



Highways England Company Limited

NEC4 Term Service Short Contract

(June 2017 with amendments January 2019)

Contract Data

in relation to a *service* for

**Highways England
Vehicle Recovery Contract
(2020 - 2027)**

CONTENTS AMENDMENT SHEET

Issue No.	Revision No.	Amendments	Initials	Date
1	1	Tender Version	■	■

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

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

Name

Address for
communications

Highways England, The Cube, 199 Wharfside Street, Birmingham,
B1 1RN

Address for
electronic
communications

The authority of the *Client's Agent* is

to be confirmed during the tender period

The *service* is

the provision of vehicle removal services across the Highways
England Strategic Road Network. This provision will include
Statutory Vehicle Removal, Pre-Positioning when instructed and
Scheme Vehicle Removal.

The *starting date* is

1st April 2020

The *service period* is

36 months

The *period for reply* is

2 weeks

The *assessment day* is the

[REDACTED]

of each month

Are the rates and Prices in the contract adjusted for inflation

[REDACTED]

If Yes the *index* is

[REDACTED]

provided by

[REDACTED]

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

The *Adjudicator* is

Name

Chartered Institution of Arbitrators

Address for
communications

12 Bloomsbury Square, London, WC1A 2LP

Address for
electronic
communications

[REDACTED]

The interest rate on late payments is

[REDACTED]

% 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

[REDACTED]

The *Client* provides this insurance

[REDACTED]

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

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

The *Adjudicator* nominating body is

The *tribunal* is

arbitration

The arbitration procedure is

Chartered Institution of Arbitrators' Arbitration Rules (2015)

These are additional compensation events

Z14.1 – The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.

Z14 - Project Bank Account

The *Contractor* is not to pay any charges made and not to be paid any interest paid by the *project bank*

Z54 - Extension to the Service Period

The extension period is

48 months

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

Address for
communications

Address for electronic
communications

The quality statement is in

The fee percentage is

 %

The people rates are

category of person

unit

rate

not applicable

The published list of Equipment is

not applicable

The percentage for adjustment for Equipment is

not applicable

Contract Data entry relating to Data Protection Legislation

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

Contract Data entries relating to Z Clauses

Z14 - Project Bank Account

The *project bank* is

named suppliers are

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	
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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"> • A Consortium Member or • Any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the <i>Contractor</i> or a Consortium Member. <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"> • has Control of the <i>Contractor</i> or a Consortium Member or • holds or controls the largest direct or indirect interest in the relevant share capital of the <i>Contractor</i> or a Consortium Member. <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>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>(25) 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>(26) Enforcement Action is enforcement action brought by a regulatory authority against the <i>Contractor</i> or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract.]</p> <p>(27) Financial Standing Test is the financial test for the <i>Contractor</i>, a Consortium</p>

Member or a proposed guarantor used in the tender stage of the competition for this contract.

(28) 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.

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

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

(31) 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*.

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

(33) 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. 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.

(34) 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.

(35) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.

(36) Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed. Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope

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

(38) 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.

(39) Project Bank Account is the account used to receive payments from the Client and the *Contractor* and to make payments to the *Contractor* and Named Suppliers.

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

- provide part of the *service*,
- provide a service necessary to Provide the Service or
- supply Plant and Materials for the *service*.

(46) 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.

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

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

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*.

Z4 Assignment and transfer

Z4.1 The *Contractor* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.

Z4.2 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement to do so. The *Contractor* explains the reasons for the proposed transfer and provides the *Client* with all such information as the *Client* may require in order to make its decision. If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require.

Z4.3 If requested by the *Client*, the *Contractor* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to

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

Z5 Confidentiality

Z5.1 The *Contractor* 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 contract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Service

except that the *Contractor* may disclose information

- to its legal or other professional advisers,

- to anyone employed by it or acting on its behalf as needed to enable the *Contractor* to Provide the Service
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Contractor* consults the *Client* and takes full account of the *Client'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 *Contractor* or
- with the consent of the *Client*

Z5.2 The *Contractor* 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.

Z6 Adjudication

Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:

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

Z6.2 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 *Adjudicator*.

Z7 Termination - Public Contract Regulations 2015

Z7.1 The *Client* 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 *Contractor* at the Contract Date.

Z7.2 The *Client* may terminate the contract with immediate effect

- 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
- 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.

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

- R2 if the modification or infringement was due to a default by the *Contractor*,
- R5 if the modification or infringement was due to a default by the *Client* and

- R8 if the modification or infringement was due to any other reason

Z8	Subcontracting
Z8.1	The <i>Contractor</i> assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
Z8.2	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> .
Z8.3	Not Used
Z8.4	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, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.
Z8.5	<p>Before</p> <ul style="list-style-type: none"> • appointing a proposed subcontractor or • allowing a subcontractor to appoint a proposed subsubcontractor <p>the <i>Contractor</i> submits to the <i>Client</i> for acceptance</p> <ul style="list-style-type: none"> • either <ul style="list-style-type: none"> • 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	<p>The <i>Contractor</i> does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the <i>Client</i> has accepted the submission. A reason for not accepting the submission is that</p> <ul style="list-style-type: none"> • it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 • [the <i>Client</i> 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 <i>Client</i> , the <i>Contractor</i> 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 practise in the jurisdiction in which the relevant entity is incorporated and
- accepted by the *Client*.

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

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

Z10	Joint ventures
Z10.1	This clause applies if the <i>Contractor</i> is an unincorporated joint venture.
Z10.2	Each Consortium Member is jointly and severally liable to the <i>Client</i> for the performance of the <i>Contractor's</i> obligations under this contract.
Z10.3	The <i>Contractor</i> 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 <i>Contractor</i> acknowledges that receipt of a communication by the <i>Contractor's</i> nominated representative constitutes receipt by all the Consortium Members. The <i>Contractor</i> notifies the <i>Client</i> in advance of any change to the identity of the <i>Contractor's</i> nominated representative.
Z10.4	The <i>Contractor</i> acknowledges that any payment made by the <i>Client</i> to a Consortium Member under the contract to that extent discharges the <i>Client's</i> liability to make payment to the <i>Contractor</i> .
Z10.5	A Consortium Member gives not less than four weeks' notice to the <i>Client</i> 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 <i>Contractor</i> to comply with its obligations.
Z10.7	Where two or more Consortium Members comprise the <i>Contractor</i> , 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 <i>Contractor</i> , any Consortium Member".
Z11	Parent Company Guarantee
Z11.1	<p>If required by the <i>Client</i>, the <i>Contractor</i> gives to the <i>Client</i> a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the <i>Client</i> within four weeks of the date of award of the contract, or of the <i>Client's</i> request, whichever is later.</p> <p>Parent Company Guarantees are given for:</p> <ul style="list-style-type: none"> • a standalone company – from its Controller, or • a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member. <p>In all cases it is for the <i>Client</i> to decide whether it will accept a Parent Company Guarantee from a company other than the Controller.</p>
Z11.2	A failure to comply with this condition is treated as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z12	Discrimination, Bullying and Harassment
Z12.1	<p>The <i>Contractor</i> indemnifies the <i>Client</i> against all costs, charges, expenses (including legal and administrative expenses) and payments made by the <i>Client</i> arising out of or in connection with</p> <ul style="list-style-type: none"> • 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 In relation to the Traffic Officer Mobile Responsive Portal (TOMRP) and Control Room Incident Screen, the *Contractor* and *Client* agree and accept that these systems have been developed for the *Client* by the *Contractor*. The IPRs for these systems will remain with the *Contractor*.
- Should the *Contractor* wish to use the TOMRP developed for the *Client* to any other customer then the consent of the *Client* must be sought. Where such consent is agreed the *Contractor* and *Client* shall negotiate in good faith a commercial agreement between the *Contractor* and the *Client* allowing the re-couping of development costs borne by the *Client*.

Z14 Project Bank Account

- Z14.1 The *Client* may at any time notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with its contracts.
- Z14.2 The *Contractor* establishes the Project Bank Account with the *project bank* within six weeks of the Contract Date.
- Z14.3 Unless stated otherwise in the Contract Data, the *Contractor* pays any charges made and is paid any interest paid by the *project bank*. The charges and interest by the *project bank* are not included in Defined Cost.

- Z14.4 The *Contractor* submits to the *Client* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with the contract. The *Contractor* provides to the *Client* copies of communications with the *project bank* in connection with the Project Bank Account.
- Z14.5 The *Contractor* includes in its contracts with Named Suppliers the arrangements in the contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
- Z14.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the *Client* for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Scope. The *Client*, the *Contractor* and the Supplier sign the Joining Deed after acceptance.
- Z14.7 The *Contractor* shows in the application for payment the amounts due to Named Suppliers in accordance with their contracts.
- Z14.8 Within the time set out in the banking arrangements to allow the *project bank* to make payment to the *Contractor* and Named Suppliers in accordance with the contract,
- the *Client* makes payment to the Project Bank Account of the amount which is due to be paid under the contract and
 - the *Contractor* makes payment to the Project Bank Account of any amount which the *Client* has notified the *Contractor* it intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
- Z14.9 The *Contractor* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the payment due under the contract. After signing the Authorisation, the *Contractor* submits it to the *Client* no later than four days before the final date for payment. The *Client* signs the Authorisation and submits it to the *project bank* no later than one day before the final date for payment.
- Z14.10 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
- Z14.11 A payment which is due from the *Contractor* to the *Client* is not made through the Project Bank Account.
- Z14.12 Payments made from the Project Bank Account are treated as payments from the *Client* to the *Contractor* in accordance with the contract or from the *Contractor* or Subcontractor to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the *Contractor* to comply with the requirements of this clause is not treated as late payment under the contract.
- Z14.13 The *Client*, the *Contractor* and named suppliers sign the Trust Deed before the first assessment date.
- Z14.14 If the *Client* issues a termination certificate, no further payment is made into the Project Bank Account.

Z15	Tax Non – Compliance
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"> • 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 • the steps the <i>Contractor</i> 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 <i>Client</i>.
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"> • the warranty given by the <i>Contractor</i> under clause Z15.1 is untrue, • the <i>Contractor</i> fails to notify the <i>Client</i> of a Tax Non-Compliance or <p>the <i>Client</i> decides that any mitigating factors notified by the <i>Contractor</i> are unacceptable.</p>
Z16	Value Added Tax (VAT) Recovery
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.
Z17	Termination and removal of part of the service
Z17.1	<p>The <i>Client</i> may instruct the <i>Contractor</i> that</p> <ul style="list-style-type: none"> • part of the <i>service</i> is to be permanently removed from the contract or • for urgent reasons of health and safety, part of the <i>service</i> is to be temporarily removed from the contract. <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	<p>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></p> <ul style="list-style-type: none"> • completes the performance of any part of the <i>service</i> started prior to the date of termination and • co-operates with the <i>Client</i> or any Incoming Contractor so as to ensure a smooth transfer of functions.

Z18	Corruption or loss of data
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">• the <i>Client</i> may instruct the <i>Contractor</i> to restore the data in accordance with the <i>Client</i>'s requirements or• 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).

Z19-Z21 Not Used

Z22 Quality Management System

- Z22.1 The Contractor Provides the Service under a quality management system which
- complies with BS EN ISO 9001:2015 (or the current standard that replaces it),
 - incorporates an environmental management system consistent with ISO 14001 (or current standard that replaces it),
 - has third party certification from an accreditation body approved by the applicable national member of the European Co-operation on Accreditation or is operating in preparation for accreditation within 12 months of the Contract,
 - complies with good industry practice and
 - matches or exceeds the performance standards of any similar service provided by the Contractor to other parties including in relation to any scheme recovery services.
- Z22.2 The Quality Statement is the statement of that name referred to in the Contractor's Offer detailing the Contractor's proposals for the management and resourcing of the service. The Quality Plan incorporates the Quality Statement and demonstrates how the Contractor will achieve each of the commitments in the Quality Statement and meet the Client's requirements and objectives for this contract. The Contractor keeps a controlled copy of the Quality Plan available for inspection by the Client at all times.
- Z22.3 The Client notifies the Contractor if he considers that the Quality Plan does not comply with the requirements of this contract. Following such notification the Contractor reviews the Quality Plan and reports to the Client setting out his proposed changes. If the Client accepts the proposals the Quality Plan is changed.
- Z22.4 The Contractor carries out a programme of internal audits in accordance with the requirements of ISO 9001. The Contractor notifies the Client of the internal audit dates and makes provision for the Client to attend. The Contractor supplies the Client with copies of all internal audit documentation including reports and action plans.
- Z22.5 The Client audits the Contractor's quality management system from time to time. The Contractor allows access to any place where he or any Subcontractor carries out any work that relates to this contract at all reasonable times for the Client to carry out audits, to inspect work and materials and generally to investigate whether the Contractor is performing his obligations under this contract. The Contractor provides all facilities necessary to allow such audits and inspections to be carried out.
- Z22.6 The Contractor corrects a failure to comply with a requirement of this contract within a time which minimizes the adverse effect on the Client or Others and takes corrective action to eliminate the cause of the failure before undertaking any operation the same as or similar to that in respect of which the failure occurred. The Contractor submits a corrective action report to the Client for acceptance not later than two weeks after the failure is identified.

- Z22.7 If the Client does not accept the corrective action report, the Client notifies the Contractor and instructs the Contractor to revise it. A reason for not accepting the corrective action report is that it will not allow the Contractor to Provide the Service effectively or efficiently.
- Z22.8 If the Contractor fails to take corrective action within the time set out in the Contractor's corrective action report, the Contractor
- establishes the reason for the failure to take action and
 - submits a new corrective action report to the Client
- not later than two weeks after the failure is identified. The new corrective action report identifies the changes he has made to the Quality Plan to prevent further failures.
- Z22.9 A failure by the Contractor to take corrective action within the time set out in the Contractor's new corrective action report is treated as the Contractor having substantially failed to comply with this contract.
- Z22.10 An agreed revision to the Quality Statement is not a compensation event.
- Z22.11 Quality Management Points are points incurred by the Contractor in accordance with the Quality Table for the failures in the Contractor's quality management system listed on the Quality Table whether arising from an audit by the Contractor, the Client or the relevant accreditation body
- Z22.12 If the Contractor fails to comply with his quality management system, the Contractor incurs Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The length of time Quality Management Points are incurred for is in accordance with the Quality Table. If in the opinion of the Client the Contractor has failed to properly incur Quality Management Points, the Client instructs the Contractor to incur the applicable number of Quality Points calculated in accordance with the Quality Table and they are deemed to have been incurred from the date of the Client's instruction.
- Z22.13 The Contractor maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points incur and are removed.
- Z22.14 If the number of Quality Management Points in effect at any time is more than 25, the Contractor and Client meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid incurring further Quality Management Points. The Contractor submits a report to the Client within one week of the meeting setting out
- the actions agreed at the meeting and
 - any other actions which the Contractor proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid incurring further Quality Management Points.
- Z22.15 If the Client does not accept the Contractor's proposals or the Contractor does not take the agreed actions, the Client serves a quality warning notice on the Contractor. Within one week of receipt of the quality warning notice, the Contractor submits a report to the Client setting out the actions which the Contractor has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.

- Z22.16 Until the number of Quality Management Points in effect is reduced to 25 or less, the Contractor takes the actions detailed in his reports and submits weekly up date reports to the Client setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.
- Z22.17 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as the Contractor having substantially hindered the Client.

Quality Table

Failure	Quality Management Points	Period of effect
Failure to have complete Quality Plan in place and operating	■	■■■■■■■■■■ ■■■■■■■■■■ ■■■■■■■■■■ ■■■■■■■■■■
The Quality Plan does not comply with the requirements of this contract	■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■ ■■■■■■■■■■■■■■■■■■■■
Failure to raise a non-conformity report	■■■■■■■■■■ ■■■■■■■■■■	■■■■■■■■■■
Failure to raise a corrective action report	■■■■■■■■■■ ■■■■■■■■■■	■■■■■■■■■■
Failure to correct Quality Plan in manner set out in a corrective action report (see note 1 below)	■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■
Failure to implement recommendations in audit report (see note 1 below)	■■■■■■■■■■ ■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■ ■■■■■■■■■■■■■■■■■■■■ ■■■■■■■■■■■■■■■■■■■■
Failure to carry out internal audit	■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■
Carrying out work without release of hold point	■■■■■■■■■■	■■■■■■■■■■
Failure to make records available for inspection by the Client	■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■ ■■■■■■■■■■■■■■■■■■■■

Failure to allow access for <i>Client</i> audits	[REDACTED]	[REDACTED]
Failure by <i>Contractor</i> to account for Quality Management Points that it has incurred	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Note 1: For each failure which is not remedied by the next audit, additional Quality Management Points will be incurred by the <i>Contractor</i> .		

Z22.18 If the Contractor fails to comply with the corrective and/or preventative action accepted by the Client it is treated as the Contractor having substantially hindered the Client.

Z22.19 The Contractor remains liable (subject to any applicable legislation relating to limitation of actions) for claims, proceedings, compensation and costs due to breaches of this contract which become apparent before or after the end of the service period.

Z23 Charges Collection and Vehicle Recovery Bank Account

Z23.1 The Charges Regulations are The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations. The Vehicle Recovery Bank Account is a bank account required to be set up by the Contractor on behalf of the Client to receive payments from road users and to make refund payments to road users of the Statutory Charges. The Contractor establishes the Vehicle Recovery Bank Account within one week of the starting date.

Z23.2 The Contractor collects and processes payment of all amounts received by the Contractor under the Charges Regulations (the "Statutory Charges") in accordance with the Scope.

Z23.3 The Contractor pays, and ensures that its Subcontractors pay, all Statutory Charges collected in the course of Providing the Service into the Vehicle Recovery Bank Account in accordance with the Scopes.

Z23.4 The Contractor acknowledges that, in the course of Providing the Service, any and all Statutory Charges that fall due and payable by road users are the property of the Client. Any such charges held or handled by the Contractor or and Subcontractor are done so on trust for the Client. Neither the Contractor nor any Subcontractor shall acquire any right, title or interest in any such charges.

Z23.5 The Contractor banks any Statutory Charges collected on the day of receipt, when payment is received before midday, and by the next working day in all other circumstances in to the Vehicle Recovery Bank Account.

Z23.6 The Contractor grants a fixed legal charge over the Vehicle Recovery Bank Account in favour of the Client, such charge to be in form and substance satisfactory to the Client.

- Z23.7 The Contractor ensures that where any Subcontractor has a right of set-off in respect of the Contractor's obligations to make any payment of any nature to such Subcontractor, such right of set-off will not apply in relation to any monies which are to be paid into the Vehicle Recovery Bank Account pursuant to the terms of this contract.

Z24 Changes to the service period

- Z24.1 On each anniversary of the date when this contract came into existence, the Client assesses the performance of the Contractor under this contract and classifies it as
- good if the Contractor has
 - incurred no more than ■ Quality Management Points in the relevant year and
 - achieved a Performance Measurement Score of ■ or more
 - poor if the Contractor has
 - incurred ■ Quality Management Points in the relevant year or
 - achieved a Performance Measurement Score of ■
 - neutral in all other cases.
- Z24.2 The Client notifies the Contractor of the classification and of the following actions to be taken as a result of the classification:
- if the performance of the Contractor is classified as good and the service period has previously been reduced as a result of poor performance in accordance with this clause Z24.2 and remains less than the duration stated at the date when this contract came into existence, the service period is increased by six months,
 - if the performance of the Contractor is classified as good and the service period duration is not less than stated at the date when this contract came into existence, a potential extension to the service period of six months is earned or
 - if the performance of the Contractor is classified as poor, the service period is reduced by six months and any potential extension earned is reduced by 6 months
- Z24.3 No later than 11 months before the end of the service period, the Client may notify the Contractor that the service period is extended by an amount not exceeding the potential extension(s) earned. The amount of any potential extensions earned is reduced by the amount that the service period is extended in accordance with this clause Z24.3
- Z24.4 The service period is not extended by more than 48 months in aggregate.
- Z24.5 A reduction to or extension of the service period notified by the Client in accordance with clause Z24 is not a compensation event.
- Z24.6 The Performance Measurement Score is the average performance indicator score measured in accordance with the Client's Performance Management approach. The average score is calculated from all of the monthly scores of all indicators during the relevant year.

Z25 Not Used

Z26	Changes to Average Clearance Time
Z26.1	For the purposes of this clause the "Continuous Improvement Report" is defined in the Annex 4 Definitions and Abbreviations. The Client may change the Average Clearance Times following consideration of the Continuous Improvement Report. A change to the Average Clearance Time is not a compensation event.
Z26.2	The Client shall use its reasonable endeavours to ensure that any changes made under clause Z26.2 do not have a material detrimental impact on the Contractor.
Z27	Vehicle Recovery and Vehicle Recovery Delay Damage
Z27.1	The Contractor complies with an instruction given by the representatives of the police, ambulance or fire services or other bodies having statutory powers to issue instructions following an incident when engaged in an action either on the highway or which affects the safe progress of traffic on the highway. An incident includes an unforeseen event which directly or indirectly affects the highway network and causes or has the potential to cause disruption to the free flow of traffic on the highway network or threatens the safety of the public or is an immediate or imminent threat to the long term integrity of any part of the highway network or to land adjacent to the highway network or likely to be affected by events on the highway network or any other unplanned occurrence necessitating traffic control measures.
Z27.2	<p>For each calendar month, if the Contractor clears all Light recoveries within [REDACTED] and all Heavy recoveries within [REDACTED] the Contractor will pay no delay damages for the calendar month, otherwise the Contractor pays vehicle recovery delay damages.</p> <ul style="list-style-type: none"> For all Light Vehicles where the Contractor did not achieve clearance within [REDACTED] the vehicle delay damages is calculated by multiplying the vehicle delay damage rate by the Total Excess Time where: The Total Excess Time is the aggregate time taken over [REDACTED] for all light recoveries to be cleared from the carriageway For all Heavy Vehicles where the Contractor did not achieve clearance within [REDACTED] the vehicle delay damages is calculated by multiplying the vehicle delay damage rate by the Total Excess Time where: The Total Excess Time is the aggregate time taken over [REDACTED] for all Heavy recoveries to be cleared from the carriageway
Z27.4	If an instruction given under clause Z27.1 delays the vehicle recovery then the recovery is subject to an Exception and therefore not subject to delay damage. The instruction is not an instruction for the purposes of clause 31.1 and is not a compensation event.
Z28	Indexation of rates in Vehicle Recovery Commercial Workbook
Z28.1	<p>On each anniversary of the starting date the rates stated in the Vehicle Recovery Commercial Workbook are multiplied by the Price Adjustment Factor, where the Price Adjustment Factor is L/B</p> <p>L is the latest available index before the anniversary of the starting date</p>

B is the latest available index at the starting date

Z29	Not Used
Z30	Not Used
Z31	Reporting: Small and Medium Exercises
Z31.1	<p>In this Clause Z31 SME is</p> <ul style="list-style-type: none"> • a Subcontractor or • a subcontractor to a Subcontractor <p>and</p> <ul style="list-style-type: none"> • is not controlled by the Contractor and • is a European Union enterprise not owned or controlled by a non-European Union parent company. <p>SMEs are further classified as medium, small or micro sized enterprises as follows:</p> <ul style="list-style-type: none"> • for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros, • for a small sized enterprise (small class) employs fewer than 50 staff and has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and • for a micro sized enterprise (micro class) employs fewer than 10 staff and has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.
Z31.2	<p>For each SME involved in the service, the Contractor reports to the Client each quarter from the starting date until the end of the service period</p> <ul style="list-style-type: none"> • the name of the SME, • the class of the SME (medium, small or micro), • the value of the contract undertaken by the SME, • the monthly amounts paid to the SME in the quarter and • the aggregated value paid to the SME since the starting date.
Z31.3	<p>The Client acknowledges that the Client may</p> <ul style="list-style-type: none"> • publish the information supplied under Z31.2, along with the Contractor's name and this contract name and • pass the information supplied under this clause Z31 to any Government Department who may then publish it along with the names of the SMEs, the Contractor's name and this contract name.
Z31.4	<p>The Client ensures that the conditions of contract for each Subcontractor who is an SME include</p> <ul style="list-style-type: none"> • a term allowing the Client to publish the information supplied under Z31.2 and • obligations substantially similar to those set out in this clause Z31.

- Z31.5 The Contractor further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any subcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in Z31.4.
- Z31.6 The Contractor keeps these records
- accounts of payments of Defined Cost,
 - proof that payments have been made,
 - communications about the assessments of compensation events for Subcontractors and subcontractors to a Subcontractor and
 - other records stated in the Scope.

Z32 Fair Payment

- Z32.1 Clause 51.1 is deleted and replaced with
- 51.1 The Client pays within three weeks after the assessment day or three weeks after the receipt of the assessment application which ever is the later.
- Z32.2 The Contractor assesses the amount due to a Subcontractor without taking into account the amount certified by the Client in respect of the applicable assessment application made under clause 50.1.
- Z32.3 The Contractor includes in the contract with each Subcontractor,
- a period for payment of the amount due to the Subcontractor not greater than 19 days after the due date in this contract. The amount due includes but is not limited to, work which the subcontractor has completed from the previous assessment date up to the current assessment date in this contract
 - a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract
 - a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor.
- Z32.4 The due date in this contract is the date on which the Client certifies payment of the applicable assessment application submitted to the Client under clause 50.1.
- Z32.5 The Contractor notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The Contractor includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract.

Z33-Z50 Not Used

Z51 Changes to Prices

- 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 *Contractor* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Contractor's* obligation to Provide the Service by notifying the

Contractor.]

Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z52.1	The <i>Contractor</i> provides to the <i>Client</i> within 10 days of the <i>Client's</i> request such information in connection with TUPE as the <i>Client</i> may require. The <i>Contractor</i> promptly notifies the <i>Client</i> of any later change to information provided by it.
Z52.2	<p>The Contractor acknowledges that the Client may disclose information provided by the Contractor to</p> <ul style="list-style-type: none"> • any replacement provider of service similar to the service and • any person tendering to become a replacement provider. <p>The Client obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).</p>
Z52.3	<p>During the 8 month period immediately prior to the end of the Service Period, the Contractor submits for the acceptance of the Client any proposals to</p> <ul style="list-style-type: none"> • materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the Scope of this contract, • materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or • move or deploy any key person away from the performance of the service. <p>The Client may withhold acceptance if the proposal would increase the cost to the Client of this or any future contract for the service.</p>
Z52.4	The Contractor does not do anything which may adversely affect the orderly transfer of responsibility for provision of the service.
Z52.5	The Contractor complies with, and ensures that any Subcontractor complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's Government.]
Z53	Pensions
Z53.1	<p>The Contractor indemnifies the Client and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which</p> <ul style="list-style-type: none"> • relate to pension rights in respect of periods of employment on or after the Contract Date or <p>arise out of the failure of the Contractor, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of the section headed "Pensions" in the Scope</p>
Z54	Extension to the service period
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 *Client* may specify.

Z54.2 If the *service period* is extended by less than the extension period, the *Client* may further extend the *service period* so that the total period of extension does not exceed the extension period.

Z54.3 The *Client* does not notify the *Contractor* of any extension or further extension to the *service period* later than [6 months] before the expiry of the *service period*.

Z55 **Not Used**

Z56 **Not Used**

Z57 **Not Used**

Z58 **Revisions to Promises Statement**

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

- it will not enable the *Contractor* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Contractor* to achieve the level of performance specified in the Promises Statement or

it will unacceptably increase the risk of failure to achieve the level of performance specified in the Promises Statement.

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

Z59 **Indemnified claims**

Z59.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).

Z59.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.

Z59.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.

Z59.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.

Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.

Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Contractor*

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

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

Z60 **Not Used**

Z61 **Not Used**

Z62 **Third Party Rights**

Z62.1 A subcontractor and subsubcontractor have the right to enforce the terms of clause Z8 Subcontracting and the Highways England Fair Payment Charter.

Z62.2 A Named Supplier has the right to enforce clause Z14 (Project Bank Account)

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.