

A303 Amesbury to Berwick Down (Stonehenge) Archaeological Works



Highways England Company Limited

NEC4 Term Service Short Contract

(June 2017 with amendments dated January 2019)

Contract Data

in relation to a *service* for

A303 Amesbury to Berwick Down

(Stonehenge)

Archaeological Works

8 June 2020

NEC4 Term Service Short Contract

A contract between

Highways England Company Limited
Highways England Company Limited
Bridge House,
1 Walnut Tree Close
Guildford
Surrey GU1 4LZ
Registered number 09346363

and [*Contractor*]

for A303 Amesbury to Berwick Down (Stonehenge) Archaeological Works

Contract Data

The <i>Client's</i> Contract Data	
The <i>Client</i> is	
Name	Highways England Company Limited
Address for communications	Bridge House, 1 Walnut Tree Close Guildford Surrey GU1 4LZ Registered number 09346363
Address for electronic communications	
If the <i>Client</i> appoints a <i>Client's Agent</i> , the <i>Client's Agent</i> is	
Name	To be advised
Address for communications	To be advised
Address for electronic communications	To be advised
The authority of the <i>Client's Agent</i> is	To be advised
The <i>service</i> is	A303 Amesbury to Berwick Down (Stonehenge) Archaeological Works

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<p>The Scope is in</p>	<p>Document titled Scope in relation to <i>services</i> for A303 Amesbury to Berwick Down (Stonehenge) Archaeological Works. Reference HE551506-HE-EHR-SW-GN-000_Z_CD-LH-60000424</p>	
<p>The <i>starting date</i> is</p>	<p>16th October 2020</p>	
<p>The <i>service period</i> is</p>	<p>8 Years (+1)</p>	
<p>The <i>period for reply</i> is</p>	<p>2 weeks</p>	<p>unless a different period is specified in the Scope.</p>
<p>The <i>assessment day</i> is the</p>	<p>28th</p>	<p>of each month.</p>
<p>Are the rates and Prices in the contract adjusted for inflation</p>		<p>Yes</p>
<p>If Yes, the <i>index</i> is</p>	<p>EARN03: Average Weekly Earnings by industry - Not seasonally adjusted Average Weekly Earnings – Index figures including bonuses and arrears - Sector M – Professional, Scientific and Technical Activities, Tab 5, Column K5EY</p>	<p>provided by the Office for National Statistics</p>
<p>The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply.</p>		
<p>The <i>Adjudicator</i> is the person chosen by the Parties from the list of adjudicators published by the Institute of Civil Engineers.</p>		

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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 their nominee.

The interest rate on late payments is % per complete week of delay.

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

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

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with a Task Order, other than excluded matters listed in Z127.5, is limited to

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 Z127.5, is limited to

The *Client* provides this insurance

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

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

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any one event	number of occurrences in any annual policy period.
The minimum amount of cover for the fourth insurance stated in the Insurance Table is, for any one event	Limit of indemnity of £5,000,000 in respect of any one claim and in the annual aggregate until 12 years following completion of the whole of the <i>service</i> or termination.
The <i>Adjudicator</i> nominating body is	The Institution of Civil Engineers
The <i>tribunal</i> is	arbitration
The arbitration procedure is	The latest version of the Institution of Civil Engineers Arbitration Procedure published at the time of the referral.
<p>The <i>conditions of contract</i> are the NEC4 Term Service Short Contract June 2017 including amendments dated January 2019 and the additional <i>conditions of contract</i> clauses Z1 to Z19, Z50, Z51, Z54, Z56, Z57, Z58, Z59, Z60, Z62, Z109, Z126, Z127 and Z128.</p>	
<p>These are additional compensation events</p> <ol style="list-style-type: none"> 1. The <i>Client</i> notifies the <i>Contractor</i> that payments under the contract will no longer be made using the Project Bank Account. 2. The <i>Client</i> withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in the contract. 3. A <i>weather measurement</i> is recorded <ul style="list-style-type: none"> • within a calendar month, • before the end of the <i>service period</i> and • at the place stated in the Contract Data <p>the value of which, by comparison with the <i>weather data</i>, is shown to occur on average less frequently than once in ten years.</p> <p>Only the difference between the weather measurement and the weather which the weather data show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.</p> 4. A breach of contract by the <i>Client</i> which is not one of the other compensation events in the contract 5. The <i>Contractor</i> encounters Protester Action which <ul style="list-style-type: none"> • is within the Site, • prevents the <i>Contractor</i> from Providing the Service in accordance with the 	

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	<p>Accepted Plan,</p> <ul style="list-style-type: none"> • is greater/ more extensive than provided for in the Security Management Plan, • requires the <i>Contractor</i> to <ul style="list-style-type: none"> ○ seek assistance of a Relevant Authority or ○ ask the <i>Client</i> to use its rights to remove any Protester from the Site and • are not due to the actions or inactions of the <i>Contractor</i>. <p>Only the difference between the Protester Action encountered and those anticipated by the Security Management Plan is taken into account in assessing a compensation event.</p>
<p>The place where weather is to be recorded is</p>	<p>RAF Boscombe Down</p>
<p>The <i>weather measurements</i> to be recorded for each calendar month are</p> <ul style="list-style-type: none"> • 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 1800 hours GMT <p>and these measurements:</p>	
<p>No additional measurements</p>	
<p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month</p>	
<p>which were recorded at</p>	<p>RAF Boscombe Down</p>
<p>and which are available from</p>	<p>the Meteorological Office</p>
<p>Where no recorded data are available</p>	<p>Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are</p>
	<p>Not applicable</p>

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Z14 - Project Bank Account	
The <i>Contractor</i> is to pay any charges made and to be paid any interest paid by the <i>project bank</i> .	
Z54 - Extension to the Service Period	
The <i>extension period</i> is	1 year
Z109 – Termination and omission of work	
The <i>failure level</i> is 6.	
Z126 – Task Order programme	
The number of days after receipt of a Task Order within which the <i>Contractor</i> submits a Task Order programme is	14

The Contractor's Contract Data

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

The *Contractor* is

Name

[...]

Address
communications

for

[...]

Address for electronic
communications

[...]

The *quality statement* is in

[...]

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

[...]

The *fee percentage* is

[...]

%

The *people rates* are in the Schedule of Cost Components of the A303 Amesbury to Berwick Down (Stonehenge) Archaeological Works Price List.

The *published list of Equipment* is

The edition current at the Contract Date of the Civil Engineering Contractors Association Schedule of Dayworks Carried Out Incidental to Contract Work Including Rail Items Volumes 1 & 2 published and available to purchase from CECA, 1 Birdcage Walk, London, SW1H 9JJ.

The *percentage for adjustment for Equipment* is (state plus or

[...]

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minus)		
Contract Data entry relating to Data Protection Legislation		
The contact details of the <i>Contractor's</i> Data Protection Officer or Data Protection nominated lead are	[...]	
Contract Data entries relating to Z Clauses		
Z14 - Project Bank Account		
The <i>project bank</i> is		
[...]		
<i>named suppliers</i> are		
[...]		
Z9 - Merger, take-over, Change of Control and financial distress		
The <i>credit ratings</i> at the Contract Date and rating agencies issuing them are		
party	rating agency	<i>credit rating</i>
<i>Contractor</i>	[...]	[...]
Consortium Member	[...]	[...]
Guarantor	[...]	[...]

Z Clauses

Z1 Changes to core clauses

11 Identified and defined terms

Amend the following terms

In “(13) A Task Order includes” add the following bullet points after the existing second and before the existing third bullet points

- a description of the Task Order Area,
- a description of the Task Sections,
- the amount of any delay damages for the Task Sections,

11.2 Add the following defined terms

(16) Associated Company is any of

- a Consortium Member or
- any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Contractor* or a Consortium Member.

(17) The Authorisation is a document authorising the project bank to make payments to the *Contractor* and Named Suppliers.

(18) 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.

(19) 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.

(20) The Contract Date is the date when the contract came into existence.

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

(22) Controller is the single person (or group of persons acting in concert) that

- has Control of the *Contractor* or a Consortium Member or
- holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member.

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- (23) 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.
- (24) The Data Protection Legislation is
- the General Data Protection Regulation (EU 2016/679),
 - the LED (Law Enforcement Directive (Directive (EU) 2016/680),
 - the Data Protection Act 2018 and
 - any other data protection laws and regulations applicable in England and Wales.
- (25) The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act.
- (26) 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).
- (27) 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.
- (28) EU Reference is any European Union
- regulation,
 - decision,
 - tertiary legislation or
 - provision of the European Economic Area agreement
- (29) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amend.
- (30) 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.
- (31) 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.
- (32) Guarantor is a person who gives a Parent Company Guarantee to the *Client*.
- (33) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (34) Not used.

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- (35) Incoming Contractor is any contractor appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Contractor*.
- (36) Indemnified Claim is a matter for which the *Contractor* is liable under the contract.
- (37) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the *service* or any revised systems introduced by the *Client* from time to time.
- (38) Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.
- (39) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.
- (40) License is the document entitled "Highways England: License" listed in Annex A to the Scope.
- (41) Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed.
- (42) Others are people or organisations who are not the *Client*, the *Client's Agent*, the *Adjudicator*, the *Contractor* or any employee, subcontractor or supplier of the *Contractor*. In clauses 20.1, 22.1, 42.1, 44.1, 80.1 and 81.1 replace "others" with "Others".
- (43) Parent Company Guarantee is a guarantee of the *Contractor's* performance in the form set out in the Scope.
- (44) Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope.
- (45) Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the Data Protection Legislation.
- (46) Price for Service Provided to Date is
- the Price for each lump sum item in the Price List or Task Order which the *Contractor* has completed,
 - where a quantity is stated for an item in the Price List or Task Order, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.
- (47) Project Bank Account is the account used to receive payments from the Client and the *Contractor* and to make payments to the *Contractor* and Named Suppliers.

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- (48) Project Road means the A303 trunk road within the Site (as defined in the Scope).
- (49) Protester is any person or persons engaged in Protester Action.
- (50) Protester Action is any action taken by any person or persons protesting against the carrying out of any part of the *service* 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 *service* including action or threatened action which results in
- increases in the Defined Cost of performing the *service* (including increased security costs) and
 - delays in performing the *service*.
- (51) Quality Statement is the *quality statement* unless later changed in accordance with the contract.
- (52) Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract.
- (53) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.
- (54) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.
- (55) 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).
- (56) The Secretary of State is the Secretary of State for Transport.
- (57) Staff are persons employed or engaged by the *Contractor* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Service at any time.
- (58) A Supplier is a person or organisation who has a contract to
- provide part of the *service*,
 - provide a service necessary to Provide the Service or
 - supply Plant and Materials for the *service*.
- (59) Task Order Area is the area of property and lands (and the volumes above and below it) affected by the works and services (in a Task Order), and as stated in the Task Order.
- (60) Task Section is an area of land or property (and the volumes above and below it) of the Task Order Area stated in the Task Order.

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- (61) Tax Non-Compliance is where a tax return submitted by the *Contractor* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012
- is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Contractor* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
 - the failure of an avoidance scheme in which the *Contractor* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of the contract or to a civil penalty for fraud or evasion.
- (62) Threshold Level is the threshold level of Quality Management Points stated in the Scope.
- (63) Trespasser is any person (other than a Protester) on, but not entitled to be on, the Site (as defined in the Scope) or any working area.
- (64) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.

Amend the following terms

12 Interpretation and the Law

12.2 Delete existing clause 12.2 and replace it with new clause

"12. 2 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."

14 The *Client's* authority, delegation and *Client's Agent*

14.10 Insert the following additional sub-clause

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"14.10 The *Contractor* submits a Task Order programme for each Task Order in accordance with clause Z126."

21 Subcontracting and people

21.4 to 21.7 Insert the following new sub-clauses

"21.4 The *Contractor* either provides each person named in the *key persons schedule* to do the job stated in that schedule or provides a replacement person who has been accepted by the *Client*. 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.

21.5 The *Contractor* ensures that each person named in the *key persons schedule* devotes a sufficient amount of time and effort to the provision of the *service*. The *Contractor* retains the services of each *key person* and does not remove or change the *key persons* unless

- any of the *key persons* are on long-term sickness leave, maternity, paternity or equivalent leave or leave the *Contractor's* employment or
- the *Client's* gives its prior agreement for the replacement.

21.6 The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement *key person* to the *Client* for acceptance. The *Client* accepts the proposed replacement if the person has the equivalent or better qualifications and experience as those of the *key person* who is to be replaced.

21.7 The *Contractor* bears the cost and any delay caused as a result of replacing a *key person*."

30 Starting and the *service period*

30.1 Delete 30.1 and replace with

"The *Contractor* does not start work until

- the *starting date* and
- for a Task Section until the starting date stated in the Task Order

and Provides the Service until the later of the end of the *service period* and the latest Task Completion Date."

51 Payment

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

60 Compensation events

In clause

60.1(1) Delete the full stop and insert

"or a change to the Information Systems or the introduction of a new Information System or, a change to the method of or requirements for performance measurement or a change which is stated elsewhere in these *conditions of contract* not to be a compensation event."

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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(5)

- Delete "does" and substitute “or Others do” and
- add at the end before the full stop

 "provided that for the purposes of this clause 60.1(5), Others does not include the *Contractor* or any Associated Company in the same group of companies as the *Contractor* acting under any other contract between the *Contractor* (or Associated Company) and the *Client*".

82 Recovery of costs

82.4 Delete clause 82.4 of the *conditions of contract*.

83 Insurance cover

83.3 In clause 83.3 add a fourth type of insurance to the Insurance Table

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER
Claims made against it arising out of the <i>Contractor's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i> .	The amount stated in the Contract Data for any one claim and in the annual aggregate.

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

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	contract or any other contract with the <i>Client</i> .
Z4	Assignment and transfer
Z4.1	The <i>Contractor</i> does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the <i>Client</i> .
Z4.2	If the <i>Contractor</i> wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the <i>Client's</i> agreement to do so. The <i>Contractor</i> explains the reasons for the proposed transfer and provides the <i>Client</i> with all such information as the <i>Client</i> may require in order to make its decision. If the <i>Client</i> (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Scope or such other form as the <i>Client</i> may reasonably require.
Z4.3	If requested by the <i>Client</i> , the <i>Contractor</i> executes a novation agreement in the form specified in the Scope (or such other form as the <i>Client</i> may reasonably require) transferring the benefit and burden of the contract to <ul style="list-style-type: none"> • an organisation established to take over the <i>Client's</i> 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 <i>Contractor</i> keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person <ul style="list-style-type: none"> • the terms of the contract and • any confidential or proprietary information (including Personal Data) provided to or acquired by the <i>Contractor</i> in the course of Providing the Service except that the <i>Contractor</i> may disclose information <ul style="list-style-type: none"> • to its legal or other professional advisers, • to anyone employed by it or acting on its behalf as needed to enable the <i>Contractor</i> to Provide the Service, • where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the <i>Contractor</i> consults the <i>Client</i> and takes full account of the <i>Client's</i> views about whether (and if so to what extent) the information should be disclosed, • 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 <i>Contractor</i> or • with the consent of the <i>Client</i>.
Z5.2	The <i>Contractor</i> does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it

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	for any purpose other than to Provide the Service.
Z6	Adjudication
Z6.1	The NEC4 Dispute Resolution Service Contract (June 2017 with amendments January 2019) includes the following additional condition of contract <p>“Any information concerning the contract obtained by either the <i>Dispute Resolver</i> or any person advising or aiding the <i>Dispute Resolver</i> is confidential, and is not used or disclosed by the <i>Dispute Resolver</i> or any such person except for the purposes of this contract. The <i>Dispute Resolver</i> complies, and takes all reasonable steps to ensure that any persons advising or aiding the <i>Dispute Resolver</i> comply, with the Official Secrets Acts 1911 to 1989.”</p>
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 <i>Adjudicator</i> .
Z7	Termination - Public Contract Regulations 2015
Z7.1	The <i>Client</i> may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the <i>Contractor</i> at the Contract Date.
Z7.2	The <i>Client</i> may terminate the contract with immediate effect <ul style="list-style-type: none"> • if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or • the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.
Z7.3	The procedure and amount due on termination are the same as for <ul style="list-style-type: none"> • R2 if the modification or infringement was due to a default by the <i>Contractor</i>, • R5 if the modification or infringement was due to a default by the <i>Client</i> and • R8 if the modification or infringement was due to any other reason.
Z8	Subcontracting
Z8.1	The <i>Contractor</i> assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.
Z8.2	If the <i>Contractor</i> subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the <i>Client</i> .
Z8.3	The <i>Client'</i> may, having stated the reasons, instruct the <i>Contractor</i> to remove a subcontractor. The <i>Contractor</i> then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract.

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- Z8.4 Not Used.
- Z8.5 Before
- appointing a proposed subcontractor or
 - allowing a subcontractor to appoint a proposed sub subcontractor
- the *Contractor* submits to the *Client'* for acceptance
- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or sub subcontractor or
 - other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or sub subcontractor
 - details of any RIDDOR Incident under any contract for which the proposed subcontractor or sub subcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or sub subcontractor.
- Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed sub subcontractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that
- it shows that there are grounds for excluding the proposed subcontractor or sub subcontractor under regulation 57 of the Public Contracts Regulations 2015
 - the *Client* is not satisfied that the proposed subcontractor or sub subcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur.
- Z8.7 If requested by the *Client*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5.
- Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that
- one of the grounds for excluding the subcontractor or sub subcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
 - the subcontractor or sub subcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur
- the *Client* may instruct the *Contractor* to
- replace the subcontractor or
 - require the subcontractor to replace the sub subcontractor.
- Z8.9 The *Contractor* submits the name of each proposed subcontractor to the *Client'* for acceptance. A reason for not accepting the subcontractor is that its appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed subcontractor until the *Client* has accepted it.

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Z8.10	The <i>Contractor</i> submits the proposed conditions of contract for each subcontract to the <i>Client</i> for acceptance unless the <i>Client</i> has agreed that no submission is required.
Z8.11	The <i>Contractor</i> does not appoint a subcontractor on the proposed subcontract conditions submitted until the <i>Client</i> has accepted them. A reason for not accepting them is that <ul style="list-style-type: none"> • they will not allow the <i>Contractor</i> to Provide the Service or • they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.
Z9	Merger, take-over, Change of Control and financial distress
Z9.1	The <i>Contractor</i> notifies the <i>Client</i> immediately if a Change of Control has occurred.
Z9.2	If a Change of Control occurs without the <i>Client</i> prior consent or will not allow the <i>Contractor</i> to Provide the Service, the <i>Client</i> may terminate the <i>Contractor's</i> obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.
Z9.3	The <i>Contractor</i> notifies the <i>Client</i> immediately of any material change in <ul style="list-style-type: none"> • the direct or indirect legal or beneficial ownership of any shareholding in the <i>Contractor</i> (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 <i>Contractor</i> (or a Consortium Member) or • the composition of the <i>Contractor</i> or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the <i>Contractor</i> or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
Z9.4	The <i>Contractor</i> notifies the <i>Client</i> immediately of any change or proposed change in the name or status of the <i>Contractor</i> or a Consortium Member.
Z9.5	The <i>Contractor</i> notifies the <i>Client</i> immediately if <ul style="list-style-type: none"> • any of the following events occurs in relation to the <i>Contractor</i>, a Consortium Member or a Guarantor <ul style="list-style-type: none"> • its Credit Rating falls below the relevant <i>credit rating</i>, • there is a further fall in its Credit Rating below the relevant <i>credit rating</i>, • 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.

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- any Parent Company Guarantee becomes invalid or unenforceable for any reason.
- Z9.6 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Contractor's* obligation to Provide the Service with immediate effect. In the event of a termination under Z9.6, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.
- Z9.7 If a Change of Control occurs, the *Contractor* provides to the *Client*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of a board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client*,
 - any other information required by the *Client* in order to determine whether the Controller meets the Financial Standing Test and
 - any other information requested by the *Client* in order to satisfy itself that the *Contractor* remains in a position to Provide the Service.
- Z9.8 If a Change of Control or any of the events listed in clauses Z9.3 to Z9.5 occurs, the *Client* may require the *Contractor* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller does not meet the Financial Standing Test) an alternative guarantor proposed by the *Contractor* and accepted by the *Client*.
- The *Contractor* provides the *Client* with the information listed in clause Z9.7 and the credit ratings for the proposed alternative guarantor (unless otherwise agreed by the *Client*) and any further information requested by the *Client* concerning the alternative guarantor.
- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not
- meet the Financial Standing Test,
 - provide the legal opinion required in clause Z9.13 or
 - have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.5 has occurred.
- Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* for the *Contractor* or relevant Consortium Member the notification refers to.
- Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the

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	end of that period.
Z9.12	<p>If</p> <ul style="list-style-type: none"> • the <i>Contractor</i> fails to notify the <i>Client</i> that an event listed in clause Z9.5 has occurred, • neither the Controller nor any alternative guarantor proposed by the <i>Contractor</i> complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13 • the <i>Contractor</i> does not give to the <i>Client</i> a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the <i>Client</i> within four weeks of a request from the <i>Client</i> to do so or • the <i>Contractor</i> fails to demonstrate to the <i>Client</i> that the Controller or the alternative guarantor accepted by the <i>Client</i> will meet the Financial Standing Test within eighteen (18) months of the <i>Client's</i> acceptance <p>the <i>Client</i> may treat such failure as a substantial failure by the <i>Contractor</i> to comply with its obligations.</p>
Z9.13	<p>If the <i>Contractor</i>, a Consortium Member, a Guarantor or an alternative guarantor proposed by the <i>Contractor</i> (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England, the <i>Contractor</i> provides a legal opinion from a lawyer or law firm which is</p> <ul style="list-style-type: none"> • qualified and registered to practice in the jurisdiction in which the relevant entity is incorporated and • accepted by the <i>Client</i>. <p>The legal opinion is addressed to the <i>Client</i> 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 <i>Client</i>.</p> <p>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.</p>
Z9.14	If accepted by the <i>Client</i> , the alternative guarantor becomes the Guarantor for the <i>Contractor</i> or the relevant Consortium Member and the credit ratings become the <i>credit rating</i> for the Guarantor.
Z9.15	A failure to comply with this clause Z9 is treated as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z10	Joint ventures
Z10.1	This clause applies if the <i>Contractor</i> is an unincorporated joint venture.
Z10.2	Each Consortium Member is jointly and severally liable to the <i>Client</i> for the performance of the <i>Contractor's</i> obligations under the contract.
Z10.3	The <i>Contractor</i> nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The <i>Contractor</i> acknowledges that receipt of a communication by the <i>Contractor's</i> nominated representative constitutes

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	receipt by all the Consortium Members. The <i>Contractor</i> notifies the <i>Client</i> in advance of any change to the identity of the <i>Contractor's</i> nominated representative.
Z10.4	The <i>Contractor</i> acknowledges that any payment made by the <i>Client</i> to a Consortium Member under the contract to that extent discharges the <i>Client's</i> liability to make payment to the <i>Contractor</i> .
Z10.5	A Consortium Member gives not less than four weeks' notice to the <i>Client</i> of any proposed termination of the joint venture arrangement.
Z10.6	Termination of the joint venture arrangement for any reason is treated as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z10.7	Where two or more Consortium Members comprise the <i>Contractor</i> , clause 90.1 & 90.2 of the <i>conditions of contract</i> are amended by inserting after "the other Party" the words "or in the case of the <i>Contractor</i> , any Consortium Member".
Z11	Parent Company Guarantee
Z11.1	The <i>Contractor</i> gives to the <i>Client</i> a Parent Company Guarantee. The Parent Company Guarantee is given by the Contract Date. Parent Company Guarantees are given for <ul style="list-style-type: none"> • a standalone company – from its Controller or • a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member. In all cases it is for the <i>Client</i> to decide whether it will accept a Parent Company Guarantee from a company other than the Controller.
Z11.2	A failure to comply with this condition is treated as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z12	Discrimination, Bullying and Harassment
Z12.1	The <i>Contractor</i> indemnifies the <i>Client</i> against all costs, charges, expenses (including legal and administrative expenses) and payments made by the <i>Client</i> arising out of or in connection with <ul style="list-style-type: none"> • any investigation or proceedings under the Discrimination Acts or • an allegation of bullying or harassment resulting from any act or omission of the <i>Contractor</i> in connection with the contract.
Z13	Intellectual Property Rights (IPRs)
Z13.1	The <i>Client</i> 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 <i>Client</i> , the <i>Contractor</i> enters into such documents and does such acts as the <i>Client</i> requests to transfer the IPRs to the <i>Client</i> , and procures that its subcontractors (at any stage of remoteness from the <i>Client</i>) do the same. The <i>Contractor</i> provides to the <i>Client</i> the documents which transfer these IPRs to the <i>Client</i> .
Z13.2	The <i>Contractor</i> obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licenses (capable of being sub-licensed to a third party, who shall also have the right to

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	<p>grant further sub-licenses) of other IPRs for the <i>Client</i> 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 <i>Contractor</i> or its assignees or any third party. The <i>Contractor</i> provides to the <i>Client</i> the documents which license these IPRs to the <i>Client</i>.</p> <p>The <i>Contractor's</i> or third party licensor's exclusive remedies for any breach by the <i>Client</i>, or any sub-licensee, of any license granted under this clause are damages and equitable relief.</p>
Z13.3	The <i>Contractor</i> ensures that any subcontract (at any stage of remoteness from the <i>Client</i>) contains a right for the <i>Client</i> (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.
Z14	Project Bank Account
Z14.1	The <i>Client</i> may at any time notify the <i>Contractor</i> that payments under the contract will no longer be made using the Project Bank Account. Within one week of the <i>Client's</i> notice, the <i>Contractor</i> notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with its contracts.
Z14.2	The <i>Contractor</i> establishes the Project Bank Account with the <i>project bank</i> within six weeks of the Contract Date.
Z14.3	Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
Z14.4	The <i>Contractor</i> submits to the <i>Client</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with the contract. The <i>Contractor</i> provides to the <i>Client</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
Z14.5	The <i>Contractor</i> includes in its contracts with Named Suppliers the arrangements in the contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
Z14.6	The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Client</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Scope. The <i>Client</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.
Z14.7	The <i>Contractor</i> shows in the application for payment the amounts due to Named Suppliers in accordance with their contracts.
Z14.8	<p>Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract,</p> <ul style="list-style-type: none"> • the <i>Client</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract and • the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Client</i> has notified the <i>Contractor</i> it intends to withhold from the

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	certified amount and which is required to make payment to Named Suppliers.
Z14.9	The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Contractor</i> for the balance of the payment due under the contract. After signing the Authorisation, the <i>Contractor</i> submits it to the <i>Client</i> no later than four days before the final date for payment. The <i>Client</i> signs the Authorisation and submits it to the <i>project bank</i> no later than one day before the final date for payment.
Z14.10	The <i>Contractor</i> and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
Z14.11	A payment which is due from the <i>Contractor</i> to the <i>Client</i> is not made through the Project Bank Account.
Z14.12	Payments made from the Project Bank Account are treated as payments from the <i>Client</i> to the <i>Contractor</i> in accordance with the contract or from the <i>Contractor</i> or Subcontractor to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the <i>Contractor</i> to comply with the requirements of this clause is not treated as late payment under the contract.
Z14.13	The <i>Client</i> , the <i>Contractor</i> and Named Suppliers sign the Trust Deed before the first assessment date.
Z14.14	If the <i>Client</i> issues a termination certificate, no further payment is made into the Project Bank Account.
Z15	Tax Non – Compliance
Z15.1	The <i>Contractor</i> warrants that it has notified the <i>Client</i> of any Tax Non-Compliance or any litigation in which the <i>Contractor</i> (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date.
Z15.2	The <i>Contractor</i> notifies the <i>Client</i> within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of <ul style="list-style-type: none"> • 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 <i>Client</i>.
Z15.3	The <i>Contractor</i> is treated as having substantially failed to comply with its obligations if <ul style="list-style-type: none"> • the warranty given by the <i>Contractor</i> under clause Z15.1 is untrue, • the <i>Contractor</i> fails to notify the <i>Client</i> of a Tax Non-Compliance or • the <i>Client</i> decides that any mitigating factors notified by the <i>Contractor</i> 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

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	by that person (or a member of the same tax group) by set-off or repayment.
Z17	Termination and removal of part of the service
Z17.1	<p>The <i>Client</i> may instruct the <i>Contractor</i> that</p> <ul style="list-style-type: none"> part of the <i>service</i> is to be permanently removed from the contract or for urgent reasons of health and safety, part of the <i>service</i> is to be temporarily removed from the contract. <p>In either case the <i>Contractor</i> acknowledges that the <i>Client</i> may itself, or may appoint another supplier in place of the <i>Contractor</i> to provide works similar to the removed <i>service</i> (or part of it).</p>
Z17.2	An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R4, R6 or R8, the assessment includes a deduction of the forecast of the additional cost to the <i>Client</i> of completing the removed <i>works</i> .
Z17.3	<p>If the <i>Contractor's</i> obligation to Provide the Service is terminated for any reason, the <i>Contractor</i> if instructed by the <i>Client</i></p> <ul style="list-style-type: none"> completes the performance of any part of the <i>service</i> started prior to the date of termination and co-operates with the <i>Client</i> or any Incoming Contractor so as to ensure a smooth transfer of functions.
Z18	Corruption or loss of data
Z18.1	<p>If any data of the <i>Client</i> is corrupted, lost, stolen or degraded as a result of the <i>Contractor's</i> default so as to be unusable, the <i>Contractor</i> immediately reports this to the <i>Client</i> and</p> <ul style="list-style-type: none"> the <i>Client</i> may instruct the <i>Contractor</i> to restore the data in accordance with the <i>Client's</i> requirements or the <i>Client</i> may itself restore the data (and the <i>Contractor</i> pays to the <i>Client</i> any reasonable expenses which the <i>Client</i> incurs in so doing).
Z19	Conflict of interest
Z19.1	Any steps taken in accordance with paragraph S334.1 in the Scope is not a compensation event.
Z19.2	A failure to comply with paragraph S334.1 in the Scope is treated as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z20 - Z49	Not Used
Z50	Health & Safety Plan
Z50.1	The <i>Client</i> may terminate if the <i>Contractor</i> has not produced all the Health and Safety Plans in the form which the contract requires within six weeks after the Contract Date.

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	This is treated as a termination because of a substantial failure of the <i>Contractor</i> to comply with its obligations.
Z50.2	The period for producing the Health and Safety Plans may be extended by not more than four weeks if the <i>Client</i> and the <i>Contractor</i> agree to the extension before the Health and Safety Plans are due. The <i>Client</i> notifies the extension that has been agreed to the <i>Contractor</i> .
Z50.3	If the <i>Client</i> does not terminate, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the <i>Contractor</i> has produced all the Health and Safety Plans in the form which the contract requires.
Z51	Changes to Prices
Z51.1	The Parties may at any time agree a reduction to the Prices.
Z51.2	The reduced Prices apply to any work carried out after the reduction is agreed.
Z51.3	If the <i>Contractor</i> does not agree a reduction requested by the <i>Client</i> , the <i>Client</i> may terminate the <i>Contractor's</i> obligation to Provide the Service by notifying the <i>Contractor</i> .
Z52 – Z53	Not Used
Z54	Extension to the <i>service period</i>
Z54.1	The <i>Client</i> may notify the <i>Contractor</i> that the <i>service period</i> is to be extended by the <i>extension period</i> or such lesser period as the <i>Client</i> may specify.
Z54.2	If the <i>service period</i> is extended by less than the extension period, the <i>Client</i> may further extend the <i>service period</i> so that the total period of extension does not exceed the <i>extension period</i> .
Z54.3	The <i>Client</i> does not notify the <i>Contractor</i> of any extension or further extension to the <i>service period</i> later than 3 months before the expiry of the <i>service period</i> .
Z55	Not Used
Z56	Construction Industry Scheme
Z56.1	In this clause (but not otherwise) <ul style="list-style-type: none"> the “Act” is the Finance Act 2004 and the “Regulations” are the Income Tax (Construction Industry Scheme) Regulations 2005.
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 <i>Contractor</i> provides the information required by the Regulations to enable the <i>Client</i> to verify (in accordance with paragraph 6 of the Regulations) whether the <i>Contractor</i> under the Act <ul style="list-style-type: none"> is registered for gross payment,

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	<ul style="list-style-type: none"> • 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	<p>If the <i>Contractor</i> is registered for payment under deduction or is neither registered nor exempt from registration</p> <ul style="list-style-type: none"> • the <i>Contractor</i> submits an application for payment which separately identifies the cost of labour and • the <i>Client</i> deducts the relevant percentage from the payment in accordance with the Act and the Regulations.
Z57	Infrastructure Act 2015
Z57.1	<p>The <i>Contractor</i> Provides the Service in compliance with, and so as not to put the <i>Client</i> in breach of</p> <ul style="list-style-type: none"> • the License and • any other directions and guidance issued by the Secretary of State to the <i>Client</i> under section 6 of the Infrastructure Act 2015 (and notified by the <i>Client</i> to the <i>Contractor</i>).
Z57.2	<p>The <i>Client</i> notifies the <i>Contractor</i> of any notice issued by the Office of Rail and Road to the <i>Client</i> under section 11(2)(a) of the Infrastructure Act 2015 that relates to the <i>service</i>. The <i>Contractor</i> complies with the terms of any such notice and indemnifies the <i>Client</i> against any associated fine imposed on the <i>Client</i> under section 11(2)(b) of that Act.</p>
Z58	Revisions to Quality Statement
Z58.1	<p>The <i>Contractor</i> may submit to the <i>Client</i> proposed revisions to the Quality Statement for acceptance within the <i>period for reply</i>. A reason for not accepting the proposed revision is that</p> <ul style="list-style-type: none"> • it will not enable the <i>Contractor</i> 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 <i>Contractor</i> to achieve the level of performance specified 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 <i>Client</i> is not a compensation event.
Z58.3	The <i>Client</i> may instruct the <i>Contractor</i> to amend the Quality Statement where it is not compliant with the Scope provided by the <i>Client</i> . This instruction is not a compensation event.
Z58.4	A revision to the Quality Statement agreed by the <i>Client</i> in accordance with the Scope is not a compensation event.

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Z59	Indemnified claims
Z59.1	The <i>Client</i> notifies the <i>Contractor</i> as soon as practicable of any notice or demand which it receives in respect of a matter for which the <i>Contractor</i> is liable under the contract (an Indemnified Claim).
Z59.2	The <i>Contractor</i> may elect to conduct the defense of any Indemnified Claim (including any settlement negotiations) in the name of the <i>Client</i> . The <i>Client</i> co-operates with and gives reasonable assistance to the <i>Contractor</i> in defending the Indemnified Claim.
Z59.3	The <i>Contractor</i> keeps the <i>Client</i> fully and regularly informed and consults with the <i>Client</i> as appropriate in relation to the conduct of any Indemnified Claim.
Z59.4	Where the <i>Contractor</i> is diligently conducting the defense of an Indemnified Claim, the <i>Client</i> does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the <i>Contractor</i> .
Z59.5	The <i>Contractor</i> bears the costs which it incurs in defending an Indemnified Claim. The <i>Contractor</i> indemnifies the <i>Client</i> against any costs incurred by the <i>Client</i> arising out of the <i>Contractor's</i> defense of the Indemnified Claim.
Z59.6	<p>The <i>Client</i> may, at any time prior to the settlement of an Indemnified Claim, give the <i>Contractor</i> notice that it is taking over the conduct of an Indemnified Claim. On receipt of the <i>Client's</i> notice the <i>Contractor</i></p> <ul style="list-style-type: none"> • takes all the steps necessary to transfer the conduct of the Indemnified Claim to the <i>Client</i> and • co-operates with and gives reasonable assistance to the <i>Client</i> in defending the Indemnified Claim. <p>Where the reason for the <i>Client's</i> notice is not due to the fault of the <i>Contractor</i> in conducting the Indemnified Claim, the <i>Contractor</i> is released from its indemnity to the <i>Client</i> in respect of it.</p>
Z60	Tax Arrangements of appointees
Z60.1	Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the <i>Contractor</i> 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 <i>Contractor</i> 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 <i>Client</i> may, at any time during the term of the contract, request the <i>Contractor</i> 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	<p>If the <i>Contractor</i> fails to provide information in response to a request under clause Z60.3</p> <ul style="list-style-type: none"> • within the period for reply or • which adequately demonstrates either how any member of Staff is complying

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	<p>with clauses Z60.1 and Z60.2 or why those clauses do not apply to it the <i>Client</i> may</p> <ul style="list-style-type: none"> • treat such failure as a substantial failure by the <i>Contractor</i> to comply with its obligations or • instruct the <i>Contractor</i> to replace the relevant member of Staff.
Z60.5	If the <i>Client</i> 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 <i>Client</i> may treat such non-compliance as a substantial failure by the <i>Contractor</i> to comply with its obligations.
Z60.6	<p>The <i>Contractor</i> acknowledges that the <i>Client</i> may</p> <ul style="list-style-type: none"> • supply any information which it receives under clauses Z60.3 or Z60.5 or • advise the non-supply of information <p>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.</p>
Z61	Not Used
Z62	Third Party Rights
Z62.1	A subcontractor and sub subcontractor have the right to enforce the terms of clause Z8 Subcontracting and Fair payment as stated in S315.90 of the Scope.
Z62.2	A Named Supplier has the right to enforce clause Z14 (Project Bank Account).
Z62.3	Otherwise a person or organisation who is not a Party has no right to enforce any term of the contract under the Contracts (Rights of Third Parties) Act 1999.
Z63 – Z108	Not Used
Z109	Termination and omission of work
Z109.1	The following is added at the end of clause 90.1 of the <i>conditions of contract</i> "unless instructed otherwise by the <i>Client</i> ".
Z109.2	Delete clause 92.3 of the <i>conditions of contract</i> and substitute it with "Not Used."
Z109.3	<p>The following are treated as a substantial failure by the <i>Contractor</i> to comply with its obligations</p> <ul style="list-style-type: none"> • the <i>Contractor's</i> performance as measured in accordance with the current edition of the <i>Client's</i> Collaborative Performance Framework (CPF) (or any replacement for it) is below the <i>failure level</i> or • a key resource needed by the <i>Contractor</i> to Provide the Service is no longer available, and the <i>Contractor</i> does not propose an alternative resource acceptable to the <i>Client</i>.

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Z109 – Z125	Not Used
Z126	Task Order Programme
Z126.1	The <i>Contractor</i> submits a Task Order programme to the <i>Client</i> for acceptance within the period stated in the Contract Data.
Z126.2	<p>The <i>Contractor</i> shows on each Task Order programme submitted for acceptance</p> <ul style="list-style-type: none"> • the Task starting date and the Task Completion Date, • planned Task completion, • the order and timing of the operations which the <i>Contractor</i> plans to do in order to complete the Task, • provisions for <ul style="list-style-type: none"> – float, – time risk allowances, – health and safety requirements and – the procedures set out in the contract, • the dates when, in order to Provide the Service in accordance with its Task Order programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> – access to the Task Order Area, – acceptances, – Plant and Materials, equipment and other things to be provided by the <i>Client</i> and – information from Others, • for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and • other information which the Scope requires the <i>Contractor</i> to show on a Task Order programme submitted for acceptance.
Z126.3	<p>Within one week of the <i>Contractor</i> submitting a Task Order programme for acceptance, the <i>Client</i> notifies the <i>Contractor</i> of the acceptance of the Task Order programme or the reasons for not accepting it. A reason for not accepting the Task Order programme is that</p> <ul style="list-style-type: none"> • the <i>Contractor's</i> plans which it shows are not practicable, • it does not show the information which the contract requires or • it does not comply with the Scope.
Z126.4	<p><u>Revising the Task Order programme</u></p> <p>The <i>Contractor</i> shows on each revised Task Order programme</p> <ul style="list-style-type: none"> • the actual progress achieved on each operation and its effect upon the timing of the remaining work, • the effects of implemented compensation events,

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Z126.5	<ul style="list-style-type: none"> • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Contractor</i> proposes to make to the Task Order programme. <p>The <i>Contractor</i> submits a revised Task Order programme to the <i>Client</i> for acceptance</p> <ul style="list-style-type: none"> • within the period for reply after the <i>Client</i> has instructed the <i>Contractor</i> to and • when the <i>Contractor</i> chooses to. <p>The latest Task Order programme accepted by the <i>Client</i> supersedes a previously accepted Task Order programme.</p>
Z127	Limitation of Liability
Z127.1	The <i>Contractor's</i> liability to the <i>Client</i> for the <i>Client's</i> indirect or consequential loss is limited to the amount stated in the Contract Data.
Z127.2	<p>For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property</p> <ul style="list-style-type: none"> • within the Task Order Area is limited to the amount stated in the Contract Data and • outside the Task Order Area is unlimited.
Z127.3	Not Used
Z127.4	<p>The <i>Contractor's</i></p> <ul style="list-style-type: none"> • total liability to the <i>Client</i> for all matters arising under or in connection with the contract and • total liability to the <i>Client</i> for all matters arising under or in connection with a Task, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the country where the service is provided.
Z127.5	<p>The excluded matters are amounts payable by the <i>Contractor</i> as stated in the contract for</p> <ul style="list-style-type: none"> • loss of or damage to the <i>Client's</i> property, • delay damages, • fraud or fraudulent misrepresentation, • events for which the contract requires the <i>Contractor</i> to insure (but only up to the required level for each type of insurance stated in the Scope), • infringement of rights of Others, • loss or damage

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- 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* willful misconduct illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Z128	Sectional Completion
Z128.1	<p>In these <i>conditions of contract</i>, unless stated as the whole of the Task, each reference and clause relevant to</p> <ul style="list-style-type: none"> • the Task, • Task Order, • Task Order Completion Date, • starting date for Task • delay damages and • <i>service period</i> <p>applies, as the case may be, to either the whole of the Task, Task Order or any Task Section of the Task.</p>