z15B.6 The *Subcontractor* complies (and ensures that any subcontractor complies) with the *Contractor's* policies relating to bullying and harassment. If the *Contractor* considers that the presence or conduct of any of the staff at any location relevant to the performance of the *subcontract works* is undesirable or in breach of the *Contractor's* or *Client's* policies, the *Contractor* instructs the *Subcontractor* to implement corrective action.

Clause Z15C Official Secrets Act

Z15C.1 The Official Secrets Act 1989 applies to the *subcontract works* from the date of award of the subcontract until all the works to be carried out under the subcontract have been completed.

Clause Z15D Anti-Bribery and Anti-Fraud

Z15D.1 The *Subcontractor* complies (and ensures that any person employed by it or acting on its behalf complies) with the *Client's* and *Contractor's* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct, collectively "the Codes". The *Subcontractor* complies with the Codes until the *end date* with

- a) paragraph 4 of the *Client's* Anti Bribery Code of Conduct; and
- b) paragraph 3 of the *Client's* Anti Fraud Code of Conduct

until 12 years after the *defects date* under the subcontract.

Z15D.2 The *Subcontractor* ensures that any subcontract (at any stage of remoteness from the *Subcontractor*) contains provisions to the same effect as this provision.

Clause Z15E Records and Audit Access

Z15E.1 The *Subcontractor* keeps documents and information obtained or prepared by the *Subcontractor* or any Subsubcontractor in connection with the *subcontract works* for a period of 12 years after the *defects date* under the subcontract.

Z15E.2 The *Subcontractor* permits the *Contractor* and the Comptroller and Auditor General to examine documents held or controlled by the *Subcontractor* or any Subsubcontractor and provides such oral and written explanations as to the *Contractor* or the Comptroller and Auditor General considers necessary.

Z15E.3 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 *Subcontractor*.

Clause Z15F Energy Efficiency Directive

Z15F.1 The *Subcontractor*:

- a) complies with the requirements of Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Directive" ("PPN 7/14") and any work related supplementary Procurement Policy in Providing the Works,
- b) ensures that any new products purchased by it for use partly or wholly in Providing the Subcontract Works comply with the standard for products in Directive 2012/27/EU,

- c) demonstrates efficiency in resource use and ensures maximisation of recycling materials in supporting the *Contractor's* push towards a 'circular' approach to management of resources,
- d) ensures that any new products purchased by a Subsubcontractor for use partly or wholly in the performance of its obligations under its subcontract complies with the standard for products in Directive 2012/27/EU,
- e) ensures that Subsubcontractors demonstrate to the *Subcontractor* how any new products purchased by the Subsubcontractor for use partly or wholly in the performance of its obligations under a subcontract complies with the requirements of PPN 7/14 and
- f) includes requirements to the same effect in any subsubcontract (at any stage of remoteness from the *Contractor*).

The *Subcontractor* demonstrates to the *Contractor* how any new products purchased by it for use partly or wholly in Providing the Works comply with the requirements of PPN 7/14.

Clause Z15G not used

Clause Z15H Category Management

- Z15H.1 A Category Purchase Agreement is a framework agreement between the *Client* and a Category Supplier for the purchase of materials, works or services for use across the *Client's* business.
- Z15H.2 A Category Supplier is a supplier who enters into a Category Purchase Agreement with the *Subcontractor*.
- Z15H.3 The *Subcontractor* enters into a contract with a Category Supplier pursuant to a Category Purchase Agreement for the purchase of materials, works or services needed to Provide the Subcontract Works where a Category Purchase Agreement exists.
- Z15H.4 The *conditions of contract* between the *Subcontractor* and a Category Supplier are those set out in the Category Purchase Agreement and the *Subcontractor* does not change them unless the *Contractor* agrees.
- Z15.5 The *Subcontractor* liaises with the *Contractor* to identify and plan a programme that allows a Category Supplier procurement and associated governance procedures to be incorporated within the Accepted Programme.
- Z15H.6 The *Subcontractor* manages the process for entering into a contract with a Category Supplier in accordance with the subcontract.
- Z15H.7 The *Subcontractor* provides full visibility to the *Contractor* of the process for entering into a contract with a Category Supplier.
- Z15H.8 not used.
- Z15H.9 The *Subcontractor* co-operates with the *Contractor*, *Client* and Others (any other suppliers who enter into contracts with a Category Supplier) in forecasting demand for materials, works or services related to a Category Purchase Agreement.
- Z15H.10 The *Subcontractor* remains responsible for Providing the Subcontract Works and for the quality of any materials, works or services supplied by a Category Supplier as if it had supplied them itself.
- Z15H.11 Prior to entering into a contract with a Category Supplier, the *Subcontractor* may request the *Contractor's* agreement to use an alternative supplier if the *Subcontractor* considers that it offers better value to the *Contractor* and aligns with the *Contractor's* strategy for category management.

- Z15H.12 The *Subcontractor* ensures that a Subsubcontractor enters into a contract with a Category Supplier pursuant to a Category Purchase Agreement for the purchase of *materials*, works or services needed to Provide the Works.
- Z15H.13 The *Subcontractor* ensures that the *conditions of contract* between the Subsubcontractor and the Category Supplier are those set out in the Category Purchase Agreement and that the Subsubcontractor does not change them unless the *Contractor* agrees.
- Z15H.14 not used.
- Z15H.15 For technology categories the *Subcontractor* enters into a contract with a Category Supplier for the procurement and installation of roadside technology, pursuant to the Category Purchase Agreements. The primary technology Category Purchase Agreement is with the Crown Commercial Service, the Traffic Management Technology 2 Framework (TMT2).

Clause Z15I Particular requirements on Subcontractors

- Z15I.1 The *Subcontractor* ensures that all subsubcontracts (at any stage of remoteness from the *Contractor*) contain similar OHSE requirements to those of the *Subcontractor*.
- Z15I.2 The *Subcontractor* does not:
- a) appoint a Subsubcontractor; or
 - b) allow a Subsubcontractor to appoint a sub-subcontractor (at any stage of remoteness from the *Contractor*).

until the *Subcontractor* has demonstrated to the *Contractor* that the subcontract complies with these requirements.

Clause Z15J not used

Clause Z15K Fair payment

- Z15K.1 The *Subcontractor* assesses the amount due to a Subsubcontractor without taking into account the amount assessed under the subcontract.
- Z15K.2 The *Subcontractor* includes in the contract with each Subsubcontractor:
- a) a period for payment of the amount due to the Subcontractor not greater than 23 days after the date on which payment becomes due under the subcontract. The amount due includes, but is not limited to, payment for work which the Subsubcontractor has completed from the previous assessment date up to the current assessment date in the contract,
 - b) a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Subcontractor*.
- Z15K.3 The *Subcontractor* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Subcontractor* includes this provision in each subcontract and requires Subcontractors to include the same provision in each subsubcontractor.

Clause Z16 Main Contract

Z16.1 In connection with the provisions of the *subcontract works* the *Subcontractor* shall be deemed to have knowledge of all the relevant provisions and terms and conditions of the Main Contract and the requirements of the *Client* as stated in the Main Contract Scope and Site Information documents.

Z16.2. The *Subcontractor* shall

- (a) be responsible for the performance and discharge of the obligations and liabilities of the *Contractor* under or arising out of or in connection with the Main Contract which expressly relate to the *subcontract works* and the provisions of the Main Contract imposing such obligations and liabilities shall be deemed to be incorporated into this contract mutatis mutandis.
- (b) execute and complete the *subcontract works* so that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the *Contractor* of any of his obligations under the Main Contract.

Z16.3 No inspection, checking and supervision or lack of inspection, checking and supervision nor any comment, rejection or approval or disapproval by the *Client* or the *Contractor* shall in any way operate to relieve the *Subcontractor* of any of his duties, responsibilities, obligations or liabilities imposed on him by any of the provisions of this subcontract.

Clause Z17 Recovery of sums due from the *Subcontractor*

Z22.1 When under the subcontract any sum of money is recoverable from or payable by the *Subcontractor* 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 *Subcontractor* under this subcontract or any other contract with the *Contractor*. Sums of money shall only be deducted when the *Contractor* can demonstrate that losses have been suffered as a result of the performance of the *Subcontractor*.

Clause Z18 Confidentiality

Z18.1 The *Subcontractor* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person

- the terms of this subcontract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Subcontractor* in the course of performing its obligations under this subcontract

except that the *Subcontractor* may disclose information

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

Z18.2 The *Subcontractor* 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 perform its obligations under this subcontract.

Z18.3 Within two weeks after termination of the contract for any reason and the completion of work under the contract or (if earlier) when it is no longer required, the *Subcontractor* returns to the *Contractor* any confidential or proprietary information belonging to or provided by the *Contractor* in

the *Subcontractor's* possession or control and deletes (and procures that any *Subsubcontractor* deletes) any electronic information or data held by the *Subcontractor* relating to the *Contractor*, *Client* or the contract in a manner that is compatible with the requirements for data protection that are set out in this contract.

Clause Z19 Policies and Procedures

The *Subcontractor* shall comply with any policies or procedures relating to the performance of the *subcontract works*, as may be provided or notified to the *Subcontractor* from time to time.

Clause Z20 Entire Agreement

Z20.1 This subcontract constitutes the whole agreement and understanding of the Parties in respect of the subject matter of this subcontract and supersedes any previous understandings, arrangements or agreements between the Parties in relation to the *subcontract works* (including but not limited to any letter of intent or letter of instruction or pre-construction services agreement). The *Subcontractor* warrants to the *Contractor* that it does not enter into the subcontract in reliance upon any antecedent or collateral representations, undertakings or promises of any nature whatsoever made by or on behalf of the *Contractor*. The Parties agree that any statements, representations or warranties made or given by either Party during the course of negotiations which do not form part of the subcontract are withdrawn, overridden and of no legal effect and that the Parties shall not be entitled to rely upon nor make any claim in law in relation to them.

Z20.2 Any works or services performed by the *Subcontractor* prior to the date of this subcontract in relation to the *subcontract works* pursuant to any previous agreement, understanding or arrangement are deemed to have been performed pursuant to and subject to the terms of this subcontract and any amounts paid pursuant to any such agreement, understanding or arrangement are to be treated as having been paid on account of the Prices.

Clause Z21 Site Conditions

Z21.1 The *Subcontractor* warrants to the *Contractor* that the *Subcontractor* has had the opportunity of inspecting and testing the physical conditions (including the sub-surface conditions) of or affecting the site (including verification of any information provided to the *Subcontractor* by or on behalf of the *Contractor* and/or the *Client*) and means of access to and from the site and shall be deemed to have acquainted himself fully with the same and to have obtained all necessary information as to physical conditions and risks including (without limitation):

- (a) the location of the site, the position and nature of any adjoining structures;
- (b) all physical conditions (including the sub-surface conditions) and risks including (without limitation) the existence of contamination or environmental hazards, contingencies and all other circumstances which may influence or affect the execution of the *subcontract works*;
- (c) relevant ground conditions and any existing site infrastructure and services of or affecting the site;
- (d) the general condition of any existing buildings (having particular regard to structures and existing services); and
- (e) the means of access to and from the site and all factors likely to affect or restrict access to and use of the site and/or the carrying out and completion of the *subcontract works*.

Z21.2 The *Subcontractor* further warrants that the *Subcontractor* has made all necessary allowance in the Prices for all site conditions (including latent or unforeseen conditions) works and facilities required as set out in or reasonably inferred, in all the circumstances, from the Subcontract Scope and Site Information.

Z21.3 The Parties agree that: (a) no failure on the part of the *Subcontractor* to discover or foresee any such condition, risk, contingency or circumstance, or (b) the presence of such condition, risk, contingency or circumstance; as referred to in this Z clause 21 shall give rise to a compensation event or to any other addition to the Prices and/or damages,.

Z21.4 The *Subcontractor* shall not and shall not be entitled to rely upon any drawing, survey, report or other document prepared or provided by or for the *Contractor* and/or the Client regarding any matter referred to in this Z clause 21 and the *Contractor* makes no representation or warranty as to the accuracy or completeness of any such drawing, survey, report or document. The *Contractor* shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, therein contained.

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

Y2.3 On line 2 delete “seven” and insert “one”