



A303 Amesbury to Berwick Down (Stonehenge)

Volume 1 – Contract Data

July 2022

Doc Ref: A303-MW-CoD-002-V1-Contract Data

Version 3.1 (Final)

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PART ONE – DATA PROVIDED BY THE CLIENT

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

1. General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract (June 2017 including the January 2019 and October 2020 amendments).

Main Option	C	Option for resolving and avoiding disputes	W2
Secondary Options	X2, X5, X7, X8, X10, X11, X13, X15, X18, X21, Y(UK)1, Y(UK)2, Y(UK)3 and Z		
The <i>works</i> are	providing a high quality, two-lane dual carriageway on the A303 trunk road between Amesbury and Berwick Down in Wiltshire. The works are approximately 8 miles (13km) long and comprise the following key components a) a northern bypass of Winterbourne Stoke with a viaduct over the River Till valley, b) a new junction between the A303 and A360 to the west of and outside the WHS, replacing the existing Longbarrow roundabout, c) a twin-bore tunnel approximately 2 miles (3.3km) long, past Stonehenge and d) a new junction between the A303 and A345 at the existing Countess roundabout all as more particularly described in the Scope		
The <i>Client</i> is	National Highways Limited, a company incorporated in and in accordance with the laws of England, having as its registered number (company No. 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ		
Address for electronic communications	GeneralCounsel'sTeam@nationalhighways.co.uk		

The *Project Manager* is

Name

REDACTED

Address for
communications

Temple Quay House
2 The Square,
Temple Quay
Bristol
BS1 6HA

Address for electronic
communications

REDACTED

The *archaeologists* are

Wessex Archaeology Limited

The *support team* is

AmW or its replacements
and
the *archaeologists*

The *affected property* is

as defined in the Scope (Volume 2 Scope Part 4
(Maintenance Period Requirements))

The *Supervisor* is

Name

TBC for the *starting date*

Address for
communications

Temple Quay House
2 The Square,
Temple Quay
Bristol
BS1 6HA

Address for electronic
communications

TBC

The Scope is in

Volume 2

The Site Information is in

Volume 5

The *boundaries of the
site* are

indicated on drawings HE551506-AMW-GEN-
SW_GN_000_Z-DR-CH-4000 to HE551506-AMW-

GEN-SW_GN_000_Z-DR-CH-4016 in (Volume 4 - Contract drawings).¹

The *working areas* are

none

The *language of the contract* is

English

The *law of the contract* is the law of

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

The *period for reply* is

14 days

except where

The *period for reply* is stated in

Volume 2 Part 9 – Review and Certification

The following matters will be included in the Early Warning Register

protester action
archaeology
utilities (capacity of supply, interface and performance)
traffic flows
land access
asset condition
consents and discharge of DCO requirement

Early warning meetings are held at intervals no longer than

one month

2. The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*.

The *key dates* and *conditions* to be met are

condition to be met

key date

(1)

Not Used

Not Used.

¹ addition boundaries of the site shall be established for the at the South East and South West Regional Operational Centres and the Avon and Somerset Police (at the Police and Fire Headquarters) for the evidence recovery control unit (ERCU) and offence viewing and decision system (OVDS).

The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than

one month.

3. Time

The *starting date* is

As notified by the *Project Manager*

The *tender date* is

1st May 2020

The *maintenance completion date* is

the later of 129 months after the *starting date* or five (5) years after the Completion of *section (3)*

The *access dates* are

	part of the Site	date
(1)	the whole of the Site	the date of the issue of the notice to proceed
(2)	section 1A	the day Completion of section 1 is achieved
(3)	section 2A	the day Completion of section 2 is achieved
(4)	section 3A	the day Completion of section 3 is achieved
(5)	section 5	the day Completion of section 3 is achieved

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

monthly

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

129 months after the *starting date*

Taking over the *works* before the Completion Date

The *Client*, except for section 5, is

willing to take over the *works* before the Completion Date.

The period after the *starting date* within which the *Contractor* is to submit a Mobilisation Phase programme for acceptance is

28 days

The period prior to the notice to proceed date on the accepted Mobilisation Phase programme by when the *Contractor* is to submit its Construction Phase programme for acceptance

12 weeks

4. Quality Management

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

2 weeks

The period between Completion of the whole of the *works* and the *defects date* is

104 weeks

The *defect correction period* is

4 weeks

except that:

The *defect correction period* for

tunnel structure and
mechanical and
electrical installations
and safety systems

is

4 weeks

5. Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is

1 calendar month

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

3 % per annum above the
Bank of England base rate
in force from time to time

The *Contractor's share percentages* and the *share ranges* are:

<i>share range</i>	<i>Contractor's share percentage</i>
less than 85 %	0 %
from 85 % to 95 %	$\frac{X-65}{0.4}$ %
from >95 % to 100 %	75 %
from >100 % to 110 %	50 %
from >110 % to 140 %	$\frac{X-80}{0.6}$ %
greater than 140 %	100 %

Note 1 X is the final Price for Work Done to Date divided by the final total of the Prices, expressed as a percentage.

Where the *share range* is greater than 100%, the *Contractor's share* does not exceed one hundred and eighty million pounds (£180,000,000.00).

The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the Price for Work Done to Date

- The *divisions* are
- *section 1*
 - *section 1A*
 - *section 2*
 - *section 2A*
 - *section 3*
 - *section 3A*
 - *section 4*
 - *section 5*

The *construction base date* is the date of issue of the notice to proceed to the Construction Phase.

The <i>construction index</i> is	Construction Output Price Index: New Work Output Prices - Infrastructure (published by the ONS)
The <i>maintenance base date</i> is	the date of issue of the notice to proceed to the Construction Phase.
The <i>maintenance index</i> is	Construction Output Price Index: New Work Output Prices - Infrastructure (published by the ONS)

6. Compensation events

The place where weather is to be recorded is

N/A

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at

N/A

hours GMT

and these measurements:

N/A

The *weather measurements* are supplied by

N/A

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

N/A

and which are available from

N/A

Where no recorded data are available

Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are

N/A

These are additional compensation events

- The *Client* gives an instruction to change the Maintenance Completion Date. If the effect of a compensation event is to reduce the total Defined Cost, the Prices are reduced.
- The *Client* gives an instruction to change the Affected Property. If the effect of a compensation event is to reduce the total Defined Cost, the Prices are reduced.
- The *Project Manager* or Archeologists gives an instruction for dealing with an Archaeological Find found within the Site or Working Areas.
- The *Contractor* encounters Trespasser' trespassing or Protester Action which
 - is within the Site,
 - prevents the *Contractor* from Providing the Works in accordance with the Accepted Programme,
 - is not anticipated by the Security Management Plan,
 - requires the *Contractor* to
 - seek assistance of a Relevant Authority or
 - ask the *Client* to use its rights to remove any Protester or Trespasser from the Site and
 - are not due to the actions or inactions of the *Contractor*.

Only the difference between the trespassing or Protester Action encountered and those anticipated by the Security Management Plan is taken into account in assessing a compensation event.

- The *Contractor* incorporate *Client's* developments in Technology Equipment into the works in accordance with paragraph 18.1.22 of the Scope (part 2 Design and Technical Requirements).
- The *Project Manager* gives an instruction to make a permanent repair or renewal to an asset or infrastructure following an incident.
- An event which is a Prevention Event and is not
 - a breach of contract by the *Contractor* and
 - one of the other compensation events stated in the contract.
- The *Project Manager* does not issue a notice to proceed to the Construction Phase no later than fourteen days after the later of
 - nine months of the *starting date*,
 - the date for issue of the notice to proceed on the Accepted Programme,
 - the *Client's* agreement to the *Project Manager's* assessment of the forecast final Price for Work Done to Date at Completion of the whole of the works where it exceeds the total of the Prices (including the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented) or
 - when the *Contractor* has
 - completed all the Deliverables for the Mobilisation Phase,
 - obtained approvals and consents from Others as stated in the Scope,
 - completed and discharged its Pre-commencement Development Consent Order Activities,
 - delivered its processes and procedures for Providing the Works so that they are developed and integrated with *Client's* own processes,
 - embedded its leadership team into an integrated structure with the *Client*, *Project Manager*, *Supervisor* and Support Team and

- the order for the Tunnel Boring Machine has been placed by the *Contractor*.

The *Project Manager's* assessment of the forecast final Price for Work Done to Date at Completion for the whole of the *works* and compensation events considers the *Contractor's*

- forecast of the Defined Cost prepared in consultation with the *Project Manager* and
- estimates including supporting evidence issued to the *Project Manager* to support compensation events or forecast to Completion of the whole of the *works*, including its methodology audit trail in backing up the estimate element allowances.
- The *Contractor* encounters COVID-19 Related Action which affects the *Contractor's* ability to Provide the Works which results in
 - delays in performing the *works* in accordance with the Accepted Programme or
 - a change in the Defined Cost of performing the *works*.

If the COVID-19 Related Action is to reduce the Defined Cost, the Prices and Fee are reduced.

Only the difference between the COVID-19 Related Action and those for which it would have been reasonable to have allowed, including the the document Construction Leadership Council "Construction Sector Site Operating Procedures Protecting your Workforce During Coronavirus (Covid-19)" (Version 7 – 7th January 2021)", is taken into account in assessing a compensation event.

- The *Contractor* uses a Category Purchase Agreement. If effect of the use of the Category Purchase Agreement is to reduce the Defined Cost, the Prices and Fee are reduced.
- The *Contractor* encounters physical conditions which
 - are man-made obstructions but excluding man-made obstructions due to the actions of the *Contractor*,
 - adversely impacts the advancement of the Tunnel Boring Machine such that the Aggregated Delay exceeds 45 days,
 - are within the Site,
 - are not due or related to weather conditions and
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event

- The *Contractor* encounters physical conditions which
 - are man-made contamination but excluding man-made contamination due to the actions of the *Contractor*,
 - adversely impacts the advancement of a Tunnel Boring Machine such that the Aggregated Delay exceeds 45 days,
 - are within the Site,
 - are not due or related to weather conditions and

- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

- The *Contractor* encounters physical conditions which²
 - are voids greater than 100m³ but excluding voids greater than 100m³ due to the actions or inactions of the *Contractor*,
 - results in a loss of face (counter) pressure which adversely impacts the advancement of a Tunnel Boring Machine such that the Aggregated Delay exceeds 45 days,
 - are within the Site and
 - are not due or related to weather conditions.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

- A change between the made Development Consent Order (on the date it is originally made) and the Development Consent Order (Quashed). If the effect of the change is to reduce the total Defined Cost, the Prices are reduced.
- The *Project Manager* notifies a *starting date* which is later than 31th January 2022.

The *non-material schedule* is in a document called the Non-Material Schedule.

8. Liabilities and insurance

These are additional *Client's* liabilities

- (1)

traffic flows in excess of that stated in the Scope

See Scope for insurance details Part 1 Annex J

² Note to Participant: Drafting subject to fine tuning/optimisation for Participant's TBM selections.

Resolving and avoiding disputes

The *tribunal* is

arbitration

The *arbitration procedure* is

The Institution of Civil Engineers Arbitration Procedure current at the date of referral to the *tribunal*.

The place where *arbitration* is to be held is

London

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

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

The *Senior Representatives* of the *Client* are

Name (1)

REDACTED

Address for communications

Manton Lane
Manton Industrial Estate
Bedford
MK41 7LW

Address for electronic communications

REDACTED

Name (2)

REDACTED

Address for communications

The Cube
199 Wharfside Street
Birmingham
B1 1RN

Address for electronic communications

REDACTED

The *Adjudicator* is the person chosen by

the Parties from the list of adjudicators published by the Institution of Civil Engineers

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

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

The *Adjudicator nominating body* is the Institution of Civil Engineers

Contract Data entries relating to *conditions of contract*

Clause 54 *initial share date* see Contract Data entries relating to Z Clauses for Z119

Option X1: Not Used

Option X5: Sectional Completion

The *completion date* for each *section* of the works is

<i>section</i>	description to be defined by reference to Scope	<i>completion date</i>
(1)	Winterbourne Stoke Bypass	30 months after the date of the notice to proceed
(1A)	<i>section 1</i> works maintenance period	the day of Completion of <i>section 3</i>
(2)	Countess Junction	30 months after the date of the notice to proceed
(2A)	<i>section 2</i> works maintenance period	the day of Completion of <i>section 3</i>
(3)	A303 mainline and junction slip roads	69 months after the <i>starting date</i>
(3A)	de-trunking works	the earlier of 81 months after the <i>starting date</i> or 12 months after Completion of <i>section 3</i>
(4)	landscaping aftercare	60 months after Completion of <i>section 3</i>
(5)	maintenance period	60 months after Completion of <i>section 3</i>

Option X7: Delay damages

delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	Winterbourne Stoke Bypass	£14,000.00
(1A)	section 1 works maintenance period	£0.01
(2)	Countess Junction	£16,000.00
(2A)	section 2 works maintenance period	£0.01
(3)	A303 mainline and junction slip roads	£17,000.00
(3A)	de-trunking works	£6,000.00
(4)	landscaping aftercare	£500.00
(5)	tunnel maintenance period	£0.01

The total delay damages payable to the *Client* does not exceed 5% of the total of the Prices.

Option X8: Undertakings to the *Client* or Others

The *undertakings to Others* are

To Wiltshire Council as described in the Scope S1700, Part 1

The *Subcontractor undertaking to Others* are

works

provided to

N/A

The *Subcontractor undertaking to the Client* are
works

N/A

Option X10: Information modelling

The period after the *starting date* within which the
Contractor is to submit a first Information Execution Plan
for acceptance is

12 weeks

Option X13: Performance bond

The amount of the performance bond is

£20,000,000.00

Option X14: Not Used

Option X15: *Contractor's design*

The *period of retention* following Completion of the whole
of the *works* or earlier termination is

12 years

Option X16: Not Used

Option X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect and
consequential loss is limited to

£50,000,000.00

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

£50,000,000.00

The *Contractor's* liability for Defects due to its design
which are not listed on the Defects Certificate is limited to

£200,000,000.00

The *Contractor's* total liability to the *Client* for all matters
arising under or in connection with the contract, other than
excluded matters listed in X18.5, is limited to

£250,000,000.00

The *end of liability date* is

12

years after Completion of the whole
of the *works*.

Option X20: Not Used

Option Y(UK)1: Project Bank Account

Charges made and interest
paid by the *project bank*

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

The *account holder* is the *Contractor*.

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

The period for payment is

14

days after the date on which payment becomes
due.

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

Term

beneficiary

The provisions of
Option Y(UK)1

Named Suppliers

Scope section 1206
(Part 1)

subcontractors (at any stage of remoteness from
the *Client*.

Z52.8, Z52.9 and
Z53.1

any Incoming Contractor and any Incoming
Contractor Subcontractor.

Option Z: Additional conditions of contract

The *additional conditions of contract* are
the following clauses

Z1 –Z130

Contract Data entries relating to Z Clauses

Clause Z19
Termination
and omission
of work

The *failure level* is 5

Clause Z106
*Extended
liability period
for Plant*

The *extended
liability period* for

Plant

is

- within or
- on the portal
to
the Stonehenge
Tunnel

24 months following
correction of a
Defect or until the
defects date,
whichever is later

Z115

Enabling Works and Pre-commencement Development Consent Order Activities

- The *enabling works* are

(1)

archaeological mitigation

(2)

site clearance and ecological mitigation

(3)

minor highway works on the local road network

(4)

utilities diversion and new connections

*pre-commencement development consent
order activities*

Party

(1)

see Annex 5

see Annex 5

Clause Z119 Incentives

The *combined budget incentive schedule* is in the document called

Performance Manual, section 2.2

The *performance incentive fund schedule* is in the document called

Performance Manual, section 2.3

performance manual is in the document called

A303-MW-CoD-004-Performance Manual-Contract Ver 1.1.pdf

initial share date is

the day 6 months after Completion of *section 3A* is achieved

performance incentive fund date is

defects date

combined budget incentive date is

defects date

Client's Costs are

technical and professional services support

£75,000,000.00

land purchase and compensation

£25,000,000.00

statutory undertaker and authority costs

£6,000,000.00

Archaeology and other works procured by the *Client*

£24,000,000.00

Other enabling works

£10,500,000.00

the *Client's* retained risk

£128,000,000.00

total *Client's Costs* are

£268,500,000.00

PART TWO DATA PROVIDED BY THE CONTRACTOR

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

1. General

	The <i>Contractor</i> is	
	Name	
	Address for communications	
	Address for electronic communications	
Fill in if the <i>Contractor</i> is an unincorporated JV	The <i>Contractor's</i> nominated representative is	
	Name	
	address for communications	
	Address for electronic communications	

The *mobilisation phase fee percentage* is %

The *construction phase fee percentage* is %

--	--

The *key persons* are those identified in the *key persons schedule* in

Quality Statements

leadership team is

[insert names]

The following matters will be included in the Early Warning Register

design consultant are³

[...]

key subcontractors⁴ are

tunnel boring machine
supplier is

[...]

slurry treatment plant
supplier is

[...]

tunnel lining mould
supplier is

[...]

2. The Contractor's main responsibilities

If the Contractor
is to provide
Scope for its
design

The Scope provided by
the Contractor for its
design is in

the *quality statement*

The *quality statement* is in

the document called Quality Statements

The *software schedule* is
in

the document called Quality Statements

the following *outline documents* listed below

The *outline tunnel design*
authority report is in

the document called Quality Statements

³ Tenderer's to include all designers to be used in Providing the Works and must include designers relied upon as part of the SQ submission.

The *outline minimum operating requirements* are in

the document called Quality Statements

The *outline TCMS solutions document* is in

the document called Quality Statements

The *outline approval in principle for Stonehenge Tunnel* is in

the document called Quality Statements

The *outline approval in principle for the western portal structures* is in

the document called Quality Statements

The *outline approval in principle for the western cut retaining structures* is in

the document called Quality Statements

The *outline approval in principle for green bridge four* is in

the document called Quality Statements

The *outline approval in principle for the eastern portal structures cut retaining structures* is in

the document called Quality Statements

The *outline approval in principle for the eastern cut retaining structures* is in

the document called Quality Statements

The *testing, commissioning and handover plan the M&E and technology installations* is in

the document called Quality Statements

The *outline approval in principle for the River Till viaduct* is in

the document called Quality Statements

The *outline approval in principle for Countess Roundabout flyover* is in

the document called Quality Statements

The <i>outline security management plan</i> is in	the document called Quality Statements
The <i>pre-appointment BIM execution plan</i> is in	the document called Quality Statements
The <i>outline information services strategy</i> is in	the document called Quality Statements
The <i>outline asset management forward plan</i> is in	the document called Quality Statements
The <i>outline health, safety and wellbeing implementation plan</i> is in	the document called Quality Statements
The <i>outline stakeholder engagement plan</i> is in	the document called Quality Statements
The <i>outline community relations plan</i> is in	the document called Quality Statements
The <i>outline leadership plan</i> is in	the document called Quality Statements
The <i>outline behaviour maturity plan</i> is in	the document called Quality Statements
The <i>outline supply chain engagement plan</i> is in	the document called Quality Statements
The <i>outline project execution plan</i> is in	the document called Quality Statements
The <i>client's requirement schedule</i> is in	the document called <i>Client's Requirement Schedule</i>

The *relevant works and the relevant work conditions* are

relevant work

relevant work condition

reference

section of the Scope

3. Time

The programme identified
in the Contract Data is in

Not Used

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

Not Used

5. Payment

The *activity schedule* is in [...]

The tendered total of the
Prices is [...]

The *commercial workbook*
is in the document called Commercial Workbook]

The *fee schedule* is in *commercial workbook*

The *overhead percentages* for the cost of support people and office overhead
for a *design consultant* are

location

overhead percentage

	%
	%

		%
--	--	---

If Option F is used	Work which the <i>Contractor</i> will do is	Not Used
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Resolving and Avoiding Disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for
communications

Address for electronic
communications

Name (2)

Address for
communications

Address for electronic
communications

X10: Information modelling

The *information execution plan* identified in the
Contract Data is

Option Y(UK)1: Project Bank Account

The *project bank* is

named suppliers are

All known suppliers at any tier must be listed as *named suppliers*

Option Z: Additional conditions of contract

Clause Z9 The *credit ratings* at the date of award of the contract and the rating agencies issuing them are

Party	rating agency	credit rating
Contractor	<input type="text"/>	<input type="text"/>
Consortium Member ⁵	<input type="text"/>	<input type="text"/>
Guarantor ⁶	<input type="text"/>	<input type="text"/>

Data for Schedule of Cost Components

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The rates for special Equipment are

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

⁵ Consortium Members to be added by Tenderer

⁶ Guarantors to be added for each Consortium Member by Tenderer

The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the *Contractor* are

category of person	rate
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of legal services for Protester Action and Trespassers done outside the Working Areas are

category of person	rate £/hour
Professionally qualified Lead Partner/Director (with at least 10 years post qualification experience in relevant field of work)	<input type="text"/>
Other professionally qualified Senior Solicitor (with 5-10 years or more post-qualification experience in relevant field of work)	<input type="text"/>
Professionally qualified Solicitor (with 3-5 years post-qualification experience in relevant field of work)	<input type="text"/>
Professionally qualified Junior Solicitor (with up to 3 years post-qualification experience in relevant field of work)	<input type="text"/>
Trainee/Paralegal	<input type="text"/>

The categories of legal people whose travelling expenses to and from the Working Areas are included as a cost of legal services for Protester Action and Trespassers done outside the Working Areas are

Data for the Shorter Schedule of Cost Components – NOT USED

Z Clause Contents

Number	Title
Z1	Changes to Core and Secondary Option Clauses
Z2	Interpretation
Z3	Recovery of sums due from <i>Contractor</i>
Z4	Assignment and transfer
Z5	Confidentiality
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Merger, take-over, Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non - Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>works</i> from the Scope
Z18	Corruption or loss of data
Z19	Termination and omission of work
Z20 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Not Used
Z52	Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
Z53	Pensions
Z54	Not Used
Z55	Payment of the <i>Contractor's</i> share
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z58	Revisions to Quality Statement
Z59	Indemnified claims
Z60	Not Used
Z61 – Z99	Not Used
Z100	Not Used
Z101	Not Used
Z102	Not Used
Z103	Not Used
Z104	Single point design responsibility
Z105	Innovation - Title to Equipment
Z106	Extended liability period for Plant
Z107	Not Used
Z108	Not Used
Z109	Archaeologists
Z110	Legal proceedings in the name of the <i>Client</i>
Z111	Physical conditions and materials provided by the <i>Client</i>
Z112	Finalisation of Defined Cost for Divisions
Z113	Not used
Z114	The Affected Property

Number	Title
Z115	Enabling Works and Pre-commencement Development Consent Order Activities
Z116	Maintenance Completion Date
Z117	Mobilisation Phase
Z118	Notice to proceed to Construction Phase
Z119	Incentives
Z120	Payment Bond
Z121	Lump sum Fee
Z122	Scope provided by the <i>Contractor</i> for its design
Z123	Title to Equipment and Spares
Z124	Plant and Material outside the Working Areas
Z125	Inflation
Z126	<i>starting date</i>
Z127	Adjustment of the fee percentages
Z128	Proposed notification of the Development Consent Order and the <i>starting date</i>
Z129	the <i>tunnel boring machine supplier</i> , the <i>slurry treatment plant supplier</i> and the <i>tunnel lining mould supplier</i>
Z130	office overhead

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms to Core clause 11.2

(37) Adjusted Final PIF Payment is defined in the Performance Manual.

(38) The Affected Property is the *affected property* unless later changed in accordance with the contract.

(38A) Aggregated Delay⁷ is the aggregated delay due to physical conditions which

- are within the Site,
- are not due or related to weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them

that adversely impacts the advancement of a Tunnel Boring Machine due to

- voids greater than 100m³ but excluding voids greater than 100m³ due to the actions or inactions of the *Contractor*,
- man-made obstructions but excluding man-made obstructions due to the actions of the *Contractor* or
- man-made contamination but excluding man-made contamination due to the actions of the *Contractor*.

(39) Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Project Manager*.

(40) Archaeologists are the *archaeologists* unless later changed in accordance with the contract.

(41) Archaeological Find is an archaeological item identified by an Archaeologist or the *Project Manager* as requiring further mitigation or investigation.

(42) Associated Company is any of

- a Consortium Member,
 - 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 *Contractor* or a Consortium Member or
 - other Design Consultants but excluding
 - a subcontractor (at any stage of remoteness from the *Client*) that provides the design works or services for
 - temporary works,
 - Equipment and
 - Plant and Material (but not the integration of such item in to the *works*)
- only and
- a subcontractor (at any stage of remoteness from the *Client*) that provides the design works or services for the permanent works where

⁷ Note to Participant: Drafting subject to fine tuning/optimisation for Participant's TBM selections.

design works or services account for less than 20% of the total of the prices of such subcontract.

- (43) Availability means the percentage of lane kilometre minutes available in accordance with the *Client's* Operational Metrics Manual (OMM) (January 2019) and inclusive of both planned and unplanned closures.
- (44) Category Purchase Agreement is a framework agreement which is established or may be established by the *Client* for common requirements across its asset management and wider expenditure plan under which
 - the *Client* may enter into contracts with Category Suppliers or
 - the *Client*, *Contractor* and Others may enter into contracts with Category Suppliers.
- (45) Category Suppliers are parties to a Category Purchase Agreement with the *Employer*.
- (46) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Contractor* 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 *Contractor* or a Consortium Member.
- (47) Client's Outturn Costs is the sum of the final Price for Work Done to Date,
 - where the final total of the Prices exceeds the final Price for Work Done to Date, any *Contractor's* share (calculated in accordance with clause 54) paid to the *Contractor*,
 - the final amounts paid to Others by the *Client*
 - for any technical and professional services support,
 - for land
 - access,
 - compensation and
 - purchases and
 - for utilities diversions.

less

 - where the final Price for Work Done to Date exceeds the final total of the Prices, any *Contractor's* share (calculated in accordance with clause 54) the *Contractor* pays to the *Client*.
- (48) Combined Budget is the sum of the total of the Prices at the Contract Date stated in the *activity schedule* and the total *Client's Costs*.
- (49) Combined Budget Incentive is the incentive calculated in accordance with the Combined Budget Incentive Schedule.
- (50) Combined Budget Incentive Schedule is the *combined budget incentive schedule* unless later changed in accordance with the contract.
- (51) Combined Budget Incentive Repayment is defined in the Performance Manual.

- (52) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Contractor*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.
- (53) Construction Phase Activities are the activities listed in the Scope as being intended to be performed during the Construction Phase.
- (54) Construction Phase Fee is the lump sum calculated by applying the *construction phase fee percentage* to the forecast Defined Cost stated in the *activity schedule* of work (including any forecast Defined Cost for Equipment to be used in the Construction Phase but incurred in the Mobilisation Phase) originally intended to be carried out in the Construction Phase (as stated in the Scope at the Contract Date) less the sum of the Monthly Section 5 Fees unless later changed in accordance with the contract.
- (54A) Construction Phase Fee Percentage is the *construction phase fee percentage* unless later changed in accordance with the contract.
- (55) Construction Phase has the meanings given to it in the Scope.
- (56) Contractor Employee means any person employed or engaged or formerly employed or engaged by the *Contractor* or any of its subcontractors (at any stage of remoteness from the *Client*) in Providing the Works.
- (57) Contracts Finder is the government website for information about contracts worth over £10,000 that supply works, goods or services to the government and its agencies and arm's length bodies.
- (58) Contract Year is (as the case may be) the period commencing on the Contract Date or each anniversary of the Contract Date and ending 12 months later.
- (59) Control has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- (60) Controller is the single person (or group of persons acting in concert) that
- has ultimate Control of the *Contractor* or a Consortium Member by virtue of being at the top of the *Contractor's* or Consortium Member's corporate structure or
 - holds or controls (by virtue of being at the top of the *Contractor's* or Consortium Member's corporate structure) the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member.
- (60A) Coronavirus means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) including any mutation thereof recognised by the World Health Organisation and government of the United Kingdom as a mutation.
- (61) Corrective Action has the meaning given to it in ISO 9000.
- (61A) COVID-19 means the official designation by the government of the United Kingdom of the disease which can be caused by Coronavirus.
- (61B) COVID-19 Related Action is any
- action taken,
 - restriction imposed
 - restriction lifted or
 - change in any restriction

by the government of the United Kingdom or other government of another country after the Contract Date to control Coronavirus and COVID-19.

- (62) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Contractor*, a Consortium Member or any Guarantor. Rating agency accepted by the *Client* are Moody's Investor Service Inc., Standard & Poor's Financial Services LLC., Fitch Ratings Inc.) unless agreed otherwise by the *Client*.

- (63) Deliverable is any

- item or feature delivered or to be delivered and
- any materials prepared

by the *Contractor*, including any agreement or acceptance, to Provide the Works.

- (64) Design Consultant is

- a subcontractor (at any stage of remoteness from the *Client*) that provides the design for the *works* or temporary works or
- a *design consultant*.

- (64A) Development Consent Order ("DCO") means the development consent order in relation to the A303 Amesbury to Berwick Down project made on or after the 30th July 2021 and notified by the *Project Manager* including amendments.

- (65) Development Consent Order (Quashed) means

- the development consent order made on 12 November 2020 by the Secretary of State under the Planning Act 2008, which authorises the construction, operation and maintenance of the Scheme and includes a range of ancillary provisions, including provisions authorising the compulsory acquisition of interests in and rights over land, powers to use and possess land temporarily, traffic management powers, street works powers in relation to the A303 Amesbury to Berwick Down project and
 - the documents listed in schedule 12 (Documents to be Certified) of the development consent order, or once such documents have been certified by the Secretary of State pursuant to article [56] (Certification of documents), such certified documents.
- and quashed on the 30th July 2021.

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

- (67) Division is an activity or group of activities in respect of which the *Project Manager* may wish to finalise the Defined Cost when the Division is completed. The Divisions are the *division* stated in the Contract Data unless later changed in accordance with the contract.

- (68) 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).

- (69) Employment Liabilities means without limitation any costs, claims, demands or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred

as a result of an indemnity or warranty given or to be given by the *Client*, the *Contractor*, an Incoming Contractor or an Incoming Contractor Subcontractor).

- (70) Enabling Works are the *enabling works* unless later changed in accordance with the contract.
- (71) Enforcement Action is enforcement action brought by a regulatory authority against the *Contractor* 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.
- (71AA) Epidemic is the occurrence in a community or region of cases of an illness, specific health-related behaviour or other health-related events
- affecting a large number of people and
 - impacting the whole United Kingdom clearly in excess of normal expectancy and declared as such by the government of the United Kingdom.
- (71A) Equipment Fee is the is the lump sum calculated by applying the *construction phase fee percentage* to the forecast Defined Cost stated in the Activity Schedule of Tunnel Boring Machine, Slurry Treatment Plant and Tunnel Lining Mould.
- (72) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement.
- (72A) Excluded Items are
- until Completion of the whole of the *works*, the achievement of the minimum Availability of the *works* for the specified periods stated in the Scope (Volume 2 Part 4 (Maintenance Period Requirements), section 1.5 (Network availability)),
 - the achievement of the
 - Stonehenge Tunnel's,
 - cross passages' and
 - mid tunnel Plant rooms' (if provided)

water resistance and leakage criteria stated in the Scope (Volume 2 Part 2 section 15.2 (Tunnel Structure), paragraph 15.2.10A) and
 - the achievement of carriageway flooding criteria between chainage points CH 6000 and CH 10800 stated in the Scope (Volume 2 Part 2 section 6.4 (New Drainage) paragraph 6.4.7.).
- (73) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.
- (74) Exit Transferring Employee means any Contractor Employee who is assigned to Providing the Works whose employment (or Employment Liabilities in respect of whom) will transfer to the *Client*, an Incoming Contractor or an Incoming Contractor Subcontractor under TUPE at a relevant Transfer Date and whose name is set out in the Final Exit List and provided in accordance with clause Z52.8.

- (75) Final Exit List means the updated list of the Exit Transferring Employees provided pursuant to clause Z52.8 provided that there shall be no changes to the Exit Transferring Employees other than by agreement between the *Client* and the *Contractor*.
- (76) Financial Standing Test is the financial test for the *Contractor*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for the contract (as in Scope Part 1 Annex XX).
- (77) Form of Performance Security is a form of bond specified in the Scope (or such other form as the *Client* may reasonably require).
- (78) 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.
- (79) Guarantor is the *guarantor* unless later changed in accordance with the contract.
- (80) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (81) Health and Safety Plans are
- a completed Supply Chain Health and Safety Maturity Matrix (SCMM) for the *Contractor* or each Consortium Member in the form required by the *Client*, recording the level of safety maturity within the organisation at the date of the SCMM,
 - an implementation plan, setting out the actions to be taken by the *Contractor* or each Consortium Member over a period of 12 months following the date of the SCMM in order to improve the scores recorded in the SCMM by not less than the percentage specified from time to time by the *Client*, including the timescale for each action and
 - an action plan, setting out the specific actions to be taken under the contract by the *Contractor* and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Contractor* or each Consortium Member.
- (82) Incoming Contractor is any contractor appointed by the *Client* to Provide the Works or part of it (or a similar service or part of it) in place of the *Contractor*.
- (83) Incoming Contractor Subcontractor means any subcontractor (at any stage of remoteness from the *Client*) of the Incoming Contractor providing services which are fundamentally the same as any or all of the *works*.
- (84) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the Site and the *works* or any revised systems introduced by the *Client* from time to time.
- (85) Initial Combined Budget Incentive Share is defined in the Performance Manual.
- (86) Initial PIF Payment is defined in the Performance Manual
- (87) Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.

- (88) Intellectual Property Rights or IPRs are
- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks (and goodwill attaching to those trade marks), rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information (as defined in the Scope),
 - applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction and
 - all other rights having equivalent or similar effect in any country or jurisdiction.
- (88A) Key Subcontractor is
- each of the *key subcontractors*,
 - any subcontractor replacing any Key Subcontractor,
 - any subcontractor which in the opinion of the *Project Manager* performs a significant or critical role in the Providing the Works,
 - any subcontractor with a subcontract with a contract value in excess of 10% of the aggregate Defined Cost payable under the contract,
 - any subcontractor with a subcontract where the total of the prices (as defined under the subcontract) is valued at £5,000,000 or higher, excluding VAT, at the subcontract's contract date (as defined under the subcontract),
 - any subcontractor with a subcontract where the duration
 - between the subcontract's contract date (as defined under the subcontract) and its completion date (as defined under the subcontract) is 12 months or more or
 - of the type of works, services or goods provided by the subcontract (whether delivered through the proposed subcontractor or not) is 12 months or more
 - in accordance with the Accepted Programme or
 - if there is no Accepted Programme, under the *Project Manager's* assessment of the duration of the type of works or services provided by the subcontract.
- (89) Licence is the document entitled "Highways England: Licence" dated April 2015 listed in Volume 2 Part 11 (Definitions and Acronyms).
- (90) Maintenance Activities are the activities listed in the Scope as being intended to be performed during *section 5* of the *works*
- (91) Maintenance Completion Date is the *maintenance completion date* unless later changed in accordance with the contract.
- (91A) Maintenance Period is the period commencing upon Completion of *section 3* to, and including, the Maintenance Completion Date.
- (92) Mobilisation Phase commences on the *starting date* and has the meanings given to it in the Scope
- (93) Mobilisation Phase Activities are the activities listed in the Scope that are required to deliver the Mobilisation Phase.
- (94) Mobilisation Phase Fee is the lump sum calculated by applying the *mobilisation phase fee percentage* to the forecast Defined Cost stated in the *activity schedule* of work originally intended to be carried out in the Mobilisation Phase (as stated in the Scope at the Contract Date) , but

excluding any forecast Defined Cost for Equipment to be used in the Construction Phase but incurred in the Mobilisation Phase), unless later changed in accordance with the contract.

- (94A) Mobilisation Phase Fee Percentage is the *mobilisation phase fee percentage* unless later changed in accordance with the contract.
- (95) Monthly Section 5 Fee is the monthly amount identified in the *Commercial Workbook* tab section 5 maintenance and is the lump sum calculated by applying the *construction phase fee percentage* to the forecast Defined Cost for each month's activities for *section 5* in the *Commercial Workbook* tab section 5 maintenance.
- (96) Nonconformity has the meaning given to it in ISO 9000 and "Nonconformance" is construed accordingly.
- (96A) Pandemic is an Epidemic (other than Covid-19)
 - occurring worldwide or over a very wide area crossing international boundaries and not just national boundaries within the United Kingdom,
 - affecting a significant percentage of the United Kingdom's population,
 - requiring the use of emergency powers by the government of the United Kingdom to control its spread and containment and
 - declared as such by the World Health Organisation and government of the United Kingdom.
- (97) Parent Company Guarantee is a guarantee of the *Contractor's* performance in one of the forms (as directed by the *Client*) set out in the Scope.
- (98) Pay is all emoluments and outgoings relating to employment including to PAYE, National Insurance Contributions, remuneration and benefits.
- (99) Performance Incentive Fund is the incentive calculated in accordance with the Performance Initiative Fund Schedule.
- (100) Performance Incentive Fund Schedule is the *performance incentive fund schedule* unless later changed in accordance with the contract.
- (101) Performance Management Points are points accrued by the *Contractor* in accordance with the quality table in the *performance manual*.
- (102) Performance Repayment is defined in the *performance manual*.
- (103) Performance Requirement is the required standard for performance of each element of the *works* as specified in the Scope.
- (104) Performance Manual is the *performance manual* unless later changed in accordance with the contract.
- (105) PIF Final Repayment is defined in the Performance Manual.
- (106) PIF Repayment is defined in the Performance Manual.
- (107) Plant is Plant and Materials which are not materials.
- (108) Potential Exit Transferring Employee is a Contractor Employee who is, at the relevant time, assigned to Providing the Works for the purposes of the application of TUPE and any person who would have been an Exit Transferring Employee had they not objected or resigned under Regulation 4(7), 4(9) or 4(11) TUPE.

- (109) Pre-commencement Development Consent Order Activities are the *pre-commencement development consent order activities* unless later changed in accordance with the contract Scope.
- (110) Project Management Points are points accrued by the *Contractor* in accordance with the Performance & Quality Management section of *performance manual*.
- (111) Project Road means the A303 trunk road within the Site.
- (112) Protester is any person or persons engaged in Protester Action.
- (113) Protester Action is any action taken by any person or persons protesting against the carrying out of any part of the *works* or use of the Project Road, or users of the Project Road, or of roads in general which directly or indirectly affects performance of the *works* including action or threatened action which results in
- increases in the Defined Cost of performing the *works* (including increased security costs) and
 - delays in performing the *works*.
- (114) Quality Statement is the *quality statement* unless later changed in accordance with the contract.
- (115) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract or the *works*.
- (116) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (117) Relevant Authority is any
- court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, (or of the Welsh Ministers or the National Assembly for Wales) and
 - other person whose authority is or may be required for the carrying out of all or any part of the *works* or which has any authority or right in respect of any part of any of the *works* under any law.
- (118) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.
- (119) Retrospective Performance Repayment is defined in the *performance manual*.
- (120) 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). Security Management Plan (SMP) is the plan outlining the *Contractor's* obligations for securing the Site and the Working Areas contain in the Scope.
- (121) Scheme means the A303 Amesbury to Berwick Down (Stonehenge) project

- (122) The Secretary of State is the Secretary of State for Transport.
- (123) Should means the *Contractor* complies with the relevant requirements unless agreed otherwise by the *Project Manager*.
- (123A) Slurry Treatment Plant means a facility to separate excavated material from a slurry, prepare and temporarily store the separated materials for disposal or reuse but excluding the Equipment to transport the slurry from and to the Tunnel Boring Machine to the facility.
- (123B) Slurry Treatment Plant And Tunnel Lining Mould Material are materials
- that form part of a Slurry Treatment Plant (but not slurry) or Tunnel Lining Mould and
 - used to repair and maintain a Slurry Treatment Plant or Tunnel Lining Mould.
- (124) Staff are employees employed by the *Contractor* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Works at any time.
- (125) Stonehenge Tunnel has the meaning given to it in Table 13-1 (List of new structures) of Volume 2 Part 2 (Design and Technical Requirements) of the contract.
- (125A) STP Payment is
- a payment due on award of a contract to a *slurry treatment plant supplier* for the supply of a Slurry Treatment Plant,
 - a payment due to a *slurry treatment plant supplier* on commencement of fabrication of a Slurry Treatment Plant and
 - a payment due to a *slurry treatment plant supplier* on successful commissioning of a Slurry Treatment Plant within the Site.
- (126) Support Team is the *support team* unless later changed in accordance with the contract
- (127) 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 Contract Date or to a civil penalty for fraud or evasion.
- (128) TBM Payment is
- a payment due on award of a contract to a *tunnel boring machine supplier* for the supply of a Tunnel Boring Machine,
 - a payment due to a *tunnel boring machine supplier* on commencement of fabrication of a Tunnel Boring Machine,
 - a payment due to a *tunnel boring machine supplier* on completion all of factory acceptance tests for a Tunnel Boring Machine and

- a payment due to a *tunnel boring machine supplier* on successful commissioning of a Tunnel Boring Machine in the Working Area.
- (129) Threshold Level is the threshold level of Performance Management Points stated in the *performance manual*.
- (129A) TLM Payment is
- a payment due on award of a contract to a *tunnel lining mould supplier* for the supply of a Tunnel Lining Mould,
 - a payment due to a *tunnel lining mould supplier* on commencement of fabrication of a Tunnel Lining Mould and
 - a payment due to a *tunnel lining mould supplier* on successful commissioning of a Tunnel Lining Mould.
- (130) Transfer Date is the relevant date or dates on which a relevant transfer for the purposes of TUPE takes effect on the expiry or termination of the contract.
- (131) Trespasser is any person (other than a Protester) on, but not entitled to be on, the Site or Working Areas.
- (132) Tunnel Boring Machine means the machine for advancing the main tunnel bores of the Stonehenge Tunnel (but excluding the cut and cover section).
- (133) Tunnel Boring Machine Materials are materials
- that form part of a Tunnel Boring Machine,
 - used to operate a Tunnel Boring Machine and
 - used to repair and maintain a Tunnel Boring Machine.
- (133A) Tunnel Lining Mould means the moulds required to fabricate or manufacture a complete tunnel ring.
- (134) TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (135) World Heritage Site (“WHS”) is a natural or man-made site, area, or structure recognized as being of outstanding international importance by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as having cultural, historical, scientific or other form of significance, and is legally protected by international treaties. The world heritage site comprises two distinct components, Avebury to the north and Stonehenge to the south and the Scheme crosses the Stonehenge component only. All subsequent references to the WHS in the contract refer to the Stonehenge component.

Amend the following terms

11.2 (10)

Delete definition and replace with

the Fee is the sum of

- the Mobilisation Phase Fee,
- the Construction Phase Fee (including any TBM Fee and Construction Phase Works Fee In The Mobilisation Phase) and
- the sum of the Monthly Section 5 Fees.

11.2 (26) Disallowed Cost

In the definition of “Disallowed Cost”

- (i) in first bullet point after “records” and before “,” add “(including the absence of sufficient recorded evidence of people costs)”
- (ii) after “and the cost of” insert the following additional bullet points
 - complying with paragraphs S1106.4 and S1110.1 of the Scope (part 1 – General Requirements),
 - implementing any modifications or enhancements to the *Contractor’s* data collection systems (or those of a subcontractor, at any stage of remoteness from the *Client*) to meet the *Client’s* requirements as stated in the Scope,
 - carrying out additional audits of the *Contractor’s* quality management system during any period while the number of Performance Management Points in effect is above the Threshold Level,
 - Plant and Material outside the Working Area other than in accordance with clause Z124.1,
 - replacing a *key person* (and any associated costs),
 - taxes or registration requirements arising in the country where the *Contractor* or a Consortium Member is registered through the execution or delivery of the contract or through the enforcement of any claims by or against the *Contractor*,
- (iii) after the last bullet point delete full stop
- (iv) after the last bullet point insert an additional paragraph as follows, “and any other cost stated in the *conditions of contract* as being a Disallowed Cost”.

12 Interpretation and the law

12.2 Replace clause with

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

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

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

19 Prevention

19.1 Insert after “and which” in the second paragraph

“is not

- a shortage of Staff whether caused by local market fluctuations or otherwise (except where it is due to action taken restriction imposed change in any restriction by the government of the United Kingdom or other government of another country after the Contract Date to control a Pandemic),
- where any of the events set out on clause 91.1 occurs to the *Contractor* or any subcontractor (at any stage of remoteness from the *Client*),
- due to physical conditions encountered,

- due to a weather related event,
- an event attributable to any negligence, omission or default of the *Contractor* or any of its Staff or any subcontractor (at any stage of remoteness from the *Client*)

and which”

and after the fourth bullet point insert

“then this is a “Prevention Event” and”

24 People

24.1 Replace clause with

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

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

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

26 Subcontracting

Insert new clause 26.1A

26.1A The *Contractor* does not place any design works or services with a subcontractor which is not a *design consultant* without the acceptance of the *Project Manager*. A reason for rejecting a proposed Design Consultant is

- it will not allow the *Contractor* to Provide the Works or
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Insert new clause 26.1B

26.1B The *Contractor* does not award any part of the *works* to be performed by a Design Consultant under its subcontract to any other person without the acceptance of the *Project Manager*. A reason for rejecting a change to a Design Consultant's subcontract is

- the proposed Subcontractor has not been accepted by the *Project Manager* or
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

Delete clause 26.2 and replace with

26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that

- the appointment will not allow the *Contractor* to Provide the Works or
- the Subcontractor is a Design Consultant that has not been accepted by the *Project Manager*.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

- accepted the Subcontractor and, to the extent these *conditions of contract* require,
- accepted the subcontract documents.

26.3 Insert an additional bullet point after “A reason for not accepting the subcontract documents is that”

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

28 Assignment

Delete clause 28

29 Disclosure

Delete clause 29

54 Contractor's share

54.3 In line 2 delete “Completion of the whole of the *works*” and insert “ *the initial share date*”

In the last sentence delete “following Completion of the whole of the *works*.” and insert “at the next assessment date after *the initial share date*.”

60 Compensation events

60.1 (1) delete “or” and insert “,” at the end of the first bullet point.

Insert new second and third bullet point

- an instruction to change the Scope in order to resolve an ambiguity or inconsistency between the Development Consent Order and the Scope (but excluding instructions issued to resolve an ambiguity or inconsistency between the Development Consent Order and the Scope provided by the *Contractor* for its design contained in the Quality Statement and identified on the *non-material schedule*),
- to exclude changes to boundary shown on drawings HE551506-AMW-GEN-SW_GN_000_Z-DR-CH-4000 to HE551506-AMW-GEN-SW_GN_000_Z-DR-CH-4016 in (Volume 4 - Contract drawings) for addition boundaries of the site established for at the South East and South West Regional Operational Centres and the Avon and Somerset Police (at the Police and Fire Headquarters) for the evidence recovery control unit (ERCU) and offence viewing and decision system (OVDS) or

and second existing bullet point becomes fourth bullet point.

In the fourth bullet point, after “design” insert “or for which the *Contractor* is responsible under clause Z104.1”.

Insert an additional sub-bullet after the third (original second) main bullet point

“in order to rectify a Defect in the design of the works,”

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”.

60.1 (7) Delete the text and insert “Not Used.”.

60.1 (12) Delete the text and insert “Not Used.”.

60.1 (13) Delete the text and insert “Not Used.”.

60.1 (19) Delete the text and insert “Not Used.”.

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

"provided that in respect of this compensation event no change is made to any Key Date and the Completion Date"

60.2 – Delete this clause.

60.3 – Delete this clause.

70 Title

70.1 and 71.1 After “*Supervisor*” insert “or *Contractor*”.

73.1 Insert at the end of first sentence (before the full stop)

“and Working Area”.

80 *Client’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 *Contractor* has responsibility under the contract)”.

Delete the third main bullet point.

82 Recovery of Costs

Delete clause 82.1 and insert

Any

- cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable or
- costs, losses, liabilities, fines, penalties and expenses (including legal expenses) which might be suffered or incurred by the *Client* in connection with taxes or registration requirements arising in the country where the *Contractor* or a *Consortium Member* is registered through the execution or delivery of the contract or through the enforcement of any claims against the *Contractor*

is paid by the *Contractor*.

83 Insurance cover

Delete clause 83 and insert

“83.1 The *Contractor* provides the insurances stated in, and to comply with the requirements set out in, Annex J to the Scope.”

Option X2 Changes in the law

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

Option X7 Delay Damages

X7.1 After the bullet points add new sentence

“The delay damages paid to the *Client* do not exceed 5% of the total of the Prices.”.

insert new clause X7.4

“If the delay damages due to the *Client* in accordance with this clause X7 equals 2% of the total of the Prices or more, the *Client* may treat such delay as the *Contractor* having substantially failed to comply with its obligations.”.

Option X10 Information modelling

X10.7(3) Delete this sub-clause.

Option X11 Termination by the *Client*

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

Option X13 Performance Bond

in X13.1, delete final two sentences and replace with

“Where the *Contractor* is an unincorporated joint venture, one or more Consortium Members may give the *Client* one or more bonds, provided by a bank or insurer which the *Project Manager* has accepted, for an aggregated amount equal to the amount stated in the Contract Data and in the form set out in the Scope. Where more than one bond is given the value of each bond is not less than

- £5,000,000.00 or
- where the *Contractor* is an unincorporated joint venture and the *Contractor* has provided a certified copy of the joint venture agreement, not less than an amount equal to a Consortium Member’s percentage share participation in the *Contractor* multiplied by £20,000,000.00.

A reason for not accepting a bank or insurer is that it

- does not have a credit rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor’s Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody’s Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Project Manager*,

- does not have a commercial position which is strong enough to carry the bond,
- is not issued by a bank or insurer registered as a company in England and is not subject to the *law of the contract* and a legal opinion in accordance with clause X13.6 is not received,
- the bond is not subject to the *law of the contract* or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

The bond is given eighteen months prior to the earlier of planned Completion of *section 3* shown on the Accepted Programme or the *section 3* Completion Date.”

insert new clause X13.2

“If the bond is not given by the time required in clause X13.1 an amount is withheld from each amount due. Until the earlier of

- the date the bond is given,
- Completion of *section 3* of the *works*,
- the date on which the *Client* takes over the whole of the *works* and
- the withheld amount equals the amount stated in Contract Data for the performance bond,

the amount withheld is one twelfth (1/12th) of the change in the Price for Work Done to Date at each subsequent assessment date.”

insert new clause X13.3

“The amount withheld remains at this amount until the earlier of

- the date when the Defects Certificate is due to be issued. No amount is withheld in the assessments made after the Defects Certificate is due to be issued or
- the date the *Contractor* gives the *Client* the bond in accordance with the contract. Any amount withheld is included in the amount due at the next assessment date.”

Insert new clause X13.4

“The *Client* may make a call on the bond if

- the *Contractor* does not make any payment due from it to the *Client* under the contract,
- the *Contractor* does not correct a notified Defect within its *defect correction period*,
- the credit rating of the issuer of the bond falls below the level set out in clause X13.1 unless, within 14 days of the credit rating of the issuer of the bond falling below the level set out in clause X13.1, the *Contractor* provides a replacement performance bond (in the form set out in the Scope) from a bank or insurer accepted by the *Project Manager* in accordance with clause X13.1 or
- there is an event entitling the *Client* to terminate the *Contractor's* obligation to Provide the Works, irrespective of whether notice or termination has been given.

If the *Client* makes a call on a bond, the *Project Manager* advises the *Contractor* and which reason the call on bond is made.”

Insert new clause X13.5

“If the *Contractor* does not

- provide the bond as required by this clause X13 and

- pay an amount to the *Client* required by the contract

then the *Client* may recover the amount due to be paid to the *Client* from the amount withheld under clause X13.2 or any other sums due to the *Contractor* under the contract.”

Insert new clause X13.6

“If the bank or insurer proposed by the *Contractor* is not a company incorporated in and subject to the *law of the contract*, the *Contractor* provides a legal opinion from a lawyer or law firm which is

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

The legal opinion is addressed to the *Client* 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 bond is valid and binding under applicable local law and in particular covers the matters listed in the Scope.”

Option X14 Not Used

Option X15 *Contractor's design*

Delete clause X15.1 and insert

X15.1 Except for the Excluded Items, the *Contractor* is not liable for a Defect in the *works* due to its design so far as it proves that it used reasonable skill and care that would be expected of a qualified, experienced and competent member of its profession providing professional services in connection with works and services of equivalent type size and complexity to the *works*.

Delete clauses X15.5 and X15.6.

Option X16 Not Used

Option X18 *Limitation of liability*

X18.3 Delete X18.3 and replace with

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

- within the Site and Working Areas is limited to the amount stated in the Contract Data and
- outside the Site and Working Areas is unlimited.”

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

- loss of or damage to the *Client's* property,
- delay damages if Option X7 applies,
- low performance damages if Option X17 applies,
- *Contractor's* share if Option C or Option D applies,

- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Contractor* to insure (but only up to the required level for each type of insurance stated in the Scope),
- infringement of the rights of Others,
- loss or damage
 - to third party property or
 - 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 *Contractor's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Option Y(UK)1 Project Bank Account

Y1.2 delete “Contract Date” and replace with “*Project Manager's* notification of the *starting date* to the *Contractor*”.

Y1.17 delete “two weeks of the Contract Date” and replace with “twelve weeks of the *Project Manager's* notification of the *starting date* to the *Contractor*”.

Schedule of Cost Components

Delete and replace with the document entitled “Template Schedule of Cost Components” in Annex One.

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

Z6 Adjudication

- Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017 and amendments January 2019) 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.
- Z7.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Contractor*,
 - R19 if the modification or infringement was due to a default by the *Client* and
 - R20 if the modification or infringement was due to any other reason

Z8 Subcontracting

- Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
- Z8.2 If the *Contractor* 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 *Client* via the *Project Manager*.
- Z8.3 The *Client* may, having stated the reasons, instruct the *Contractor* to remove a subcontractor. The *Contractor* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.
- Z8.4 Before
- appointing a proposed subcontractor or
 - allowing a subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Project Manager* for acceptance
- either
 - a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or 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 subcontractor or subcontractor and

- 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

Z8.5 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Project Manager* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Project Manager* is not satisfied that the proposed subcontractor or 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.

Z8.6 If requested by the *Project Manager*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.4.

Z8.7 If, following the acceptance of a submission under clause Z8.5, 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 similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

the *Project Manager* may instruct the *Contractor* to

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

Z9 Merger, take – over, Change of Control and financial distress

Z9.1 Not Used.

Z9.2 The *Contractor* notifies the *Project Manager* immediately if a Change of Control has occurred.

Z9.3 If a Change of Control occurs without the *Project Manager's* prior consent or will not allow the *Contractor* to Provide the Works, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. 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 A2.

Z9.4 The *Contractor* notifies the *Project Manager* 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 the contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

Z9.5 The *Contractor* notifies the *Project Manager* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.

Z9.6 The *Contractor* notifies the *Project Manager* 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 or
- any Parent Company Guarantee, Form of Performance Security or any Alternative Guarantee becomes invalid or unenforceable for any reason.

Z9.7 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Project Manager* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Works with immediate effect. 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 A2.

Z9.8 Not Used.

Z9.9 If a Change of Control occurs, the *Contractor* provides to the *Project Manager*

- 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 *Project Manager* in order to determine whether the Controller meets the Financial Standing Test and
- any other information requested by the *Project Manager* in order to satisfy itself that the *Contractor* remains in a position to Provide the Works.

Z9.10 If a Change of Control or any of the events listed in clauses Z9.4 to Z9.6 occurs, the *Project Manager* may require the *Contractor* to give to the *Client*

- a Parent Company Guarantee from the relevant Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Contractor* and accepted by the *Project Manager* or
- a Form of Performance Security, (or an alternative form of bond agreed by the *Project Manager* from an alternative guarantor proposed by the *Contractor* and accepted by the *Project Manager*) if
 - there is no Controller,
 - the mandatory or discretionary grounds (as applied to the contract) for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 apply to the Guarantor,
 - the Controller does not meet the Financial Standing Test and a suitable alternative guarantor is not acceptable or
 - if agreed by the *Project Manager* and the *Contractor* or relevant Consortium Member.

The *Contractor* provides the *Project Manager* with the information listed in clause Z9.9 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Project Manager*) and any further information requested by the *Project Manager* concerning the alternative guarantor.

Z9.11 A reason for not accepting an alternative guarantor (as referred to in the first bullet point at clause Z9.10) proposed by the *Contractor* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9.15 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.6 has occurred.

Z9.11A A reason for not accepting an alternative guarantor (for a Form of Performance Security, or an alternative a form of bond agreed by the *Project Manager*) proposed by the *Contractor* is that it

- does not have a Credit Rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Project Manager*,

- does not have a commercial position which is strong enough to carry the bond,
- is not issued by an office of the proposed alternative guarantor located in England and is not subject to the *law of the contract*,
- the Form of Performance Security (or an alternative a form of bond agreed by the *Project Manager*) is not subject to the *law of the contract* or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

Z9.12 If so required by the *Project Manager*, the *Contractor* within four weeks after the *Project Manager* notifies the requirement gives to the *Client*

- a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
- a Form of Performance Security, or an alternative form of bond agreed by the *Project Manager*

for the *Contractor* or relevant Consortium Member the notification refers to.

Z9.13 The *Project Manager* 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 eighteen (18) months of the *Project Manager's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.

Z9.14 If

- the *Contractor* fails to notify the *Project Manager* that an event listed in clause Z9.6 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 Z9.12 or fails to provide the legal opinion required by clause Z9.15,
- the *Contractor* does not give to the *Client* a
 - Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Project Manager* or
 - Form of Performance Security or an alternative form of bond agreed by the *Project Manager*

within four weeks of a request from the *Project Manager* to do so or

- the *Contractor* fails to demonstrate to the *Project Manager* that the Controller or the alternative guarantor accepted by the *Project Manager* will meet the Financial Standing Test within eighteen months (18) of the *Project Manager's* acceptance

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

Z9.15 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 and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is

- independent of the relevant entity,
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
- agreed by the *Project Manager*.

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

- Z9.16 If accepted by the *Project Manager*, the alternative guarantor becomes the Guarantor for the *Contractor* or the relevant Consortium Member and the credit ratings become the *credit rating* for the Guarantor.
- Z9.17 A failure to comply with this clause Z9 is treated as a substantial failure by the *Contractor* to comply with its obligations

Z10 Joint ventures

- Z10.1 This clause applies if the *Contractor* is an unincorporated joint venture.
- Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under the contract.
- Z10.3 The *Contractor* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.
- Z10.4 The *Contractor* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Contractor*.
- Z10.5 A Consortium Member gives not less than four weeks' notice to the *Project Manager* of any proposed termination of the joint venture arrangement.
- Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Contractor* to comply with its obligations.
- Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 & 91.1 of the *conditions of contract* are amended by inserting after "the other Party" the words "or in the case of the *Contractor*, any Consortium Member".

Z11 Parent Company Guarantee

- Z11.1 Where a *Contractor* or Consortium Member has a Controller, the *Contractor* gives to the *Client* a Parent Company Guarantee. The Parent Company Guarantee is given by the Contract Date.

Parent Company Guarantees are given for

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

using the version directed by the *Client*.

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

- Z11.2 Where a *Contractor* or Consortium Member has no Controller and the *Client* has agreed an alternative form of guarantee, the *Contractor* gives to the *Client* the Alternative Guarantee. The Alternative Guarantee is given by the Contract Date.

Alternative Guarantees are given for

- a standalone company – from its Guarantor or
- a joint venture (whether incorporated or unincorporated) – from the Guarantor of each relevant Consortium Member (which does not have a Controller).

In all cases it is for the *Client* to decide whether it will accept an Alternative Guarantee from the Guarantor.

- Z11.3 A failure to comply with this clause Z11 is treated as a substantial failure by the *Contractor* to comply with its obligations.

Z12 Discrimination, Bullying and Harassment

- Z12.1 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with

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

resulting from any act or omission of the *Contractor* in connection with the contract.

Z13 Intellectual Property Rights (IPRs)

- Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with the 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 with 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 or equivalent law of the country of the subcontract) to enforce the obligations in this clause.

- Z13.4 In this clause, additional definitions are defined in the Scope. The *Contractor* warrants to the *Client* that
- the Software does not contain any Open Source Software other than OSS,
 - the OSS is licensed upon terms which permit the use of such Open Source Software by the *Contractor*, the *Client*, other *Client's* contractors (and their subcontractors) and the *Client's* end users for all purposes contemplated by the contract and
 - all components of the Software
 - are free from material design and programming errors,
 - provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
 - the Scope,
 - the Quality Statement,
 - the Documentation and
 - do not infringe any Intellectual Property Rights.
- Z13.5 The *Contractor* at all times, during the *works* and after the Completion, indemnifies the *Client* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- Z13.6 If the *Contractor* has not avoided or resolved the IPRs Claim (as defined in the Scope) then without prejudice to the indemnity set out in clause Z13.5, the *Contractor* is liable for all reasonable and unavoidable costs of the substitute items and services including the additional costs of procuring, implementing and maintaining the substitute items.

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. This notice is a compensation event. 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.

Z15 Tax Non – Compliance

- Z15.1 The *Contractor* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Contractor* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.
- Z15.2 The *Contractor* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,

- any mitigating factors that it considers relevant and
- any other information requested by the *Client*.

Z15.3 The *Contractor* is treated as having substantially failed to comply with its obligations if

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

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 works

Z17.1 The *Project Manager* may instruct the *Contractor* that

- part of the *works* is to be permanently removed from the contract or
- for urgent reasons of health and safety, part of the *works* is to be temporarily removed from the contract.

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

Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R22, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*.

Z17.3 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Project Manager*

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

Z17.4 The *Project Manager* may give the *Contractor* an instruction to Provide the Works (or parts of the *works*) in relation to highway assets outside the Affected Property owned by the *Client* or a third party. The instruction states

- the assets to which it relates,
- the parts of the *works* which the *Contractor* is to provide in relation to them,
- the expected duration of the instruction and
- any constraints on how the *Contractor* is to Provide the Works.

Before giving an instruction under this clause, the *Project Manager* consults with the *Contractor* and confirms that giving the instruction will not prejudice the *Contractor's* ability to comply with its obligations under the contract.

Z18 Corruption or loss of data

- Z18.1 If any data of the *Client* is corrupted, lost or degraded as a result of the *Contractor* default so as to be unusable, the *Contractor* immediately reports this to the *Project Manager* and
- the *Project Manager* may instruct the *Contractor* to restore the data in accordance with the *Project Manager's* requirements (and any cost incurred by the *Contractor* in so doing is Disallowed Cost) or
 - the *Client* may itself restore the data (and the *Contractor* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

Z19 Termination and omission of work

- Z19.1 The following is added at the end of clause 90.4 of the *conditions of contract*:
“unless instructed otherwise by the *Project Manager*”.
- Z19.2 Delete Item A4 in clause 93.2 of the *conditions of contract*.
- Z19.3 The following are treated as a substantial failure by the *Contractor* to comply with his obligations
- the *Contractor's* performance as measured in accordance with the current edition of the *Client's* Collaborative Performance Framework (or any replacement for it) is below the *failure level* or
 - a key resource needed by the *Contractor* to Provide the Works is no longer available and the *Contractor* does not propose an alternative resource agreeable to the *Project Manager*.

Z20 - Z49 Not Used

Z50 Health and Safety Plan

- Z50.1 The *Client* may terminate if the *Contractor* has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the *starting date*. This is treated as a termination because of a substantial failure of the *Contractor* to comply with his obligations.
- Z50.2 The period for producing the Health and Safety Plans may be extended by not more than four weeks if the *Project Manager* and the *Contractor* agree to the extension before the Health and Safety Plans are due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.
- Z50.3 If the *Client* does not terminate, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has produced all the Health and Safety Plans in the form which the contract requires.

Z51 Not Used

Z52 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

- Z52.1 The inclusion of this clause Z52 does not indicate or confirm that the *Client* considers or anticipates that TUPE will apply at the termination or expiry of the contract.
- Z52.2 The *Contractor* represents, warrants and undertakes to the *Client* that no Contractor Employee is assigned to the *works* to the extent that his or her employment or any Employment Liabilities in respect of his or her employment will or is likely to transfer to the *Client* or an Incoming Contractor under TUPE in respect of the termination or expiry of the contract.

- Z52.3 The *Contractor* provides to the *Client* within 10 days of the *Client's* request such information in relation to Contractor Employees as the *Client* may require including to

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

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

- Z52.4 The *Contractor* acknowledges that the *Client* may disclose information provided by the *Contractor* to

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

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

- Z52.5 During the 8 months period immediately prior to the Completion Date, the *Contractor* submits for the acceptance of the *Client* any proposals to

- materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the Scope of the contract,
- materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the contract or
- move or deploy any key person away from the performance of the works.

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

- Z52.6 The *Contractor* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *works*.
- Z52.7 The *Contractor* complies with, and ensures that any subcontractor (at any stage of remoteness from the *Client*) complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's Government.
- Z52.8 No later than 30 days prior to a relevant Transfer Date, the *Contractor* provides to the *Client*, any Incoming Contractor and Incoming Contractor Subcontractor, as relevant, the information set out in clause Z52.3 in relation to each Potential Exit Transferring Employee such information to include the Final Exit List and such additional information as is required by Regulation 11 of TUPE
- Z52.9 The *Contractor* is responsible for, and indemnifies the *Client*, the Incoming Contractor and any Incoming Contractor Subcontractor, in respect of all Pay and other Employment Liabilities
- in relation to the Contractor Employees and payable in respect of any period before any relevant Transfer Date,
 - as a result of any failure by the *Contractor* or any direct or indirect subcontractor to comply with regulations 13 and 14 of TUPE except where the failure arises from the failure of the *Client*, Incoming Contractor or any Incoming Contractor Subcontractor to comply with its obligation under regulations 13 and 14 of TUPE and
 - the employment and termination of employment whether before or after the Transfer Date of any persons employed or engaged by the *Contractor* or any subcontractors (at any stage of remoteness from the *Client*) (other than any employee who immediately before the Transfer Date is an Exit Transferring Employee and whose name is included on the Final Exit List provided in accordance with the provisions of clause Z52.8) whose employment or claims or liabilities arising out of their employment or its termination transfers to the *Client* or an Incoming Contractor following the Transfer Date pursuant to or by virtue of TUPE or who claim that their employment or those claims or liabilities transfer.

Z53 Pensions

- Z53.1 The *Contractor* indemnifies the *Client*, any Incoming Contractor and any Incoming Contractor Subcontractor and holds it harmless at all times from any Employment Liabilities suffered or incurred by it arising from claims by Exit Transferring Employees or by trade unions, elected Exit Transferring Employee representatives or staff associations in respect of all or any Exit Transferring Employees which
- relate to pension rights benefits or liabilities arising in respect of periods of employment on or before the Transfer Date including any pension rights, benefits or liabilities which are alleged to transfer to the Incoming Contractor, any Incoming Contractor Subcontractor or the *Client* following any such Transfer Date or
 - arise out of the failure of the *Contractor*, any of its indirect or direct subcontractors or any subsequent transferee of the Exit Transferring

Employees to comply with the relevant provisions of the section headed “Pensions” in the Scope prior to the Transfer Date.

Z54 Not Used

Z55 Payment of the *Contractor's* share

Z55.1 If, prior to Completion of the whole of the *works*, the Price for Work Done to Date exceeds the total of the Prices, the *Project Manager* makes an assessment of the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date at each assessment date. The total of the Prices includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.

This share is included in the amount due to the *Contractor*.

Z56 Construction Industry Scheme

Z56.1 In this clause (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).

Z56.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z56.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* 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.

Z56.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration

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

Z57 Infrastructure Act 2015

Z57.1 The *Contractor* Provides the Works in compliance with, and so as not to put the *Client* in breach of

- the Licence and
- any other directions and guidance issued by the Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Project Manager* to the *Contractor*).

- Z57.2 The *Project Manager* notifies the *Contractor* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *works*. The *Contractor* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

Z58 Revisions to Quality Statement

- Z58.1 The *Contractor* may submit to the *Project Manager* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that
- it will not enable the *Contractor* to meet a Performance Requirement,
 - it will unacceptably increase the risk of failure to meet a Performance Requirement,
 - it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015,
 - it will not enable the *Contractor* to achieve the level of performance specified in the Quality Statement,
 - the *Client* has not agreed to the removal of a deliverable in the Quality Statement or
 - it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement.
- Z58.2 A revision to the Quality Statement accepted by the *Project Manager* is not a compensation event unless the revision is in response to an instruction given to remove a proposal listed on the *non-material schedule* to resolve an ambiguity or inconsistency with the Development Consent Order.
- Z58.3 The *Project Manager* may instruct the *Contractor* to amend the Quality Statement where it is not compliant with the Scope provided by the *Client*. This instruction is not a compensation event unless such instruction is given to remove a proposal listed on the *non-material schedule* to resolve an ambiguity or inconsistency between the Development Consent Order.
- Z58.4 A revision to the Quality Statement agreed by the *Client* in accordance with the Scope is not a compensation event unless the revision is in response to an instruction to remove a proposal listed in the *non-material schedule* to resolve an ambiguity or inconsistency between the Development Consent Order.

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.
- Z59.7 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 Tax Arrangements of Public Appointees

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- Z60.2 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- Z60.3 The *Client* may, at any time during the term of the contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it.
- Z60.4 If the *Contractor* fails to provide information in response to a request under clause Z60.3
- within the period for reply or
 - which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it
- the *Client* may
- treat such failure as a substantial failure by the *Contractor* to comply with his obligations or

- instruct the *Contractor* to replace the relevant member of Staff.

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

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

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

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

Z61 – Z103 Not Used

Z104 Single point design responsibility

Z104.1 The *Contractor* accepts sole responsibility for the design of the whole of the *works*, whether carried out before or after the Contract Date and including any design carried out by or on behalf of the *Client*, 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 *Contractor*.

Z104.2 The *Contractor* is not relieved from its liabilities or obligations under the contract and such liabilities or obligations are not restricted or qualified in any way by

- the presence of the *Client*, *Project Manager*, *Supervisor* or any representative of those on the Site or the Working Areas,
- the carrying out of tests or inspections by the *Supervisor* or by the *Contractor* (whether or not watched by the *Supervisor*) or
- any instruction, agreement, acceptance or inspection made or given by or on behalf of the *Project Manager* or *Supervisor* (or by any failure to make or give the same).

Z105 Innovation – Title to Equipment

Z105.1 At Completion or (if earlier) when an Innovation is removed from the Working Areas, the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title in any Equipment used in the development of the Innovation. The *Contractor* ensures that the legal and beneficial title in the relevant Equipment transfers from the *Contractor* or a subcontractor (at any stage of remoteness from the *Client*) to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

Z106 Extended liability period for Plant

Z106.1 If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant and Material stated in the Contract Data requires the replacement of part of the Plant and Material, the *Contractor* corrects any further Defect in the part which has been replaced during the *extended liability period*.

Z106.2 The *Contractor* carries the risk of loss or damage caused by or resulting from work in correcting a Defect after the *defects date*.

Z107 Not Used

Z108 Not Used

Z109 Support Team

Z109.1 The *Project Manager* may change the Support Team. The *Project Manager* notifies the *Contractor* of any change to the Support Team.

Z110 Legal Proceedings in the name of the *Client*

Z110.1 The *Contractor* indemnifies and keeps indemnified the *Client* in respect of any claims or losses suffered which may arise out of or in the course of or in connection with the taking of any measures authorised by the *Client* in accordance with the contract, including

- the taking of any legal proceedings,
- enforcement of any court order,
- enforcement of any applicable law without a court order,
- the doing of anything whatsoever taken, enforced or done or purported to be taken, enforced or done

in the name of or on behalf of the *Client*.

Z110.2 If the *Client* revokes (in whole or in part including as to any specific proceedings) any *Client* authority granted in accordance with the contract (as referred to in S 216.12 of Part 1 of the Scope), the *Contractor* is released from its indemnity under clause Z110.1 save to the extent of any accrued or contingent liability thereunder which has arisen before the date of the revocation of authority pursuant to this clause Z110.2 and to the extent of any liability which arises as a result of

- a breach by the *Contractor* of its obligations under the contract before or after the date of revocation of authority or
- the manner in which the *Contractor* exercised the authority granted (whether or not in breach of such obligations) where such liability ought to have been avoided by the *Contractor*.

Z110.3 The *Client* is not responsible for

- the presence on or around, or entry onto or around, the Site and Working Areas of any Protester or Trespasser,
- any other interference with or affecting the Site and Working Areas or the vicinity of it caused by any Protester or Trespasser,
- any other interference with the *works* by or caused by any Protester or Trespasser or
- any act, omission or default of a Protester or Trespasser.

Z110.4 As between the *Client* and the *Contractor*, the *Contractor* bears, without recourse to the *Client*, any loss suffered by either Party and any other person which is caused by any Protester or Trespasser, including any damage to property, personal injury,

death or loss of income to the extent caused or contributed by a failure of the *Contractor* to comply with the SMP. Nothing in this clause Z110.4 affects

- the additional compensation event for Protester Action in Contract Data part one,
- any right of the *Client* to make or recover any claim against any Protester or Trespasser for any damage suffered by the *Client* or Others or
- any right of the *Contractor* to make or recover any claim against any Protester or Trespasser for any damage suffered by the *Contractor*.

Z111 Physical Conditions and materials Provided by the *Client*

Z111.1 The *Contractor* has inspected the physical conditions and other conditions of or affecting the Site (including any existing structures and sub-surface conditions and services) and is fully acquainted with the same and has obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect Providing the Works and no failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, entitles the *Contractor*

- to a change in the Prices,
- to claim in damages or otherwise any additional sum
- to a change in a Key Date or
- to change to a Completion Date.

Z111.2 The *Contractor* is not entitled to rely upon any survey, report or other materials prepared by or on behalf of the *Client* regarding any such matter as is referred to in this clause Z111.

Z111.3 The *Client* makes no representation or warranty as to the accuracy or completeness of any material or any representation or statement, whether negligently or otherwise made, therein contained.

Z111.4 The *Contractor* does not have or make any claim whether in contract, tort or by way of misrepresentation or otherwise in respect of information provided or statements made by or on behalf of the *Client*.

Z112 Finalisation of Defined Cost for Divisions

Z112.1 Following completion of either a Division or following an anniversary of the *starting date*, the *Project Manager* may notify the *Contractor* that it wishes to finalise the Defined Cost for the Division or the preceding Contract Year.

Z112.2 Within four weeks of the *Project Manager's* notification, the *Contractor* submits to the *Project Manager* for acceptance its assessment of the Defined Cost for the Division and makes available for inspection the records necessary to demonstrate that it has been correctly assessed.

Z112.3 Within six weeks of the *Project Manager's* notification, the *Contractor* submits to the *Project Manager* for acceptance its assessment of the Defined Cost for the preceding Contract Year and makes available for inspection the records necessary to demonstrate that it has been correctly assessed.

- Z112.4 The *Project Manager* reviews the material made available, and within four weeks
- accepts the Defined Cost for the Division or for the preceding Contract Year as correct,
 - notifies the *Contractor* that further material is needed or
 - notifies the *Contractor* of errors in its assessment.

- Z112.5 If the *Project Manager* does not notify a decision on the Defined Cost for the Division or a preceding Contract Year within the time stated, the *Contractor's* assessment is treated as correct.

- Z112.6 If the *Contractor* fails to
- submit its assessment of the Defined Cost for a Division and make the necessary records available for inspection,
 - submit its assessment of the Defined Cost for a preceding Contract Year and make the necessary records available for inspection,
 - provide any further material requested or
 - advise the correction of the errors in its assessment

within the time stated, the *Project Manager* may assess the Defined Cost for the Division or for the preceding Contract Year and notify the *Contractor* of the assessment.

A reason for not accepting a *Contractor's* submission for its assessment of

- the Defined Cost for a Division or
- the Defined Cost for the preceding Contract Year

is that it

- is not in accordance with the contract,
- the Defined Costs are not substantiated by the records and supporting evidence
- contains errors or
- it includes Disallowed Costs.

Z113 Not Used

Z114 The Affected Property

- Z114.1 The *Client* may change the Affected Property.

Z115 Enabling Works and Pre-commencement Development Consent Order Activities

- Z115.1 The *Project Manager* may alter
- the Enabling Works and
 - Pre-commencement Development Consent Order Activities
- to reflect identified works and activities that needs to be delivered before the *Contractor* is issued a notice to proceed to Construction Phase.

Z115.2 The Party delivering a Pre-commencement Development Consent Order Activity is stated in Contract Data.

Z115.3 Any revision to the Enabling Works or Pre-commencement Development Consent Order Activities by the *Project Manager* is not a compensation event.

Z116 Maintenance Completion Date

Z116.1 The *Client* may change the Maintenance Completion Date.

Z117 Mobilisation Phase

Z117.1 The cost of any work that is not included in the accepted detailed forecasts of the total Defined Cost of the work to be done in the Mobilisation Phase Activities is treated as a Disallowed Cost.

Z117.2 The *Project Manager* may instruct the *Contractor* to perform Construction Phase Activities (or proportion of an activity) during the Mobilisation Phase, the “Construction Phase Activities During The Mobilisation Phase”. This instruction is not a compensation event.

Z118 Notice to proceed to Construction Phase

- Z118.1 The *Project Manager* issues a notice to proceed to Construction Phase when
- the *Contractor* has
 - completed all the Deliverables for the Mobilisation Phase,
 - obtained approvals and consents from Others as stated in the Scope,
 - completed and discharged its Pre-commencement Development Consent Order Activities,
 - delivered its processes and procedures for Providing the Works so that they are developed and integrated with *Client's* own processes,
 - embedded its *leadership team* into an integrated structure with the *Client, Project Manager, Supervisor* and Support Team and
 - the order for the Tunnel Boring Machine has been placed by the *Contractor*,
 - unless agreed otherwise with the *Client*
 - the *Client* has completed the Enabling Works and its Pre-commencement Development Consent Order Activities and
 - the *Project Manager's* assessment of the forecast *Client's* Outturn Costs is less than the Combined Budget and
 - the *Client* has confirmed the *works* are to proceed.
- Z118.2 If a notice to proceed to Construction Phase is not issued for any reason, the *Project Manager* issues an instruction that any remaining work is removed from the Scope. This instruction is not a compensation event. Following this instruction
- the *Project Manager* does not assess the *Contractor's* share, the *Contractor* is not paid its share of the savings and does not pay its share of the excess and

- the *Contractor* is not entitled to
 - any Construction Phase Fee (except Construction Phase Fee In Stage One assessed in accordance with clause Z121.4) and
 - any further Mobilisation Phase Fee over that calculated in accordance with clause Z121.4.

Z118.3 If the *Project Manager* does not issue a notice to proceed to Construction Phase the *Client* may appoint another contractor to complete the *works*.

Z118.4 If a notice to proceed to Construction Phase is not issued for any reason, the *Contractor* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the *works* or any part of them.

Z119 Incentives

Z119.1 At the *initial share date*, the *Project Manager* makes a preliminary assessment of the Combined Budget Incentive in accordance with the Combined Budget Incentive Schedule. Any amount due to the *Contractor* from the Combined Budget Incentive (the “**Initial Combined Budget Incentive Share**”) is included in the amount due following the *initial share date*.

Z119.2 At the assessment date following the mid-point between *initial share date* and Maintenance Completion Date the *Project Manager*

- makes an assessment of the Combined Budget Incentive and
- an assessment of any Combined Budget Incentive Repayment

in accordance with the Combined Budget Incentive Schedule. The *Contractor* pays the *Client* any Combined Budget Incentive Repayment and is included in the amount due to the *Contractor* at that assessment date.

Z119.3 At the *combined budget incentive date*, the *Project Manager* calculates the Combined Budget Incentive in accordance with the Combined Budget Incentive Schedule. Any

- Combined Budget Incentive payment due to the *Contractor* in accordance with the Combined Budget Incentive Schedule or
- Combined Budget Incentive Repayment due to the *Client* in accordance with the Combined Budget Incentive Schedule

is included in the amount due following the last *defects date*.

Z119.4 At the *initial share date*, the *Project Manager* makes a preliminary assessment of the Performance Incentive Fund and any Initial PIF Payment in accordance with the Performance Incentive Fund Schedule. Any Initial PIF Payment is included in the amount due following the *initial share date*.

Z119.5 At the assessment date following the mid-point between *initial share date* and Maintenance Completion Date the *Project Manager* makes an assessment of

- the Performance Incentive Fund and any Initial PIF Payment and
- any PIF Repayment

in accordance with the Performance Incentive Fund Schedule. The *Contractor* pays the *Client* any PIF Payment Repayment and is included in the amount due to the *Contractor* at that assessment date.

Z119.6 At *performance incentive fund date*, the *Project Manager* calculates the Performance Incentive Fund Incentive in accordance with the Performance Incentive Fund Schedule. Any

- Adjusted Final PIF Payment due to the *Contractor* in accordance with the Combined Budget Incentive Schedule or
- PIF Final Repayment due to the *Client* in accordance with the Combined Budget Incentive Schedule

is included in the amount due following the *defects date*.

Z119.7 The *Client* may modify the Performance Incentive Fund Schedule or the Combined Budget Incentive Schedule to reflect

- any revised business priorities and
- identified work that needs to be delivered by a Key Date

provided that the change is not specifically intended to

- penalise the *Contractor* for poor performance in relation to any particular performance measures or
- prejudice the *Contractor's* ability to earn a Performance Incentive Fund or Combined Budget Incentive.

The *Client* consults with the *Contractor* before modifying the Performance Incentive Fund Schedule or the Combined Budget Incentive Schedule, but the *Contractor* acknowledges that the *Client* has the final decision.

Z120 Payment Bond

Z120.1 The *Contractor* issues a payment bond to the *Client* for an amount equal to any payment to

- a *tunnel boring machine supplier*,
- a *slurry treatment plant supplier* and
- *tunnel lining mould supplier*

unless the *Project Manager* states that

- a bond is not required for a payment to
 - a *tunnel boring machine supplier*
 - a *slurry treatment plant supplier* or
 - *tunnel lining mould supplier* or
- no further bonds are required.

Where the *Contractor* is an unincorporated joint venture, one or more Consortium Members may give the *Client* one or more bonds, provided by a bank or insurer which the *Project Manager* has accepted, for an aggregated amount equal to the relevant payment to a *tunnel boring machine supplier*, a *slurry treatment plant supplier* and *tunnel lining mould supplier* and in the form set out in the Scope.

The bond is in the form set out in the Scope (or such other form as the *Client* may reasonably require). Any amount to be paid by the *Client* in respect of payment to

a tunnel boring machine supplier a slurry treatment plant supplier and tunnel lining mould supplier is included at the next assessment date after either

- the *Client* receives the bond or
- the *Project Manager* has stated that a bond is not required for the amount of a payment to
 - a tunnel boring machine supplier,
 - a slurry treatment plant supplier or
 - tunnel lining mould supplier.

Z120.2 A payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting a proposed bank or insurer is that it

- does not have a credit rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)
 unless agreed otherwise by the *Project Manager*,
- does not have a commercial position which is strong enough to carry the bond,
- is not issued by a bank or issuer registered as a company in England and is not subject to the *law of the contract* and a legal opinion in accordance with clause Z120.6 is not received,
- the bond is not subject to the *law of the contract* or
- does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

Z120.3 If

- the credit rating of the issuer of a payment bond falls below
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.),
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.) or
- the bond becomes invalid or unenforceable for any reason

the *Contractor* replaces the payment bond with a new payment bond issued by a bank or insurer accepted by the *Project Manager* in the form set out in the Scope (or such other form as the *Client* may reasonably require) within four weeks, unless the *Project Manager* states that a replacement payment bond is not required.

Z120.4 A failure to comply with clause Z120 is treated as a substantial failure by the *Contractor* to comply with its obligations and no further payments are made to the *Contractor* until a replacement payment bond for any relevant payment bond is provided.

Z120.5 Any payment of Defined Cost under items

- 101 to 104 and
- 111 to 114

of the Schedule of Cost Components is an advanced payment and is considered as repaid only on the Completion of *section 3*. No amount of this advanced payment is considered repaid at any time prior to Completion of *section 3*

Z120.6 If the bank or insurer proposed by the *Contractor* is not a company incorporated in and subject to the *law of the contract*, the *Contractor* provides a legal opinion from a lawyer or law firm which is

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

The legal opinion is addressed to the *Client* 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 bond is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

Z121 Lump sum Fee

Z121.1 Not Used.

Z121.2. If

- one of the compensation events (1), (4), (14), (15) or (18) in clause 60.1 of the *conditions of contract*,
- compensation event (17) occurs and it is related to any earlier implemented compensation event (1), (4), (14), (15) or (18) or
- an additional compensation events in Contract Data part one

occurs

- the Mobilisation Phase Fee,
- the Construction Phase Fee (including any TBM Fee and Construction Phase Works Fee In The Mobilisation Phase) and
- the relevant Monthly Section 5 Fees

are adjusted by applying

- the Mobilisation Phase Fee Percentage to the changes to the Prices for the Mobilisation Phase Activities,
- the Construction Phase Fee Percentage to the changes to the Prices for the Construction Phase Activities (excluding the Maintenance Activities) and
- the Construction Phase fee Percentage to the change to the forecast Defined Cost (shown on *commercial workbook* tab section 5 maintenance) for the Maintenance Activity for the relevant months

assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from

- the Mobilisation Phase Fee,
- the Construction Phase Fee and
- the relevant Monthly Section 5 Fees.

Z121.3 Not Used.

Z121.4 Except for work in *section 5*, the Price for Work Done to Date at each assessment date includes a proportion of

- the Mobilisation Phase Fee,
- Construction Phase Works Fee In The Mobilisation Phase and
- the Construction Phase Fee (less Construction Phase Works Fee In The Mobilisation Phase)

which is the same as the proportion of work assessed by the *Project Manager* to have been completed in the Mobilisation Phase and the Construction Phase using the *Client's* earned value measurement (EVM) mechanism described in the Scope.

Equipment Fee is not paid during the Mobilisation Phase.

Z121.4A For the works in *section 5*, the Price for Work Done to Date at each assessment date includes the relevant Monthly Section 5 Fees adjusted for the period of time falling between the previous assessment date and the current assessment date related to the period covered by the relevant Monthly Section 5 Fee.

Z121.5 At each assessment date the *Project Manager* makes an assessment of any

- Performance Repayment and
- Retrospective Performance Repayment

due to the *Client* in accordance with the *performance manual*, section 4 Performance & Quality Management.

The *Contractor* pays the *Client* any Performance Repayment and any Retrospective Performance Repayment and is included in the amount due at that assessment date. The *Contractor* does not recover any Performance Repayments and any Retrospective Performance Repayments.

Z121.6 The *Client* does not modify

- section 4 Performance & Quality Management and
- Appendix A and B

of the Performance Manual.

Z121.7 The lump sum Fee, the Mobilisation Phase Fee, the Construction Phase Fee and relevant Monthly Section 5 Fee are reduced in accordance with any accepted quotation under clause 45.2 of the *conditions of contract*.

Z121.8 If the *Project Manager* instructs Construction Phase Activities During The Mobilisation Phase then the relevant Fee for such activities is the lump sum calculated by applying the *construction phase fee percentage* to the forecast Defined Cost for each of the relevant activities in the Activity Schedule to be undertaken during the Mobilisation Stage and is done when the relevant instruction

is issued in accordance with clause Z117.2, the “Construction Phase Works Fee In The Mobilisation Phase”.

- Z121.9 After an instruction is issued in accordance with clause Z117.2, if
- one of the compensation events (1), (4), (14), (15) or (18) in clause 60.1 of the conditions of contract or
 - compensation event (17) occurs and it is related to any earlier implemented compensation event (1), (4), (14), (15) or (18)

occurs that affects such Construction Phase Activities During The Mobilisation Phase, the Construction Phase Works Fee In The Mobilisation Phase is adjusted by applying the *construction phase fee percentage* to the changes to the Defined Cost for the relevant Construction Phase Activities, assessed for the event pursuant to clause 63 or clause 64. The product of this calculation is added to or deducted from the Construction Phase Works Fee In The Mobilisation Phase.

Z122 Scope provided by the *Contractor* for its design.

- Z122.1 Any additional Scope provided by the *Contractor* in the Mobilisation Phase and Construction Phase becomes Scope provided by the *Contractor* for its design.

Z123 Title to Equipment and Spares

- Z123.1 At the Maintenance Completion Date the *Project Manager* may instruct the *Contractor* to transfer to the *Client*, the Incoming Contractor or another maintenance service provider the title in any

- Equipment required to maintain or manage the Plant and Materials
- spares for the Affected Property held by the *Contractor*.

If, prior to the Maintenance Completion Date, there is a change in the Affected Property the *Project Manager* may instruct the *Contractor* to transfer to the *Client* the title in any

- Equipment required to maintain or manage the Plant and Materials
- spares held by the *Contractor*

relating to that part of the Site which has been removed from the Affected Property.

- Z123.2 In any case the *Contractor* ensures that the legal and beneficial title in the relevant Equipment and spares transfers from the *Contractor* or a subcontractor (at any stage of remoteness from the *Client*) to the *Client*, the Incoming Contractor or another maintenance service provider free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

- Z123.3 The *Contractor* delivers the relevant Equipment to the *Client*, any Incoming Contractor, or another maintenance service provider as instructed by the *Project Manager*.

Z124 Plant and Material outside the Working Areas

- Z124.1 The *Client* pays for Plant and Materials outside of the Working Area only where

- the aggregated value does not exceed £25,000,000 or the value of the bond (required by this clause) if less than £25,000,000,
- the *Supervisor* or *Contractor* has marked it for payment in accordance with the contract,
- the *Contractor* has given the payment bond required by this clause to the *Client* (and it remains in force) and
- the credit rating of the issuer of a payment bond has not fallen below the levels stated in this clause Z124 unless the *Project Manager* states that a replacement payment bond as required by this clause Z124 is not required.

Z124.2 The *Contractor* gives a payment bond to the *Client* for an amount equal to £25,000,000 or lesser amount proposed by the *Contractor* for any Plant and Materials marked for payment outside of the Working Areas, unless the *Project Manager* states that a payment bond is not required for a payment to the *Contractor*.

The payment bond is in the form set out in the Scope (or such other form as the *Client* may reasonably require). Any amount to be paid by the *Client* in respect of a payment for any Plant and Materials marked for payment outside of the Working Areas is included at the next assessment date after the *Client* receives the payment bond.

Z124.3 A payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting a proposed bank or insurer is that

- it does not have a credit rating at least equal to
 - long term credit rating of A or short term issues credit rating of A2 (Standard & Poor's Financial Services LLC.),
 - long term credit rating of Aa or short term rating of Prime-1 (Moody's Investor Service Inc.) or
 - long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)

unless agreed otherwise by the *Project Manager*,

- it does not have a commercial position which is strong enough to carry the payment bond,
- it is not issued by a bank or insurer registered as a company in England and is not subject to the law of the contract and a legal opinion in accordance with clause Z124.7 is not received,
- the payment bond is not subject to the law of the contract or
- it does not have appropriate financial regulation or have a standing of good repute in the United Kingdom financial market.

Z124.4 If the credit rating of the issuer of a payment bond falls below

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

- if the advanced payment bond becomes invalid or unenforceable for any reason

the *Contractor* replaces the payment bond with a new payment bond issued by a bank or insurer accepted by the *Project Manager* in the form set out in the Scope (or such other form as the *Client* may reasonably require) within four weeks, unless the *Project Manager* states that a replacement payment bond is not required.

Z124.5 A failure to comply with clause Z124.4 is treated as a substantial failure by the *Contractor* to comply with its obligations and no further payments are made to the *Contractor* until a replacement payment bond for any relevant payment bond is provided.

Z124.6 Any payment of Defined Cost under the Schedule of Cost Components for Plant and Materials marked for payment outside of the Working Areas is an advanced payment and is considered as repaid when

- the relevant Plant and Materials marked for payment outside of the Working Areas is incorporated into the works or
- where relevant Plant and Materials marked for payment outside of the Working Areas has been included in the Price for the Work Provided to Date and such Defined Cost has been repaid to the *Client* by the *Contractor*.

No amount of this advanced payment is considered repaid, at any time prior to

- the relevant Plant and Materials marked for payment outside of the Working Areas being incorporated into the works or
- where relevant Plant and Materials marked for payment outside of the Working Areas has been included in the Price for the Work Provided to Date, such Defined Cost being repaid to the *Client* by the *Contractor*.

Z124.7 If the bank or insurer proposed by the *Contractor* is not a company incorporated in and subject to the *law of the contract*, the *Contractor* provides a legal opinion from a lawyer or law firm which is

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

The legal opinion is addressed to the *Client* 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* via the *Project Manager*.

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

Z125 Inflation

Z125.1 (a) The Construction Base Date Index (CB) is the latest available confirmed *construction index* before the *construction base date*.

(b) The Construction Latest Index (CL) is

- for each anniversary of an issue of a notice to proceed to Construction Phase, the latest available confirmed *construction index* before the current anniversary of an issue of a notice to proceed to the Construction Phase or
- at Completion of Construction Phase Activities for *sections 1 to 3A*, latest available confirmed *construction index* before the Completion of Construction Phase Activities for *sections 1 to 3A*.

(c) The Construction Price Adjustment Factor (CPAF) is $(CL - CB)/CB$.

(d) The Maintenance Base Date Index (MB) is the latest available confirmed *maintenance index* before the *maintenance base date* on the issue of a notice to proceed to Construction Phase.

(e) The Maintenance Latest Index (ML) is

- for each anniversary of the commencement of Construction Phase Activities for *section 5* prior to Completion of the whole of the *works*, the latest available confirmed *maintenance index* before the current anniversary of the commencement of Construction Phase Activities for *section 5* or
- at Completion of the whole of the *works* the latest available confirmed *maintenance index* before the Completion of the whole of the *works*.

(f) The Maintenance Price Adjustment Factor (MPAF) is $(ML - MB)/MB$.

(g) The Annual Change in the Construction Price for the Work to Done, "ACCPWDD", is

$$ACCPWDD = PWDD_A - PWDD_B$$

where

$PWDD_A$ is the sum of

- the total Defined Cost which the *Project Manager* assesses will have been paid to the *Contractor* for the Construction Phase Activities for *sections 1 to 3A* at the day preceding the current anniversary of an issue of a notice to proceed to Construction Phase and
- less the sum of
 - for compensation events notified and implemented for the Construction Phase Activities for *sections 1 to 3A* since the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all Defined Cost incurred before such compensation events' dividing date and
 - for notified compensation events for the Construction Phase Activities for *sections 1 to 3A* since the preceding anniversary of an issue of a notice to proceed to the Construction Phase which have not been implemented, the *Project Manager's* interim assessment of all Defined Cost incurred before such compensation events' dividing date.

$PWDD_B$ is the sum of

- the total Defined Cost which the *Project Manager* assesses has been paid to the *Contractor* for the Construction Phase Activities for *sections 1 to 3A* at the preceding anniversary of an issue of a notice to proceed to the Construction Phase and

- less the sum of
 - for compensation events notified and implemented for the Construction Phase Activities for *sections* 1 to 3A at the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all the Defined Cost incurred before such compensation events' dividing date at the preceding anniversary of an issue of a notice to proceed to the Construction Phase and
 - for compensation events for the Construction Phase Activities for *sections* 1 to 3A notified prior to the preceding anniversary of an issue of a notice to proceed to the Construction Phase but implemented after the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all the Defined Cost incurred before such compensation events' dividing date.

(h) The Annual Change in the Maintenance Price for the Work to Done, "ACMPWDD", is

$$ACMPWDD = PWDD_C - PWDD_D$$

where

$PWDD_C$ is the sum of

- the total Defined Cost which the *Project Manager* assesses will have been paid to the *Contractor* for the Construction Phase Activities for *sections* 4 and 5 at the day preceding the current anniversary of the commencement of the Construction Phase Activities for *section* 5 and
- less the sum of all the Defined Cost
 - for compensation events notified and implemented for the Construction Phase Activities for *sections* 4 and 5 since the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all Defined Cost incurred before such compensation events' dividing date and
 - for notified compensation events for the Construction Phase Activities for *sections* 4 and 5 since the preceding anniversary of an issue of a notice to proceed to the Construction Phase which have not been implemented, the *Project Manager's* interim assessment of all Defined Cost incurred before such compensation events' dividing date.

$PWDD_D$ is the sum of

- the total Defined Cost which the *Project Manager* assesses has been paid to the *Contractor* for the Construction Phase Activities for *sections* 4 and 5 at the preceding anniversary of the commencement of the Construction Phase Activities for *section* 5 and
- less the sum of
 - for compensation events notified and implemented for the Construction Phase Activities for *sections* 4 and 5 at the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all the Defined Cost incurred before such compensation events' dividing date at the preceding anniversary of an issue of a notice to proceed to the Construction Phase and
 - for compensation events for the Construction Phase Activities for *sections* 4 and 5 notified prior to the preceding anniversary of an issue of a notice to proceed to the Construction Phase but implemented

after the preceding anniversary of an issue of a notice to proceed to the Construction Phase, all the Defined Cost incurred before such compensation events' dividing date.

(i) On implementation of all compensation events for the Construction Phase Activities for sections 1 to 3A, the Final Change in the Construction Price for the Work to Done, "FCCPWDD", is

$$\text{FCCPWDD} = \text{PWDD}_E - \text{PWDD}_F$$

where

PWDD_E is the sum of

- the total Defined Cost which the *Project Manager* assesses will have been paid to the *Contractor* for the Construction Phase Activities for sections 1 to 3A at the at the day of Completion of Construction Phase Activities for sections 1 to 3A and
- for compensation events notified and implemented for the Construction Phase Activities for sections 1 to 3A since the preceding anniversary of an issue of a notice to proceed to the Construction Phase, less the sum of all Defined Cost incurred before such compensation events' dividing date.

PWDD_F is the sum of

- the total Defined Cost which the *Project Manager* assesses has been paid to the *Contractor* for the Construction Phase Activities for sections 1 to 3A at the preceding anniversary of an issue of a notice to proceed to Construction Phase and
- for compensation events notified and implemented for the Construction Phase Activities for sections 1 to 3A at the preceding anniversary of an issue of a notice to proceed to the Construction Phase, less the sum of all Defined Cost incurred before such compensation events' dividing date.

(j) On implementation of all compensation events for the Construction Phase Activities for sections 4 and 5, the Final Change in the Maintenance Price for the Work to Done, "ACMPWDD", is

$$\text{FCMPWDD} = \text{PWDD}_G - \text{PWDD}_H$$

where

PWDD_G is the sum of

- the total Defined Cost which the *Project Manager* assesses has been paid to the *Contractor* for the Construction Phase Activities for sections 4 and 5 at Completion of the whole of the *works* and
- for compensation events notified and implemented for the Construction Phase Activities for sections 4 and 5 since the preceding anniversary of an issue of a notice to proceed to the Construction Phase, less the sum of all Defined Cost incurred before such compensation events' dividing date.

PWDD_H is the sum of

- the total Defined Cost which the *Project Manager* assesses has been paid to the *Contractor* for the Construction Phase Activities for sections 4 and 5 at the preceding anniversary of the commencement of the Construction Phase Activities for section 5 and
- for compensation events notified at the preceding anniversary of an issue of a notice to proceed to the Construction Phase and implemented for the

Construction Phase Activities for *sections* 4 and 5, less the sum of all Defined Cost incurred before such compensation events' dividing date.

(k) "m" is the number of complete months since last anniversary of the issue of the notice to proceed to the Construction Phase and the Completion of *sections* 1 to 3A.

(l) "n" is the number of anniversaries of the issue of the notice to proceed to the Construction Phase.

(m) "o" is the number of complete months since last anniversary of the issue of the notice to proceed to the Construction Phase and the Completion of the whole of the *works*.

(n) "p" is the number of complete months since last anniversary of the issue of the notice to proceed to the Construction Phase.

Z125.2 If an index is changed after it has been used in calculating a CPAF or MPAF, the calculation is not changed.

Z125.3 On each anniversary of the issue of a notice to proceed to Construction Phase until Completion of *sections* 1 to 3A, the total of the Prices is adjusted by

$$\text{ACCPWDD} \times ((1 + \text{CPAF}) - 1.03^n)$$

Z125.4 From the commencement of Construction Phase Activities in *section* 5 until Completion of the whole of the *works*, on

- each anniversary of the commencement of Construction Phase Activities in *section* 5 and
- if the Completion of the whole of the *works* is the day prior to the anniversary of the commencement of Construction Phase Activities in *section* 5, on anniversary of the commencement of Construction Phase Activities in *section* 5 which falls on the day after Completion of the whole of the *works*

the total of the Prices is adjusted by an amount equal to

$$\text{ACMPWDD} \times ((1 + \text{MPAF}) - 1.03^n).$$

Z125.5 On Completion of *sections* 1 to 3A, the total of the Prices is adjusted by an amount equal to

$$\text{FCCPWDD} \times \left((1 + \text{CPAF}) - 1.03^{n + \left(\frac{m}{12}\right)} \right)$$

Z125.6 If the Completion of *section* 5 does not fall on the day preceding an anniversary of the commencement of Construction Phase Activities in *section* 5, on Completion of the whole of the *works*, the total of the Prices is adjusted by an amount equal to

$$\text{FCMPWDD} \times \left((1 + \text{CPAF}) - 1.03^{n + \left(\frac{o}{12}\right)} \right)$$

Z125.7 Where a compensation event occurs that

- affects Construction Phase Activities,
- increases the Defined Cost and
- does not include Defined Cost already incurred

the forecast Defined Cost to be incurred any future inflation is on the assumption of an annual 3% inflation.

The adjustment to the total of the Prices is

$$\left(\text{CFDCI} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right) + \left(\text{MFDCI} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right)$$

where

- CFDCI is forecast Defined Cost to be incurred for Construction Activities in *sections* 1 to 3A at date when the compensation event is assessed in accordance with clause 63 or 64,
- MFDCI is forecast Defined Cost to be incurred for Construction Activities in *sections* 4 and 5 at date when the compensation event is assessed in accordance with clause 63 or 64,
- IC is latest
 - for work in *sections* 1 to 3A the latest confirmed value of the *construction index* at the date of the assessment of the compensation event or
 - for work in *sections* 4 and 5 the latest confirmed value of the *maintenance index* at the date of the assessment of the compensation event and
- IB is
 - for work in *sections* 1 to 3A, CB or
 - for work in *sections* 4 and 5, MB.

Z125.8 Where a compensation event that impacts Construction Phase Activities

- increases the Defined Cost of Construction Phase Activities and
- does includes
 - Defined Cost already incurred and
 - forecast Defined Cost to be incurred

the forecast Defined Cost to be incurred includes future inflation on the assumption of an annual 3% inflation.

The adjustment to the total of the Prices is

$$\left(\text{CFCAIDD} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right) + \left(\text{MFCAIDD} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right) + \text{DCAIDD}$$

where

- DCAIDD is Defined Cost of Construction Phase Activities already incurred at the dividing date,
- CFCAIDD is the forecast Defined Cost to be incurred for Construction Activities in *sections* 1 to 3A at the dividing date assessed in accordance with clause 63 or 64 and
- MFCAIDD is the forecast Defined Cost to be incurred for Construction Activities in *sections* 4 and 5 at the dividing date assessed in accordance with clause 63 or 64.

Z125.9 Where a compensation event occurs that impacts Construction Phase Activities and reduces future Defined Cost of Construction Phase Activities to be incurred, the forecast reduction in Defined Cost includes future inflation on the assumption of an annual 3% inflation.

The reduction to the total of the Prices is

$$\left(\text{CRDC} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right) + \left(\text{MRDC} \times \frac{\text{IB}}{\text{IC}} \times 1.03^{n+\frac{p}{12}} \right)$$

at the date the instruction to remove the work is issued where

- CRDC is the forecast reduction in Defined Cost for *sections* 1 to 3A assessed in accordance with clause 63 or 64 and
- MRDC is the forecast reduction in Defined Cost for *sections* 4 and 5 assessed in accordance with clause 63 or 64.

Z126 *starting date*

Z126.1 The *Project Manager* notifies the *starting date* to the *Contractor*, which is no later than a longstop date of two years from the Contract Date or such other date as may be agreed

Z126.2 The *Project Manager* gives the *Contractor* twelve weeks' notice of the *starting date*.

Z126.3 Any costs incurred by the *Contractor* prior to the date of the *Project Manager's* notification of the *starting date* are a Disallowed Cost except for

- a quotation for a proposed instruction or proposed notification,
- a quotation for an assessment for a forecast change in the costs of the insurances provided by the *Contractor* in accordance with clause Z127 or
- a quotation for an assessment of a compensation event for
 - the notified Development Consent Order or
 - an instruction that changes the Scope.

Following the notification for the *starting date*, any costs incurred by the *Contractor* prior to the *starting date* are a Disallowed Cost except for

- a quotation for a proposed instruction or proposed notification,
- a quotation for an assessment for a forecast change in the costs of the insurances provided by the *Contractor* in accordance with clause Z127 or
- a quotation for an assessment of a compensation event for
 - the notified Development Consent Order or *starting date* or
 - an instruction that changes the Scope.

Prior to the *starting date* the *Contractor* does not provide a quotation for an assessment of other compensation events.

Z126.4 If the *Project Manager* has not notified the *starting date* by the longstop date of two years from the Contract Date, or such other date as may be agreed, the *Project Manager* does not issue a notice to proceed to Construction Phase.

Z127 Adjustment of the fee percentages

Notification of a proposed starting date

Z127.1

Within four weeks of the *Project Manager's* proposed notification of the *starting date* the *Contractor* submits the change in the forecast costs of

- the insurances provided by the *Contractor* for
 - the Mobilisation Phase and
 - Construction Phase and
- the bonds required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase

along with a quotation for its assessment of

- the change to the Mobilisation Phase Fee Percentage,
- revised Mobilisation Phase Fee Percentage,
- revised Mobilisation Phase Fee,
- the change to the Construction Phase Fee Percentage,
- revised Construction Phase Fee Percentage,
- revised Construction Phase Fee and

resulting from changes to the costs of insurances and such bonds (required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase) provided by the *Contractor*.

The *Contractor* provides the *Project Manager* with the supporting evidence of the change in the forecast costs of the insurances and bonds (required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase) provided by the *Contractor*.

Z127.2

Not Used.

Z127.3

The change to the Mobilisation Phase Fee Percentage is assessed as

$$CC_p \div DCMP$$

expressed as a percentage where

- CC_p is the change in the forecast costs of the insurances provided by the *Contractor* for Mobilisation Phase resulting from such proposed notification and
- $DCMP$ is the forecast Defined Cost in the Prices for the Mobilisation Phase for activities in the Activity Schedule

and is added to the Mobilisation Phase Fee Percentage.

CC_p is added to the Mobilisation Phase Fee.

Z127.4 The change to the Construction Phase Fee Percentage is assessed as

$$DD_p \div DCCP$$

expressed as a percentage where

- DD_p is the sum of the change in the forecast costs of
 - the insurances
 - the bonds required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase provided by the *Contractor* for the Construction Phase resulting from such proposed notification and
- $DCCP$ is the sum of the Defined Cost in the Prices for the Construction Phase activities in the Activity Schedule,

and is added to the Construction Phase Fee Percentage.

DD_p is added to the Construction Phase Fee.

Z127.4A CC_p and DD_p are added to the total of the Prices.

Z127.5 The *Project Manager* replies to the *Contractor's* quotation by the date when the proposed notification may be given. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- the issue of a notification of the revised
 - Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee,
 - Construction Phase Fee Percentage,
 - Construction Phase Fee and
 - the revised total of the Prices and
 - acceptance of the quotation or
- a notification that the quotation is not accepted.

Z127.6 The *Project Manager* may assess the change to the fee percentages, Fee and total of the Prices if

- the *Contractor* has not submitted the quotation and details of its assessment within the time allowed or
- the *Project Manager* decides that the *Contractor* has not assessed the change to the total of the Prices, the Mobilisation

Phase Fee, Construction Phase Fee or the fee percentages correctly and has not instructed the *Contractor* to submit a revised quotation.

Z127.7

The *Project Manager* notifies the *Contractor* of the assessment of

- Mobilisation Phase Fee Percentage,
- Mobilisation Phase Fee,
- Construction Phase Fee Percentage
- Construction Phase Fee and
- total of the Prices

and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same proposed notification. This period starts when the need for the *Project Manager's* assessment becomes apparent (the *Project Manager* notifies the *Contractor* when the period begins). This assessment remains valid up to and including the last date by which the proposed notification may be given of the *starting date*.

**Notification of
starting date**

Z127.8

If the *Project Manager* notifies a *starting date* and the *Project Manager* has not issued a proposed notification of the *starting date* and notification in accordance with clauses Z127.5 or Z127.7, the *Contractor* submits the change in the forecast costs of

- the insurances provided by the *Contractor* for
 - the Mobilisation Phase and
 - Construction Phase and
- the bonds required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase

along with a quotation for its assessment of

- the change to the Mobilisation Phase Fee Percentage and revised Mobilisation Phase Fee Percentage,
- revised Mobilisation Phase Fee,
- the change to the Construction Phase Fee Percentage and revised Construction Phase Fee Percentage,
- revised Construction Phase Fee and
- revised total of the Prices

resulting from changes to the forecast cost of insurances and such bonds (required by Option X13 and under clause Z124 provided by the *Contractor* for

the Construction Phase) provided by the *Contractor* within four weeks of the notification of the *starting date*.

The assessment of

- the change in the Mobilisation Phase Fee Percentage is assessed as

$$CC_n \div DCMP$$

and is added to the Mobilisation Phase Fee Percentage

- the change in the Construction Phase Fee Percentage as

$$DD_n \div DCCP$$

and is added to the Construction Phase Fee Percentage

where

- CC_n is the change in the forecast cost of the insurances provided by the *Contractor* for Mobilisation Phase resulting from such notification and
- DD_n is the sum of the change in the forecast cost of
 - the insurances
 - the bonds required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase
 provided by the *Contractor* for the Construction Phase resulting from such notification.

CC_p is added to the Mobilisation Phase Fee. DD_n is added to the Construction Phase Fee.

The *Contractor* provides the *Project Manager* with the supporting evidence of the change in the forecast costs of the insurances and bonds (required by Option X13 and under clause Z124 provided by the *Contractor* for the Construction Phase) provided by the *Contractor*.

Z127.8A CC_n and DD_n are added to the total of the Prices.

Z127.9 The *Project Manager* replies to the *Contractor's* assessment within three weeks. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,

- a notification of the revised
 - Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee,
 - Construction Phase Fee Percentage,
 - Construction Phase Fee and
 - revised total of the Prices
 and acceptance of the assessment or
- a notification that the assessment is not accepted.

Z127.10 The *Project Manager* may assess the change to the fee percentages, Fee and Prices if

- the *Contractor* has not submitted the quotation and details of its assessment within the time allowed or
- the *Project Manager* decides that the *Contractor* has not assessed the change to the Fee, Prices or the fee percentages correctly and has not instructed the *Contractor* to submit a revised quotation.

Z127.11 The *Project Manager* notifies the *Contractor* of the assessment of

- Mobilisation Phase Fee Percentage,
- Mobilisation Phase Fee,
- Construction Phase Fee Percentage
- Construction Phase Fee and
- total of the Prices

and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same proposed notification. This period starts when the need for the *Project Manager's* assessment becomes apparent (the *Project Manager* notifies the *Contractor* when the period begins).

**Unimplemented
Compensation
Events**

Z127.12 If there are unimplemented compensation events affecting the Prices, the assessment of the change to

- the fee percentages and
- Prices and
- Fee

includes the *Project Manager's* interim assessment of the changes to the Prices for a compensation event which has not been implemented at the day of assessment as advised by the *Project Manager*.

- Z127.13 Once such compensation events have been implemented, the *Contractor* submits to the *Project Manager* the updated assessment of the change to
- the fee percentages,
 - Prices and total of the Prices,
 - Mobilisation Phase Fee and
 - Construction Phase Fee
- within one week of the compensation event's implementation.
- Z127.14 The *Project Manager* replies to the *Contractor's* assessment within two weeks. The reply is
- an instruction to submit a revised quotation including the reasons for doing so,
 - a notification of the revised
 - Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee,
 - Construction Phase Fee Percentage,
 - Construction Phase Fee and
 - total of Pricesand acceptance of the quotation or
 - a notification that the assessment is not accepted.
- Z127.15 The *Project Manager* may assess the change to the fee percentages, Fee and Prices if
- the *Contractor* has not submitted the assessment and details of its assessment within the time allowed or
 - the *Project Manager* decides that the *Contractor* has not assessed the change to the total of the Prices, the Mobilisation Phase Fee, Construction Phase Fee or the fee percentages correctly and has not instructed the *Contractor* to submit a revised quotation.
- Z127.16 The *Project Manager* notifies the *Contractor* of the assessment of
- Mobilisation Phase Fee Percentage,
 - Mobilisation Phase Fee,
 - Construction Phase Fee Percentage
 - Construction Phase Fee and
 - total of the Prices
- and gives details of the assessment within the period allowed for the *Contractor's* submission of its

assessment. This period starts when the need for the *Project Manager's* assessment becomes apparent (the *Project Manager* notifies the *Contractor* when the period begins).

Z128 Proposed notification of the Development Consent Order and the *starting date*

Z128.1 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed notification for

- the *starting date* and
- the Development Consent Order (including any associated proposed instructions to amend the Scope).

The *Project Manager* states in the instruction the date by which the proposed notification may be given. The *Contractor* does not put a proposed notification into effect.

Z128.2 The *Contractor* uses the *tender programme*, *tender milestones* and *commercial workbook* for the basis of the quotation.

Z128.3 The *Contractor* submits quotations for a proposed notification within three weeks of being instructed to do so by the *Project Manager*. The quotation is assessed as a compensation event (assessed in accordance with clause 63). The *Project Manager*

- replies to the *Contractor's* quotation within three weeks (or any longer period agreed with the *Contractor*) and the reply is an instruction to submit a revised quotation including the reasons for doing so or
- replies to the *Contractor's* quotation by the date when the proposed notification may be given. The reply is
 - the issue of the notification together with a notification of the notification as a compensation event and acceptance of the quotation or
 - notification that the quotation is not accepted.

The *Project Manager* does not notify the *Contractor* that the first quotation received is not accepted.

Z128.3A The *Project Manager*

- may request further information to clarify a quotation and the *Contractor* supplies such further information requested to enable the *Project Manager* to complete its assessment with the times permitted,
- provides to the *Senior Representatives* with its observations for each quotation, including which elements of the quotation with the current information supplied by the *Contractor* do not have observations and
- within the period allowed for the *Contractor's* submission of its quotation (or any longer period agreed with the *Contractor*), notifies the *Contractor* of its consideration of the quotation including
 - such outstanding observations provided to the *Senior Representatives* and
 - aspects of the quotation where observations do not exist on the information supplied by the *Contractor*.

- Z128.3B If the *Project Manager* has instructed the *Contractor* to submit a revised quotation but the *Project Manager* considers the reasons for doing so have not been addressed, then
- it informs the *Contractor* that it considers the revised quotation has not addressed the observations or the reasons for submitting a revised quotation and
 - it informs the *Senior Representatives* that it considers the revised quotation has not addressed the observations or the reasons for submitting a revised quotation.
- Z128.3C If the *Project Manager* has instructed the *Contractor* to submit a revised quotation but the *Project Manager* considers the reasons for submitting a revised quotation have not been addressed, it notifies the *Contractor* that it considers the reasons for submitting a revised quotation have not been addressed. The *Project Manager* instructs the *Contractor* to submit a further revised quotation fully addressing the reasons for submitting a revised quotation and submits a further revised quotation to the *Project Manager* within two weeks.
- If the *Project Manager* has instructed the *Contractor* to submit a further revised quotation but
- the *Contractor* has not submitted it within the three weeks of the *Project Manager's* instruction or
 - the *Project Manager* considers the reasons for doing so have not been addressed and considers it is unlikely that such reasons are to be addressed by the *Contractor*,
- it notifies the *Contractor* that the quotation is not accepted.
- Z128.3D If the *Project Manager* has notified the *Contractor* that it considers the reasons for submitting a revised quotation have not been addressed, then if the Parties agree, the assessment of such revised quotation is referred to the *Senior Representatives*.
- Z128.3E The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the issue over the same period allowed for the *Contractor* to submit the further revised quotation. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Project Manager* and the *Contractor* put into effect the issues agreed.
- Z128.4 If the *Project Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.
- Z128.5 If the quotation is not accepted, the *Project Manager* may issue the notification, notify the notification as a compensation event and instruct the *Contractor* to submit a quotation.
- Z128.6 (1) If the quotation for proposed notification for
- the *starting date* or
 - the Development Consent Order
- is not accepted or the quotation for such proposed notification is not fully resolved by the *Senior Representatives*, the *Client* may refer the assessment of the quotation for proposed notification for

- the the *starting date* or
- the Development Consent Order

to the *Adjudicator* for assessment. The *Client* does not refer a quotation after a date that does not allow the adjudication process to be concluded and enable the proposed notification to be given by the date when the proposed notification may be given.

(1A) Both Parties agree that whether or not the assessment is referred to the *Adjudicator*

- the *Client* is not obliged to instruct the *Project Manager* to issue the notification together with a notification of the notification as a compensation event and acceptance of the quotation (as assessed and determined by the *Adjudicator*) and
- the *Project Manager* is not obliged to issue the notification together with a notification of the notification as a compensation event and acceptance of the quotation (as assessed and determined by the *Adjudicator*).

(2) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

(3) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the the date on which the *Project Manager* has instructed the *Contractor* to submit a quotation pursuant to Z128.1 or Z128.3, as the case may be.

(4) The *Adjudicator* acts impartially and decides the assessment of the quotation for proposed notification for

- the *starting date* or
- the Development Consent Order

as an independent adjudicator and not as an arbitrator.

(5) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(6) A replacement *Adjudicator* has the power to decide an assessment of the quotation for proposed notification for

- the *starting date* or
- the Development Consent Order

referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided assessment as if it had been referred on the date of appointment as replacement *Adjudicator*.

7) The *Client* does not refer a quotation for an assessment to the *Adjudicator* that is the same or substantially the same as one that has already been decided by the *Adjudicator*.

- (8) The *Adjudicator*, and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

- Z128.7 (1) Before the *Client* refers the assessment of the quotation for the proposed notification for

- the *starting date* or
- the Development Consent Order

to the *Adjudicator*, it gives a notice of adjudication to the *Contractor*. If the *Adjudicator* is named in the Contract Data, the *Client* sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* informs the Parties that the *Adjudicator*

- is able to make such assessment in accordance with the contract or
- is unable to make such assessment and has resigned.

If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.

- (2) Within seven days of a *Client* giving a notice of adjudication it

- refers the assessment to the *Adjudicator*,
- provides the *Adjudicator* with the information on which it relies, including any supporting documents and

provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the *Contractor*.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

- (3) Not Used.

- (4) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Contractor* related to such assessment and alter a matter which has been treated as accepted or correct,
- take the initiative in ascertaining the facts and the law related to the assessment,
- instruct a Party to provide further information related to such assessment within a stated time and
- instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time.

- (5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

- (6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed.

(8) The *Adjudicator* decides the assessment and informs the Parties and the *Project Manager* of the decision and reasons within twenty-eight days of the assessment being referred. This period may be extended by up to fourteen days with the consent of the *Client* or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and expenses between the Parties.

(9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if assessment of the quotation for proposed notification for

- the *starting date* or
- the Development Consent Order

was not referred to the *Adjudicator*

(10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(11) The *Adjudicator's* decision on the assessment of the quotation and determination for proposed notification for

- the *starting date* or
- the Development Consent Order

is

- final and binding on the Parties and remains valid until the last date when the proposed notification may be given by the *Project Manager* and
- enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.

(12) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

Z128.8 A Party does not refer the assessment as assessed and determination by the *Adjudicator* of the quotation for proposed notification for

- the *starting date* or
- the Development Consent Order

under or in connection with the contract to the *tribunal*

Z128.9 Prior to the last date when the proposed notification may be given, the *Project Manager* may issue the notification for

- the *starting date* or
- the Development Consent Order

together with a notification of the notification as a compensation event and acceptance of the quotation for the compensation event as assessed and determination by the *Adjudicator*.

Z128.10 If the *Project Manager* does not issue the proposed notification for

- the *starting date* or
- the Development Consent Order

by the earlier of

- the last date when the proposed notification may be given or
- the longstop date of two years from the Contract Date or such other date as may be agreed

the *Client* pays the *Contractor* an amount equal to (but no greater than the CAC)

$$1.1 \times \frac{\text{Adjudicated Value}}{\text{Value of Contractors Latest Quotation}} \times \text{CAC}$$

where

- Adjudicated Value is the relevant assessment and determination of a compensation event for a proposed *starting date* or the Development Consent Order by the *Adjudicator* and
- Value of Contractors Latest Quotation is the *Contractor's* quotation for a compensation event for a proposed *starting date* or the Development Consent Order (as later modified by the *Contractor* during any adjudication) being considered by the *Adjudicator* in its determination of the Adjudicated Value and
- CAC is the *Contractor's* reasonable, relevant proven and justified adjudication costs.

Z129 the tunnel boring machine supplier, the slurry treatment plant supplier and the tunnel lining mould supplier

Z129.1 If

- the *tunnel boring machine supplier*,
- the *slurry treatment plant supplier* or
- the *tunnel lining mould supplier*

is not named in Contract Data at the Contract Date, the *Contractor* proposes to the *Project Manager* (as the case may be)

- the proposed tunnel boring machine supplier,
- the proposed slurry treatment plant supplier or
- the proposed tunnel lining mould supplier

in accordance with the contract.

If the *Project Manager* accepts (as the case may be)

- the proposed tunnel boring machine supplier,
- the proposed slurry treatment plant supplier or
- the proposed tunnel lining mould supplier

then (as the case may be)

- the proposed tunnel boring machine supplier,
- the proposed slurry treatment plant supplier or
- the proposed tunnel lining mould supplier

becomes (as the case may be)

- the *tunnel boring machine supplier*,
- the *slurry treatment plant supplier* or
- the *tunnel lining mould supplier*.

Z130 office overhead

Z130.1 The *Contractor* may seek a revised or additional *overhead percentage* to be added to Contract Data Part 2.

The *Contractor* submits to the *Project Manager* for acceptance the proposed office overhead with a completed office overhead build up template (using the template in Annex 6 to this Contract Data) together with

- substantiation in sufficient detail of the amounts entered in the template and
- sufficient detail to demonstrate which elements of cost have been included.

The substantiation is to be based on verifiable costs.

Z130.2 The *Contractor*

- makes available to the *Project Manager*, Staff who can provide justification of the forecast costs and costs entered in to the template and
- provides to the *Project Manager* access to and copies of evidence to support such costs on the completed template.

Z130.3 A reason for not accepting the office overhead is

- the *Contractor* has not provided the evidence requested in sufficient detail to demonstrate such cost entered in the template represent the costs incurred and forecast costs to be incurred or
- the *Contractor* has not provided access to Staff who can provide justification of the forecast costs and costs entered in to the template.

If the *Project Manager* accepts the office overhead percentage, it becomes an *overhead percentage*.

Annexes

Annex 1: Template Schedule of Cost Components

This schedule is part of the *conditions of contract*. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

In this schedule the *Contractor* means the *Contractor* and Associated Companies, but not its Subcontractors.

1. People

The following components of

- the cost of people who are directly employed by the *Contractor* (excluding people identified in the *fee schedule*) and whose normal place⁸ of working is within the Working Areas,
- the cost of people who are directly employed by the *Contractor* (excluding people identified in the *fee schedule*) and whose normal place¹⁰ of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and
- the cost of people undertaking design who are directly employed by the *Contractor* (excluding people identified in the *fee schedule*) and who are Providing the Works outside the Working Areas, proportionate to the time they spend working.

11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract.

12 Payments related to work on the contract and made to people for

- a) overtime
- b) working in special circumstances
- c) special allowances
- d) absence due to sickness and holidays

⁸ normal place of working means

- if statutory working restrictions are imposed, normal place of working is taken to be normal place of working for that person had the statutory working restrictions not been in place,
- if governmental guidance is in place on working restrictions to control Covid-19 (or similar) and the *Contractor* is implementing such guidance, normal place of working is taken to be normal place of working for that person had such guidance on working restrictions to control Covid-19 (or similar) not been in place,
- if *Contractor* and Consortium Member guidance is in place on working restrictions to control Covid-19 (or similar) and the *Contractor* and Consortium Member is implementing such guidance, normal place of working is taken to be normal place of working for that person had such guidance on working restrictions to control Covid-19 (or similar) not been in place or
- for Staff who are considered by the *Project Manager* to be home workers (except for time working from home under bullets 1, 2 or 3)
 - if all non-home work time is contracted to be within the Working Areas, normal place of working for that person is the Working Areas or
 - if any non-home work time is contracted to be at a location outside the Working Areas, normal place of working for that person is a contracted location outside the Working Areas.

- e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Works where redundancy arises because the person is no longer required to be employed to Provide the Works and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Works.

13 Payments made in relation to people in accordance with their employment contract for

- a) travel, subsistence and lodging in accordance with the *Client's* travel and subsistence policy
- b) relocation
- c) medical examinations
- d) passports and visas
- e) travel insurance
- f) items (a) to (e) for dependents
- g) protective clothing
- h) contributions, levies or taxes imposed by law
- i) pensions and life assurance excluding payments made in relation to any pensions deficits
- j) death benefit
- k) occupational accident benefits
- l) medical aid and health insurance
- m) a vehicle
- n) safety training specific to Providing the Works.

14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Working Areas.

Amounts paid by the *Contractor*.

2. Equipment

The following components of the cost of Equipment (but excluding a Tunnel Boring Machine, Slurry Treatment Plant and Tunnel Lining Moulds) which is used within the Working Areas

21 Payments for the hire or rent of Equipment not owned by

- the *Contractor*,
- the *Contractor's* ultimate holding company or
- a company with the same ultimate holding company

at the hire or rental rate multiplied by the time for which the Equipment is required.

22 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company

at open market rates, multiplied by the time for which the Equipment is required.

- 23 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

- 24 Payments for special Equipment listed in the Contract Data. These amounts are rates stated in Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

- 25 Payments for the purchase price of Equipment which is consumed.

- 26 Unless included in the hire or rental rates, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

- 27 Payments for purchase of materials used to construct or fabricate Equipment.

- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

3. Plant and Materials

The following components of the cost of Plant and Materials.

- 31 Payments for

- purchasing Plant and Materials
- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

- 32 Cost is credited with payments received for disposal of Plant and Materials, unless the cost is disallowed.

4. Subcontractors

The following components of the cost of Subcontractors.

- 41 Payments to Subcontractors, excluding Associated Companies, for work which is subcontracted
- without taking into account any amounts paid to or retained from the Subcontractor by the Contractor, which would result in the Client paying or retaining the amount twice and
 - excluding any incentive payment under the requirements of Volume 1 Part 1 (General Requirements) paragraph S1220.1 in respect of clause Z119.

5. Charges

The following components of the cost of charges paid or received by the *Contractor*.

- 51 Payments for the provision and use in the Working Areas of
- water,
 - gas,
 - electricity,
 - telephone and
 - internet.
- 52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 53 Payments for
- a) cancellation charges arising from a compensation event
 - b) buying or leasing land or buildings within the Working Areas
 - c) compensation for loss of crops or buildings
 - d) royalties
 - e) inspection certificates
 - f) charges for access to the Working Areas
 - g) facilities for visits to the Working Areas by Others
 - h) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 54 Payments made and received by the *Contractor* for the removal from Site and disposal or sale of materials from excavation and demolition.
- 55 Payments made for
- escrow agreements
 - novation agreements for escrow agreement.
- for Deposited Software (as defined in the Scope).
- 56 The following components of the cost of support people and office overhead for *design consultants*.
- A charge for support people and office overhead costs calculated by applying the relevant *overhead percentage* stated in the Contract Data to the total of people items 11, 12 and 13 for the relevant *design consultant* undertaking design outside of the Working Area. The charge includes provision and use of people, accommodation, equipment, supplies and services required to provide the office and to support people providing the *works*.

6. Manufacture and fabrication

The following components of the cost of manufacture and fabrication of Plant and Materials by the *Contractor* which are

- wholly or partly designed specifically for the works and
- manufactured or fabricated outside the Working Areas.

61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Working Areas.

7. Design

Not Used

8. Insurance

The following are deducted from cost

- the cost of events for which the contract requires the *Contractor* to insure and
- other costs paid to the *Contractor* by insurers.

9. Legal Services

The following components of the cost of legal services for Protester Action and Trespassers done outside the Working Areas.

91 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on legal services for Protester Action and Trespassers outside the Working Areas.

92 The cost of travel (at the rates within the *Client's* travel allowances) to and from the Working Areas for the categories of legal people listed in the Contract Data.

10. Tunnel Boring Machine

The following components of the cost of Tunnel Boring Machine which is used within the Working Areas

101 Payments for a TBM Payment for Tunnel Boring Machine purchased for work.

102 Payments for the purchase price of Tunnel Boring Machine Material which is consumed.

103 Unless included in payments for Tunnel Boring Machine or Tunnel Boring Machine Material purchased, payments for

- transporting Tunnel Boring Machine to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Tunnel Boring Machine,
- constructing, fabricating or modifying Tunnel Boring Machine as a result of a compensation event,
- purchase of materials used to assemble, construct or fabricate Tunnel Boring Machine,

- for the purchase price of Tunnel Boring Machine Material which is consumed and
- the cost of operatives is included in the cost of people.

104 Cost is credited with payments received for disposal of

- Tunnel Boring Machine Materials and
- Tunnel Boring Machine.

unless the cost is disallowed.

11. Slurry Treatment Plant and Tunnel Lining Mould

The following components of the cost of Slurry Treatment Plant and Tunnel Lining Mould which is used within the Working Areas

111 Payments for a STP Payment for Slurry Treatment Plant purchased for work.

112 Payments for a TLM Payment for Tunnel Lining Mould purchased for work

113 Payments for the purchase price of Slurry Treatment Plant And Tunnel Lining Mould Material which is consumed.

114 Unless included in payments for Slurry Treatment Plant, Tunnel Lining Mould or Slurry Treatment Plant And Tunnel Lining Mould Material purchased, payments for

- transporting Slurry Treatment Plant to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Slurry Treatment Plant,
- constructing, fabricating or modifying Slurry Treatment Plant as a result of a compensation event,
- purchase of materials used to assemble, construct or fabricate Slurry Treatment Plant
- for the purchase price of Slurry Treatment Plant And Tunnel Lining Mould Material which is consumed and
- the cost of operatives is included in the cost of people.

115 Cost is credited with payments received for disposal of

- Slurry Treatment Plant And Tunnel Lining Mould Material
- Slurry Treatment Plant and
- Tunnel Lining Mould.

unless the cost is disallowed.

12 Associated Company share

The following components of the cost of Associated Companies

121 Payments to Associated Companies for any subcontractor's share under clause 54 of an NEC option C or D contract or equivalent.

- 122 Cost is credited with payments received from the Associated Company for any subcontractor's share under clause 54 of an NEC option C or D contract or equivalent.

Annex 2: Form of Agreement



National Highways Limited

NEC4 Engineering and Construction Contract (June 2017)

FORM OF AGREEMENT BY DEED (Combined Standard & Unincorporated Joint Venture version)

CONTENTS AMENDMENT SHEET

Amend. No.	Issue Date	Amendments	Initials	Date

DATED [*National Highways procurement to enter date that the Highways England common seal is affixed*]

NATIONAL HIGHWAYS LIMITED

[CONTRACTOR/ JOINT VENTURE]

FORM OF AGREEMENT BY DEED

relating to the [design and] construction

of the [.....] [*identify Scheme(s)*]

Contract Reference Number [*compiler to enter appropriate Share reference number*]

DATE: [National Highways procurement to enter date the National Highways seal is affixed]

PARTIES:

- 1 NATIONAL HIGHWAYS LIMITED a company incorporated in and in accordance with the laws of England having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, England, GU1 4LZ ("the **Client**"); and
- 2 [.....] a Joint Venture comprising [.....] ["X"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] and [.....] ["Y"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] and [.....] ["Z"] a company incorporated in and in accordance with the laws of [.....] with registered number [.....] whose registered office is at [.....] (together referred to as "the **Contractor**").

RECITALS:

- A The *Client* wishes to appoint a provider of works and services to undertake the design, build and maintain of the *works*, during the contract term and for that purpose has issued invitations to tender (including the Scope) to, amongst others, the *Contractor*.
- B In response to the *Client's* invitation to tender, the *Contractor* has submitted a tender to design, build and maintain and complete the *works* in accordance with the Scope.
- C The *Client* has examined the *Contractor's* tender and now wishes to appoint the *Contractor* to design, build and maintain and complete the *works* on the terms of this Agreement and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1 In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.

2. Contract Documents

2.1 The following documents form part of this Agreement:

1. the NEC4 Engineering and Construction Contract (June 2017 and amendments January 2019) incorporating Main Option C together with dispute resolution Option W2 and secondary Options [X2, X5, X7, X8, X10, X11, X13 X18, X21], Y(UK)1, Y(UK)2, Y(UK)3 and Z1 to Z130, ("the Conditions"); and
2. the Contract Data Parts One and Two and the documents referred to in them;
3. the Scope;
4. Tender Amendments [insert references or delete];
5. The *activity schedule*.

2.2 The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

3. Agreement

- 3.1 The *Contractor* agrees to Provide the Works for the *Client* in accordance with the provisions of this Agreement.
- 3.2 The *Client* will pay to the *Contractor* the amounts due under and in accordance with the provisions of this Agreement.

4. Publication of Information

- 4.1 The *Contractor* acknowledges that the *Client* is obliged to publish the provisions of this contract in accordance with the Crown Commercial Service note entitled "*Publication of Central Government Tenders and Contracts*" dated November 2017, or any later revision), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000 (Amendment) (EU Exit) Regulations 2018. The *Client* consults with the *Contractor* before deciding whether information is exempt, but the *Contractor* acknowledges that the *Client* has the final decision. The *Contractor* co-operates with and assists the *Client* to publish this contract in accordance with the *Client's* obligation.

[Joint ventures only:]

5. Joint and Several Liability

- 5.1 Each of [X] and [Y] will be jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under this Agreement.
- 5.2 Each of [X] and [Y] will give not less than 4 weeks' notice to the *Client* of any proposed termination of the joint venture arrangement.
- 5.3 Termination of the joint venture arrangement for any reason will be treated as a substantial failure by the *Contractor* to comply with his obligations.
- 5.4 Not Used

Executed as a deed by affixing the)
common seal of NATIONAL HIGHWAYS)
COMPANY LIMITED in the presence of:

Authorised Signatory

Authorised Signatory

Executed as a deed by the **[PARTY X]** in))
the presence of:

Director

Director/Company Secretary

Executed as a deed by the **[PARTY Y]** in))
the presence of:

Director

Director/Company Secretary

Executed as a deed by the **[PARTY Z]** in))
the presence of:

Director

Director/Company Secretary

NB: For joint Ventures repeat the bottom section to accommodate signatures from each member of the Joint Venture if appropriate.

Annex 4 Performance Manual

See separate document called **A303-MW-CoD-004-Performance Manual-Contract Ver 1.pdf**

Annex 5 pre-commencement development consent order activities

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
4	OEMP ⁹	Construction Environmental Management Plan (as defined in the Scope)	4.8.1	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	main works heritage management plan	4.9.1	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(b) heritage management plan	4.11.2	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	Covered by 4.9.1
4	OEMP	(c) site specific written schemes of investigation	4.11.3	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	Covered by 4.9.1

⁹ Outline Environment Management Plan as defined in the Scope

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
4	OEMP	(d) any archaeological method statement required under the OEMP	4.11.4	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	Covered by 4.9.1
4	OEMP	site specific written scheme of investigation (10no)	4.9.2	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	archaeological method statement (15no)	4.9.3	<i>Client</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(a) site waste management plan	4.11.1	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(e) emergency preparedness and response plan (to include a pollution incident control plan)	4.11.5	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(f) ground movement monitoring strategy	4.11.6	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
4	OEMP	(g) landscape and ecology management plan	4.11.7	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(h) arboricultural mitigation strategy	4.11.8	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(i) noise and vibration management plan	4.11.9	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(j) noise insulation and temporary rehousing policy	4.11.10	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(k) soils management strategy	4.11.11	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(l) water management plan (to include a flood risk management plan)	4.11.12	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
4	OEMP	(m) groundwater management plan	4.11.13	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(n) invasive non-native species management plan (if required)	4.11.14	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(o) material management plan	4.11.15	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
4	OEMP	(p) traffic management plan (to include a construction workforce travel plan, a site access plan, construction traffic routeing details and a site travel plan)	4.11.16	Contractor	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
5	archaeology	appeal documentation - this is a reactive requirement and will only be discharged if an appeal is lodged	5.2.1	Client	full, only if triggered	
6	protected species	pre-construction survey	6.1.1	Client	full	

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
6	protected species	scheme of protection	6.2.1	<i>Client</i>	full	
8	Implementation and maintenance of landscaping	landscaping scheme for WHS (except Work No 5) and Work No 4 (both as defined in schedule 1 of the DCO).	8.1.1	<i>Contractor</i>	full	
8	implementation and maintenance of landscaping	landscaping scheme outside WHS (except Work No 4)	8.2.1	<i>Contractor</i>	full	
8	implementation and maintenance of landscaping	landscaping Scheme for Work No 5	8.2.2	<i>Client</i>	full	
9	traffic management	Traffic Management Plan (as defined in the Scope)	9.1.1	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
10	drainage	details of the drainage system (for that part of the works)	10.1.1	<i>Contractor</i>	linked to that part of the <i>works</i> to be delivered in the 12 months following issue of the notice to proceed to Construction Phase	
12	stone curlew breeding plots	details demonstrating land has been secured for	12.3.1	<i>Client</i>	full	

DCO Requirement	DCO Requirement	Product	Product Reference	Party	Content Coverage Required	Comment
		provision of additional stone curlew breeding plots				
12	stone curlew breeding plots	management regime and timetable for implementation	12.3.2	Client	full	

Annex 6 office overhead build up template

Office Overhead	location
Annual costs	
Rent	
Service charge and office insurance not included in the Fee percentage	
Maintenance costs	
Furniture and fittings	
Utilities	
Office equipment	
Consumables	
Local office ICT and other local office support services not covered in the Fee percentage	
Security & reception	
Cleaning	
Office administration staff costs (including all human resources and business administration functions) not covered in the Fee percentage	
Contractor to add	
Contractor to add	
Contractor to add	
Contractor to add	
(A) Total Annual Cost of Office	
(B) Total Annual Cost of People associated with each office	
Office Overhead percentage (A/B)	