



# **Highways England Company Limited**

## **Area 9**

### **Maintenance and Response Contract**

#### **Contract Data**

### CONTENTS AMENDMENT SHEET



Amend No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	AJP	30/06/2021
1	1	Clause 61.2 updated to remove stray reference to Z40.2 (TQ58)	AJP	30/07/2021

## 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 Term Service Contract June 2017 including amendments dated January 2019.

Main Option	A and E	Option for resolving and avoiding disputes	W2
Secondary Options	X1, X2, X11, X18, X24 Y(UK)1, Y(UK)2, Y(UK)3 Z1-Z19, Z39, Z42-Z43, Z50-Z53, Z56-Z61, Z105, Z107, Z108		
The <i>service</i> is	the provision of Maintenance and Response services in relation to the Strategic Road Network in the Affected Property		
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			
The <i>Service Manager</i> is			
Name			

Address for  
communications

West Midlands Regional Operations Centre, 1 Ridgeway, Quinton  
Business Park, Birmingham, B32 1AF

Address for  
electronic  
communications

The Affected  
Property is

- Highways England Area 9 Region assets as detailed in the Network Information.
- the DBFO Technology Affected Property from the *access date*.
- the DBFO Affected Property from the *DBFO access dates*.

The DBFO  
Affected Property  
is

as detailed in the Network Information as defined below:

- A50 DBFO Affected Property
- M40 DBFO Affected Property

The DBFO  
Technology  
Affected Property  
is

as detailed in the Network Information

The *Network  
Information* is

Network Information

The Scope is in

Scope

The *language of the contract* is

English

The *law of the contract* is the law of

England, subject to the jurisdiction of the Courts of England

The *period for reply* is

2 weeks

except that

• The *period for reply* for

Compensation  
Event quotes

is

3 weeks

The following matters will be included in the Early Warning Register

- Failure to establish an effective severe weather service.
- Failure to establish an effective incident response service.
- Failure to support the client to demonstrate a defence under Section 58 of the Highways Act 1980.
- Lack of understanding of the Affected Property, its condition, traffic using the network, asset data and maintenance requirements.
- Failure to operate as an integrated team through the Midlands Region community.
- Failure to support the Traffic Officer service by ensuring the availability of an experienced capable resource to respond to requests to provide traffic management.
- Failure to develop an effective maintenance plan that maximises network occupancy including shared opportunities with others.
- Failure to provide effective communication with Highways England's control room, traffic officers, contractors, emergency services and other stakeholders.
- Failure to develop an effective stakeholder plan, together with the use of customer insight to inform decision making.
- Failure to establish collaborative working with other delivery partners.
- Failure to establish effective engagement with Highways England's commercial and finance teams.
- Failure to establish effective health, safety and wellbeing practices.
- Failure to develop effective contingency plans and operating processes.
- Failure to understand the impact of operating a smart motorway, including the maintenance requirements.
- Failure to adopt and effectively use Highways England systems, for example Confirm.
- Failure to transition to an Asset Delivery environment.
- Failure to maintain and operate the tunnels within an appropriate time scales.
- Failure to maintain and repair technology assets within the required restore times.

Failure to provide the supportive information and data to update the *Client's* information systems.

Early warning meetings are to be held at intervals no longer than

monthly

- **Data Protection Legislation:**

The contact details of the Data Protection Officer for the *Client* are:

Highways England, Piccadilly Gate, Store Street,  
Manchester M1 2WD.

## 2 The *Contractor's* main responsibilities

The *Contractor* prepares forecasts of the total Defined Cost for the Cost Reimbursable Duties at intervals no longer than

monthly

## 3 Time

The *starting date* is

25 January 2022

The *access date* is

01 July 2022

The DBFO *access date* is

A50 DBFO *access date* - 30/06/26

M40 DBFO *access date* - 05/01/27

or such other date as instructed by the  
*Service Manager*

The *service period* is

eight years commencing on the *access date*

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

as defined in Scope,  
Annex 15

The period within which the *Contractor* is to submit a Task Order programme for acceptance is

as instructed by the  
*Service Manager*

#### 4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and Quality Plan is

As defined in Scope

#### 5 Payment

The *first assessment date* is 6<sup>th</sup> February 2022

The *currency of the contract* is the

Pound sterling (£)

The *assessment interval* is

one calendar month

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

3 % per annum (not less than 2) above the

base

rate of the

Bank of England

in force from time to time

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 Service Provided to Date

#### 6 Compensation events

The *value engineering percentage* is

50%

These are additional compensation events

- (19) The *Contractor* is required to modify its method to Provide the Service as a result of a change in the *Client's* reference documents in Scope, Annex 3 (not resulting from an Enhancement or a change in law occurring after the Contract Date). In determining whether a compensation event has occurred, the effect of

each change is considered separately and is not aggregated with the effect of any other change. The first 5% of the increase or decrease in the Defined Cost of carrying out an operation is ignored when assessing a compensation event (but not when determining whether a compensation event has occurred).

- (20) Not used.
- (21) Not used.
- (22) A Smart Motorway Scheme is handed over for maintenance by the *Contractor*.
- (23) A change in the use of the Premises that adversely affects the *Contractor's* ability to Provide the Service in relation to, or from, the Premises.
- (24) The *Service Manager* gives an instruction for dealing with an object of value or of historical or other interest found on, in or under the Affected Property.
- (25) The *Service Manager* unreasonably refuses to authorize the replacement of an item of Client's Stocks when requested to do so by the *Contractor*.
- (26) The Secretary of State issues additional directions or guidance to the *Client* under section 6 of the Infrastructure Act 2015 or changes any directions or guidance previously issued (including directions or guidance contained in the Licence).
- (27) The *Service Manager* gives the *Contractor* an instruction to Provide the Service (or parts of the service) in relation to highway assets outside the Affected Property.
- (28) The service relating to the DBFO Affected Property. For this purpose, the prices will be the Prices in the Price List, unless otherwise accepted by the *Service Manager*.
- (29) The *Service Manager's* instruction relating to Asset Type 2200: Tunnels pursuant to clause Z108.
- (30) The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.

## 8 Liabilities and insurance

These are additional *Client's* liabilities

- (1) Loss of or damage to any part of the Affected Property (excluding the Premises) due to theft
- (2) Loss of or wear or damage to any part of the Affected Property by any other cause, except loss, wear or damage which is due to any act, omission, default or breach of this contract on the part of the *Contractor*.



The *Contractor* provides the insurances in accordance with the requirements in Annex 4 of the Scope.

### Resolving and avoiding disputes

The *tribunal* is

arbitration

The *arbitration procedure* is

The Institution of Civil Engineers Arbitration Procedure (April 2012)

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 his nominee

The *Senior Representatives of the Client* are

Name (1)

[REDACTED]

Address for  
communications

Highways England  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN

Address for  
electronic  
communications

[REDACTED]

Name (2)

[REDACTED]

Address for  
communications

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

Address for  
electronic  
communications

The *Adjudicator* is

Name

the person chosen by the Parties from an agreed list of Adjudicators  
published by the Institution of Civil Engineers

Address for  
communications

to be advised on a case by case basis

Address for  
electronic  
communications

to be advised on a case by case basis

The *Adjudicator nominating body* is

The Institution of Civil Engineers

# **X1: Price adjustment for inflation used only with Option A**

The proportions used to calculate the Price Adjustment Factor is 100%

The *base date* for indices is

01 September 2021

*first inflation adjustment date is:*

01 April 2022

subsequent inflation adjustment dates (after the *first inflation adjustment date*) are:

01 April 2023

01 April 2024

01 April 2025

01 April 2026

01 April 2027

01 April 2028

01 April 2029

01 April 2030

These indices are

Price Adjustment Formulae Indices Series 4 – Highways Maintenance, 4/HM/WC/01 Routine, Cyclic and Time Charge Works published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors

# **X18: Limitation of liability**

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

£25 million

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

£25 million

The *Contractor's* liability for Defects due to its design of an item of Equipment is limited to

£25 million

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

£25 million

The *end of liability date* is 12 years after the end of the Service Period

#### X24: The accounting periods

The *accounting periods* are each Financial Year falling wholly or partly within the Service Period.

#### Y(UK)1: Project Bank Account

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

The account holder is the *Contractor*.

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

term

*beneficiary*

Fair payment (Scope, clause S 1206)

A Subcontractor  
subcontractors  
subsubcontractors

Subcontracting (Z8 & Scope, clause 1.14)

A Subcontractor  
subcontractors  
subsubcontractors

Clause Z39.3

An Incoming Contractor

The provisions of Options Y(UK)1

Named Suppliers

### Contract Data entries relating to Z Clauses

#### Clause Z107 Network Rail Possessions

Total of 16 rail possessions (for drainage maintenance at A49 Onibury level crossing and for cleaning of suspended drainage on the Midland Links Viaducts) over the contract duration.

The Network Rail possession charge is

Possession only (no electrified overhead lines) – total 8 possessions – charge £5k
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per possession

Possession and isolation (electrified lines) – total 8 possessions – charge £9k
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per possession

### Contract Data entries relating to the Scope

#### Z: Additional conditions of contract

- The *additional conditions of contract* are clauses Z1-Z19, Z39, Z42-Z43, Z50-Z53, Z56-Z61, Z105, Z107, Z108

Z Clauses Contents	
Number	Title
Z1	Changes to Core and Secondary Option clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Contractor</i> .
Z4	Assignment and transfer
Z5	Confidentiality
Z6	Adjudication
Z7	Termination – Public Contract Regulations 2015
Z8	Subcontracting
Z9	Change of Control and financial distress
Z10	Joint ventures
Z11	Parent Company Guarantee
Z12	Discrimination, Bullying and Harassment
Z13	Intellectual Property Rights (IPRs)
Z14	Project Bank Account
Z15	Tax Non – Compliance
Z16	Value Added Tax Recovery
Z17	Removal of <i>service</i> from the Scope
Z18	Corruption or loss of data
Z19	Conflict of Interest
Z20 – Z38	Not Used
Z39	The Service Period
Z40 - Z41	Not Used
Z42	Plant and Materials, Equipment and Stocks
Z43	Audit, Contract Management Points and Nonconformities
Z44 – Z49	Not Used
Z50	Health and Safety Plan
Z51	Changes to the Price
Z52	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
Z53	Pensions
Z54 – Z55	Not used
Z56	Construction Industry Scheme
Z57	Infrastructure Act 2015
Z58	Revisions to Quality Submission
Z59	Indemnified claims
Z60	Tax Arrangements of Public Appointees
Z61	Enhancements
Z62 – Z104	Not Used
Z105	Innovation - Title to Equipment
Z106	Not Used
Z107	Network Rail Possessions
Z108	Tunnel price adjustments

Z1	Changes to core & Secondary Option clauses
11	<b>Identified and defined terms</b>
11.2(1)	<p>Delete and insert new clause</p> <p>(1) The Accepted Plan is the latest Annual Commercial Plan for each Financial Year accepted by the <i>Service Manager</i> in accordance with Annex 15 to the Scope. The latest Annual Commercial Plan accepted by the <i>Service Manager</i> supersedes previous Accepted Plans.</p>
11.2(22)	In the definition of “Defined Cost (Option A) delete “Short”.
11.2(23)	In the definition of “Defined Cost (Option E) after “Components” insert “(subject to Clause Z8.2)”
11.2(24)	<p>In the definition of “Disallowed Cost”</p> <p>(i) insert an additional sub-bullet under the third main bullet point as follows</p> <ul style="list-style-type: none"> <li>○ comply with the <i>Client’s</i> Behavioural Maturity Framework described in the Scope,</li> </ul> <p>(ii) after “and the cost of” insert the following additional bullet points</p> <ul style="list-style-type: none"> <li>○ implementing any modifications or enhancements to the <i>Contractor’s</i> data collection systems (or those of a subcontractor, at any stage of remoteness from the <i>Client</i>) to meet the <i>Client’s</i> requirements as stated in the Scope,</li> <li>○ carrying out additional audits of the <i>Contractor’s</i> quality management system during any period while the number of Contract Management Points in effect is above the Threshold Level,</li> <li>○ replacing a key person (and any associated costs)</li> <li>○ complying with sections 1.16.2 (regarding substance abuse etc.) and 1.20.2 (security) in Annex 13 of the Scope and resulting costs.</li> </ul>
11.2 (25) and (26)	<p>Delete and insert new clause</p> <p>(25) The Price for Service Provided to Date is the total of</p> <ul style="list-style-type: none"> <li>• for Mobilisation Duties, the proportion stated in paragraph 15 of the Price List of the lump sum for mobilisation stated in Schedule A to the Price List according to the stage to which the Mobilisation Duties have been completed,</li> <li>• for Interventions, the total of the monthly lump sums for the Interventions stated in the relevant Accepted Plan (as adjusted for compensation events), which the <i>Service Manager</i> decides that the <i>Contractor</i> has completed,</li> </ul>

- for the remainder of the Lump Sum Duties, the total of the monthly lump sums for each identified activity stated in the relevant Accepted Plan for the period since the *access date* which the *Service Manager* decides that the *Contractor* has completed,
- for Cost Reimbursable Duties, the Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date (excluding the Defined Cost of Plant and Materials purchased by the *Contractor* but not yet incorporated in the Affected Property) plus the Fee
- for the remainder of the *service*, an amount calculated by multiplying the quantity of items which the *Contractor* has completed by the rate stated in Schedule B or Schedule C to the Price List (whichever is applicable) or otherwise agreed between the *Contractor* and the *Service Manager*, and
- the *service* which is subject to a Task Order in accordance with Schedule F of the Price List (which is not the subject of Schedule C to the Price List)

11.2 Add the following defined terms:

(30) Annual Commercial Plan is a plan for each Financial Year prepared by the *Contractor* in accordance with Annex 15 to the Scope.

(31) 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.

(32) 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.

(33) Client's Requirements are:

- GM 701 - Asset delivery asset maintenance requirements (ADAMr),
- Required Level of Service (RLOS),
- GS 801 - Asset delivery asset inspection requirements (ADAIR),
- GM 702 - Operational requirements for network occupancy (ORNO),
- GM 703 - Operational requirements for incident management (ORIM),
- GM 704 - Operational requirements for severe weather (ORSW),



- Severe Weather Plan,
  - Severe Weather Plan AD Appendices

(34) *Client's Vehicles* are the following vehicles described in Annex 22 to the Scope and listed in the Network Information

- Area Operational Winter Service Vehicles (including the Operational Reserve),
- National Reserve Winter Service Vehicles and
- National Reserve Snow Blowers.

(36) Community Partner is an organisation (other than the *Contractor*) engaged by the *Client* to provide works or services in relation to the maintenance, repair, renewal or improvement of the Affected Property.

(37) 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.

(38) Contract Management Points are points accrued by the *Contractor* in accordance with the Contract Management Points tables in the Scope.

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

(40) 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.

(41) Cost Reimbursable Duties are the duties set out in Section D of the Price List.

(42) 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.

(43) Data Protection Legislation has the meaning defined in the Scope.

(44) DBFO Affected Property is property of the *Client* which is identified as such in the Contract Data, unless later changed in accordance with the contract, excluding the DBFO Technology Affected Property

(45) DBFO Technology Affected Property is property of the *Client* which is identified as such in the Contract Data, unless later changed in accordance with the contract, excluding the DBFO Affected Property

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

(47) Documentation has the meaning defined in the Scope.

(48) 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).

(49) 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

(50) Enhancement is a change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property proposed by the *Contractor* or a Community Partner which has not previously been adopted by the *Client* in the Affected Property or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the *Client*) is expected to provide a significant long-term benefit to the *Client* in terms of

- reducing the cost to the *Client* of the *service* or of maintaining, operating, renewing and improving the Affected Property,
- improving the quality or effectiveness of delivery of the *service* or
- otherwise enhancing the achievement of the *Client's* vision, outcomes and key objectives,

but excludes design solutions proposed by the *Contractor* in the course of developing the design for works relating to the Affected Property intended to be carried out by any Community Partners

(51) EU Reference is any European Union

- regulation,
- decision,
- tertiary legislation or
- provision of the European Economic Area agreement

(52) Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended.

(53) Financial Standing Test is the financial test for the *Contractor*, a Consortium Member or a proposed guarantor required in compliance with the Public Contract Regulations 2015.

(54) Financial Year is (as the case may be)

- the period commencing on the *access date* or *DBFO access date* and ending on 31 March in the following year,
- a period of twelve months commencing on the expiry of the previous Financial Year or

- in the case of the Financial Year in which the Service Period expires, the period commencing on the expiry of the previous Financial Year and ending on the expiry of the Service Period.

(55) General Anti-Abuse Rule is

- The legislation in Part 5 of the Finance Act 2013, and
- Any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.

(56) Government is Her Majesty's Government of the United Kingdom.

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

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

(59) 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 this 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.

(60) Incentive Amount is an amount (not exceeding £1,000,000 in respect of any one Enhancement) payable to the *Contractor* (either alone or shared with one or more Community Partners) if an Enhancement is successfully implemented

(61) 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 relation to the Affected Property (or part of it) in place of the *Contractor*

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

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

(64) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the Affected Property and the *service* or any revised systems introduced by the *Client* from time to time.

(65) Innovation is an innovative solution to an issue in relation to the development of which the *Client* wishes to invest designated funds.

(66) 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.

(67) Intervention is one item of maintenance work on one unit (as defined in Schedule B to the Price List) of a Sub-Asset Type.

(68) Licence is the document entitled “Highways England: Licence” listed in Annex 3 to the Scope

(69) Lump Sum Duties are the duties set out in Schedule A to the Price List.

(70) Mobilisation Duties are the duties so described in the Scope.

(71) Network Information is information which is in the document of that name referred to in the Contract Data and which identifies and describes the Affected Property and its surroundings and provides information pertaining to them, the *Client’s* assets and the *Client’s* Stocks.

(72) Open Source Software has the meaning defined in the Scope.

(73) OSS has the meaning defined in the Scope.

(74) Outgoing Contractor is any agent or contractor appointed by the *Client* or Others to provide services similar to the *service* in relation to the Affected Property during the period immediately prior to the *access date* or *DBFO access date*.

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

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

(77) Personal Data has the meaning defined in the Scope.

(78) Premises are the office space, compounds, depots, workshop space, storage and other facilities and buildings described in the Network Information, including but not limited to roadside technology, picnic areas, tunnel buildings, and any other highway related buildings made available by the *Client* for the use of the *Contractor* during the Service Period as described in the Scope.

(79) Quality Submission is the *quality submission* unless later changed in accordance with these *conditions of contract*, detailing the commitments made by the *Contractor* as part of its tender in respect of how it is to perform its obligations under the contract.

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

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

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

(83) 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

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

(85) Service Plan is the *service plan* or is the latest plan submitted by the *Contractor* under clause 32 of the *conditions of contract*. The latest plan submitted by the *Contractor* supersedes previous Service Plans.

(86) Smart Motorway Scheme is a scheme of alteration to the Affected Property which converts the hard shoulder into a running lane, either permanently or during periods of high traffic flow, and includes the ability to control traffic dynamically.

(87) Staff are employees employed by the *Contractor* or an Associated Company or any Subcontractor to Provide the Service at any time

(88) Sub-Asset Types are the categories of asset and items in relation to which the *Contractor* is to Provide the Service as identified in the *Client's Plans*.

(89) 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
  - Giving rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of this contract or to a civil penalty for fraud or evasion.

(90) Tender Commitments are the measurable commitments contained within the Quality Submission.

(91) Threshold Level is the threshold level of Contract Management Points stated in the Scope.

(92) Transferring Employees are employees of an Outgoing Contractor (or of a Subcontractor of an Outgoing Contractor) employed for the carrying out of work or the provision of services similar to the *service* in relation to the Affected Property or the DBFO Affected Property during the period immediately prior to the *access date* or the

*DBFO access date*, other than employees who object to being transferred to the Contractor.

(93) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

(94) TUPE Information is information regarding the Staff including identity, number, age, sex, length of service, job title, grade and terms and conditions of employment, details of any disciplinary procedure taken against a member of Staff, detail of any grievance procedure taken by a member of Staff, together with any other matters affecting each of those Staff including but not limited to the information which a transferor is obliged to notify to a transferee pursuant to regulation 11(2) of TUPE.

## **12 Interpretation and the law**

### **12.2 Delete & 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.

## **15 Early warning**

### **15.1 Add after the first bullet point**

- increase the whole life cost of any asset forming part of the Affected Property,

## **24 Subcontracting**

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

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

## **26 Assignment**

Delete clause 26

## **27 Disclosure**

Delete clause 27

## **31 The Contractor's plan**

Delete clause 31 and insert "Not used".

## **32 Revising the Contractor's plan**

Delete clause 32 and insert

32.1 The *Contractor* submits a revised Service Plan to the *Service Manager*

- within the *period for reply* after the *Service Manager* has instructed the *Contractor* to,
- when the *Contractor* chooses to and
- not later than four weeks before the start of each Financial Year.

32.2 Each revised Service Plan contains the details specified in the Scope.

## **50 Assessing the amount due**

Delete clauses 50.1, 50.2, 50.3 and 50.6 and replace with:

50.1 The *Service Manager* assesses the amount due at the last day of the calendar month before each assessment date. The *first assessment date* is stated in the Contract Data. Later assessment dates occur on the 6<sup>h</sup> of each calendar month after the end of each *assessment interval* until

- one calendar month after the end of the Service Period or
- the *Service Manager* issues a termination certificate.

In assessing the amount due, the *Service Manager* considers an application for payment submitted by the *Contractor* that is date compliant and detail compliant.

If the *Contractor* submits an application for payment which is not in accordance with the contract, the *Service Manager* is not obliged to ascertain (on behalf of the *Contractor*) the amount the *Contractor* considers is due at the last day of the calendar month before each assessment date.

50.2.1 The *Contractor* submits an application for payment to the *Service Manager* no earlier than the 1<sup>st</sup> day of each calendar month and before each assessment date setting out the amount the *Contractor* considers is due at the last day of the calendar month before the assessment date.

A date non-compliant application for payment is not construed by the *Service Manager* as a date compliant application for payment until the

assessment date falling one calendar month after the date of receipt of the date non-compliant application for payment.

- 50.2.2 The *Contractor's* application for payment includes details of how the amount has been assessed and all information, in the required format, stated in the Scope.

An application for payment that does not include details of how the amount has been assessed and all information, in the required format, stated in the Scope is not in accordance with the contract. The *Service Manager* issues a payment notice pursuant to clause 50.4

- 50.3 If the *Contractor* submits an application for payment in accordance with the contract, the amount due at the last day of the calendar month before the assessment date is

- the Price for Service Provided to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

- 50.6 The *Service Manager* corrects any incorrectly assessed amount due in a later payment notice (or pay less notice as appropriate).

## 51 Payment

Delete clauses 51.1 and 51.2 and replace with:

- 51.1 The *Service Manager* certifies a payment on or before the 19th of each calendar month. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. The Party to which payment is due submits an invoice to the other Party for the amount due (stated in the payment notice) on or after receipt of the *Service Manager's* certificate but no later than the 23<sup>rd</sup> of each calendar month.

The *Contractor* submits separate invoices for

- Section A / Section B of the Price List (Lump Sum Duties),
- Section C of the Price List (Schedule of Rates)
- Section D of the Price List (Cost Reimbursable Duties) and
- Section F of the Price List (Task Order).

Payments are in the *currency of the contract* unless otherwise stated in the contract.

- 51.2 If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment



is made, and is included in the first assessment after the late payment is made.

## 52 Defined Cost

Insert new clause 52.4:

“For all Cost Reimbursable Duties, the *Contractor* utilises rates estimated from forecast Defined Costs with effect from the *access date*. The *Contractor* reconciles estimated rates with its actual Defined Costs at three monthly intervals commencing from the *access date*. These quarterly reconciliations are undertaken by the *Contractor* in collaboration with the *Service Manager*. Within 14 days of the completion of each quarterly reconciliation, the *Contractor* reports and corrects any under or over recovery of actual Defined Costs by adjusting the future rates.

The *Contractor* submits its rates utilised for Cost Reimbursable Duties on an annual basis to the *Service Manager* for acceptance. After acceptance by the *Service Manager* the adjusted rates are immediately utilised for all Cost Reimbursable Duties.”

## 60 Compensation events

In clause 60.1(1) delete “or” at the end of the first bullet point and insert a comma. At the end of the clause delete the full stop and insert

or

- a change to the Information Systems or the introduction of a new Information System,
- 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

60.1 (5) 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”.

In clause 60.1(11) after “Affected Property” insert “(other than a change in the quantity of any Sub-Asset Type comprised in the Affected Property)”.

Delete clause 60.2 and insert:

“This clause is only applicable to Option A Lump Sum Duties in Schedule A of the Price List, where the Item is not measured as a “sum”.

Within 8 weeks of the end of each Financial Year, the *Contractor* undertakes a reconciliation of the difference between the actual Total Interventions instructed and completed for the previous year and the Total Interventions as listed in Schedule A

of the Price List. The *Contractor* submits the reconciliation to the *Service Manager* for acceptance. The *Service Manager* informs the *Contractor* if it accepts the reconciliation or does not accept the reconciliation and the *Contractor* adjusts accordingly.

A compensation event will apply for each Item if:

- the difference does not result from a change to the Scope,
- the difference causes the Defined Cost per unit of quantity to change,
- for the same Item in Schedule A of the Price List the difference between the quantities for the following is greater than 25%:
  - the actual Total Interventions instructed, and completed by the *Contractor*, and
  - the Total Interventions in Schedule A of the Price List.

The *Contractor* will calculate the new rates for each Item in accordance with the Price List, Clause 20.

In clause 61.2, after the first bullet point add a new bullet point

- was something of which the *Contractor* was or ought to have been aware at the *base date*

In clause 63.2, after “other compensation events,” insert “unless the contract states otherwise,”.

Delete clauses 63.3 and 63.14.

### **63 Assessing compensation events**

Insert at the beginning of clause 63: “The *Contractor* is deemed to have satisfied itself before entering into the contract

- as to the Scope and nature of the *service* and its obligations under the contract,
- as to the basis of payment for the *service* and
- that it has all the information necessary to enable it to Provide the Service in accordance with the contract.

### **70 The *Client’s* title to Plant and Materials**

Delete clause 70 and insert:

“70.1 The value of Plant and Materials outside the Service Areas is excluded from the Price for Service Provided to Date unless

- the Plant and Materials is within the United Kingdom,
- the *Contractor* demonstrates to the satisfaction of the *Service Manager* that the *Contractor* has unencumbered title to the Plant and Materials,

- the Plant and Materials is stored separately and is clearly and visibly marked as for the *Client* and this contract,
- the Plant and Materials is adequately protected against water, theft, vandalism and other casualties,
- the Plant and Materials is insured against loss or damage while stored or in transit to the Service Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Service Areas and
- the *Contractor* has provided a vesting certificate unless otherwise accepted by the *Service Manager* (in the form annexed to the Scope, Annex 3) for the value of the Plant and Materials.

70.2 Where the value of Plant and Materials outside the Service Areas is included in an application for payment

- the *Contractor's* title in the Plant and Materials passes to the *Client*,
- the *Contractor* does not remove it from where it is stored except for use on the Affected Property and
- the risk of loss or damage to the Plant and Materials remains with the *Contractor*.

70.3 The value of Plant and Materials within the Service Areas is excluded from the Price for Service Provided to Date unless

- title in the Plant and Materials has already passed to the *Client* under clause 70.2 or
- the *Contractor* demonstrates to the satisfaction of the *Service Manager* that the *Contractor* has unencumbered title in the Plant and Materials.

70.4 The *Contractor's* title in Plant and Materials passes to the *Client* when it is brought within the Service Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor*.

70.5 The *Contractor* does not remove Plant and Materials within the Service Areas from where it is stored except for use on the Affected Property or with the *Service Manager's* prior written permission.

70.6 The title to Plant and Materials passes back to the *Contractor* if it is removed from the Service Areas with the *Service Manager's* prior written permission."

## **81 Contractor's liabilities**

At the end of clause 81.1 add a new bullet point

- Loss of or damage to the *Client's* Vehicles or *Client's* Stocks while in the possession or control of 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 4 to the Scope.

### 93 Payment on termination

Item A4 in clause 93.2 is deleted and replaced with the following:

“substantiated tender costs up to a maximum of £50,000.”

#### Option X1 Price Adjustment for Inflation

Delete clauses X1.1 (a) and (b) and insert new clauses (a) and (b):

X1.1 (a) The Base Date Index (B) used at the first inflation adjustment date is the latest available on or before the base date. The Base Date Index (B) used at subsequent inflation adjustment dates is the index at the 1ST January immediately before the previous year’s inflation adjustment date.

(b) The Latest Index (L) is the latest index available at the 1st January immediately before each inflation adjustment date

#### 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 X11: Termination by the Client

At the end of clause X11.2 (before the full stop) insert “unless the Client has given the Contractor at least 12 months’ prior notice of his intention to terminate, in which case the amounts due on termination are A1 and A2 plus the fee percentage applied to the most recent forecast of the amounts that would have become due to the Contractor under the contract during the period of 12 months after the termination (assuming the termination had not occurred) or during the remainder of the Service Period (if that remaining period is less than 12 months)”.

#### Option X18 Limitation of liability

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

- loss of or damage to the *Client’s* property,
- delay damages,
- *Contractor’s* share,
- fraud or fraudulent misrepresentation,
- 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,
- losses caused by the *Contractor's* illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct,
- death of or bodily injury to a person other than an employee of the *Contractor* and
- other events for which the contract requires the *Contractor* or *Client* to insure (but excluded only up to the required level for each type of insurance stated in Annex 4 to the Scope.

#### **Option Y(UK)1 Project Bank Account**

Y1.2 In line 1 delete “three” and insert “six”.

Clause Y1.6 is amended by inserting the following after the second sentence. "The *Client* may propose that a Supplier is added to the Named Suppliers. The *Contractor* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.

Y1.9 In line 4 delete “four” and insert “two”.

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

Delete Clauses Y2.1, Y2.2 and Y2.3 and replace with:

- Y2.1 In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays and a reference to “invoice” shall mean an “electronic invoice” where an invoice has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. The invoice is an electronic invoice if it complies with the standard on electronic invoicing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- Y2.2 The due date for payment is the 17<sup>th</sup> of each calendar month. The due date for payment of a final payment is
- if the *Service Manager* makes an assessment after the end of an accounting period, fourteen weeks after the end of the accounting period or, if a different period is stated in the Contract Data, within the period stated,
  - if the *Service Manager* makes an assessment after the end of the Service Period, fourteen weeks after the end of the Service Period

or, if a different period is stated in the Contract Data, within the period stated,

- if the *Service Manager* does not make an assessment after the end of the Service Period, one week after the *Contractor* issues its assessment or
- if the *Service Manager* has issued a termination certificate, fourteen weeks after the issue of the certificate.

The final date for payment is the later of

- thirteen (13) days after the due date for payment and
- seven days after the receipt by the Party making payment of an invoice, issued in accordance with these *conditions of contract*.

The *Service Manager's* certificate is the payment notice specifying the amount due at the due date for payment (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the *Service Manager* does not make an assessment after the end of the Service Period, the *Contractor's* assessment is the payment notice.

If the *Service Manager* does not certify and issue the payment notice in accordance with the contract, the *Contractor's* application for payment is the payment notice.

- Y2.3 If either Party intends to pay less than the notified sum, it issues a pay less notice to the other Party on or before the 27<sup>th</sup> of each calendar month by stating the amount considered to be due or to have been due on the date the pay less notice is served and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.

### **Schedule of Cost Components**

Delete the first sentence of the preamble.

Delete paragraph 12(a).

Delete paragraph 12(f) and insert "statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Service where redundancy arises because the person is no longer required to be employed to Provide the Service 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 to Provide the Service."

In paragraph 13(a) after "travel" insert "in accordance with the *Client's* Travel and Subsistence policy".

In paragraph 13(b) after “subsistence and lodging” insert “in accordance with the *Client’s* Travel and Subsistence policy”.

In paragraph 13(j) after “pensions” insert “excluding payments made in relation to any pensions deficits”.

In paragraph 13(o) after “safety training” insert “specific to Providing the Services in the Service Areas”.

In paragraph 22 insert at the end of this clause: “The reference to “open market rates” means the mean average of a minimum of three prices, obtained and evidenced by the *Contractor*, from local plant hire companies that are able to supply the required equipment, including deductions for length of hire, spend based and other discounts, unless otherwise agreed by the *Service Manager*.”

In paragraph 23 insert at the end of the second paragraph of this clause: “The reference to “open market sale price” means the mean average of a minimum of three prices, obtained and evidenced by the *Contractor*, from local plant hire companies that are able to supply the required equipment, including deductions for length of hire, spend based and other discounts, unless otherwise agreed by the *Service Manager*.”

Insert at the end of paragraph 25 “(including fuel used in the *Client’s* Vehicles or purchased by the *Client* for its own use)”.

Delete section 7 and insert “Not used”.

### **Short Schedule of Cost Components**

Delete.

## **Z2 Interpretation**

- Z2.1 In the contract, except where the context shows otherwise:
- references to a document include any revision made to it in accordance with the contract;
  - references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
  - references to a British, European or International standard include any current relevant standard that replaces it;
  - references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
  - the words “includes” or “including” are construed without limitation.

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

- Z3.1 Where, under the contract a sum of money is recoverable from or payable by the *Contractor*, such sum may be deducted from or reduced by the amount of any sum

or sums then due or which at any time after may become due to the *Contractor* under the contract or any other contract with the *Client*.

#### **Z4 Assignment and transfer**

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

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

Z4.3 If requested by the *Service Manager*, the *Contractor* executes a novation agreement transferring the benefit and burden of the contract to

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

The novation agreement is in the form set out in the Scope or such other form as the *Client* may reasonably require.

#### **Z5 Confidentiality**

Z5.1 The *Contractor* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person

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

except that the *Contractor* may disclose information

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



- with the consent of the *Client*

Z5.2 The *Contractor* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

## **Z6 Adjudication**

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

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

Z6.2 If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

## **Z7 Termination - Public Contract Regulations 2015**

Z7.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date. The procedure and amount due on termination are the same as for reason R11.

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

- if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

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

- 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 *Service Manager*.
- Z8.3 The *Service Manager* may, having stated the reasons, instruct the *Contractor* to remove a Subcontractor (at any stage of remoteness from the *Client*). The *Contractor* then arranges the removal of the Subcontractor (at any stage of remoteness from the *Client*) and the appointment of a replacement in accordance with the contract.
- Z8.4 The *Client* may terminate if a key Subcontractor or another key resource needed for the *service* is no longer available and the *Contractor* is unable to propose an alternative resource acceptable to the *Service Manager*. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A3.
- Z8.5 Before
- appointing a proposed Subcontractor or
  - allowing a Subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Service Manager* for acceptance
- either
    - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
    - other means of proof (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 subsubcontractor
  - details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor.
- Z8.6 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Service Manager* has accepted the submission. Reasons for not accepting the submission are 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 *Service 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.
- Z8.7 If requested by the *Service Manager*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5
- Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that
- one of the grounds for excluding the subcontractor or subsubcontractor under

regulation 57 of the Public Contracts Regulations 2015 applies or

- the subcontractor or subsubcontractor has not put in place adequate measures to ensure that similar matters to the RIDDOR Incident or the event giving rise to Enforcement Action will not occur

the *Service Manager* may instruct the *Contractor* to

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

Z8.9 The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that

- its appointment will not allow the *Contractor* to Provide the Service.

The *Contractor* does not appoint a proposed subcontractor until the *Service Manager* has accepted it.

Z8.10 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required.

Z8.11 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Service Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Service or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

## **Z9 Change of Control and financial distress**

Z9.1 The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.

Z9.2 The *Contractor* notifies the *Client* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor* (or a Consortium Member), or
- the composition of the *Contractor* or a Consortium Member. A change is material if it directly or indirectly affects the performance of this contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.

Z9.3 The *Contractor* notifies the *Client* immediately of any change or proposed change in the name or status of the *Contractor* or a Consortium Member.

Z9.4 The *Contractor* notifies the *Client* immediately if any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor

- its Credit Rating falls below the relevant *credit rating*,
- there is a further fall in its Credit Rating below the relevant *credit rating*,
- it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
- it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.

Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the Service 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 Service 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.

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

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

the *Client* may terminate the *Contractor's* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are P1, P2 and P3 and the amounts due on termination are A1 and A2.

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

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

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

- Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not
- meet the Financial Standing Test,
  - provide the legal opinion required in clause Z9.13 or
- have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.
- Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client*.
- Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.
- Z9.12 If
- the *Contractor* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
  - neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
  - the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
  - the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will meet the Financial Standing Test within 18 months of the *Service Manager's* acceptance
- the *Client* may treat such failure as a substantial failure by the *Contractor* to comply with its obligations.
- Z9.13 If the *Contractor*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Contractor* (in this clause referred to as a "relevant entity") is not a company incorporated in and subject to the laws of England, the *Contractor* provides a legal opinion from a lawyer or law firm which is
- qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and
  - accepted by the *Client*.
- The legal opinion is addressed to the *Client* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Client*.



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

## **Z10 Joint ventures**

- Z10.1 This clause applies if the *Contractor* is an unincorporated joint venture.
- Z10.2 Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Contractor's* obligations under this contract.
- Z10.3 The *Contractor* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative.
- Z10.4 The *Contractor* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client's* liability to make payment to the *Contractor*.
- Z10.5 A Consortium Member gives not less than four weeks' notice to the *Client* of any proposed termination of the joint venture arrangement.
- Z10.6 Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Contractor* to comply with its obligations.
- Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 & 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 If required by the *Client*, the *Contractor* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the date of award of the contract, or of the *Client's* request, whichever is later.
- Parent Company Guarantees are given for:
- a standalone company – from its Controller, or
  - a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member.
- In all cases it is for the *Client* to decide whether it will accept a Parent Company Guarantee from a company other than the Controller.
- Z11.2 A failure to comply with this condition is treated as a substantial failure by the *Contractor* to comply with its obligations.

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

- Z12.1 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with
- any investigation or proceedings under the Discrimination Acts or
  - an allegation of bullying or harassment
- resulting from any act or omission of the *Contractor* in connection with the contract.

### **Z13 Intellectual Property Rights (IPRs)**

- Z13.1 The *Client* owns (or will own) all IPRs in material prepared in connection with this contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Contractor* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client*, and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Contractor* provides to the *Client* the documents which transfer these IPRs to the *Client*.
- Z13.2 The *Contractor* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Contractor* or its assignees or any third party. The *Contractor* provides to the *Client* the documents which license these IPRs to the *Client*.
- The *Contractor's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.
- Z13.3 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

### **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 and addition of services**

Z17.1 The following non-exhaustive examples are treated as the *Contractor* having substantially hindered the *Client* or Others

- the *Contractor* substantially or repeatedly breaks a requirement of environmental legislation,
- the *Contractor* persistently or materially fails to comply with the Quality Submission or to meet any of the Performance Requirements or
- a key resource needed by the *Contractor* to Provide the Service is no longer available, and the *Contractor* does not propose an alternative resource acceptable to the *Service Manager*.

Z17.2 The *Service Manager* may instruct the *Contractor* that

- part of the Affected Property or part of the *service* is to be permanently removed from the contract or
- for urgent reasons of health and safety, part of the *service* 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 a service similar to the *service* (or part of it) in relation to that part of the Affected Property or provide services similar to the removed *service* (or part of it).

Z17.3 An instruction given under clause Z17.2 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15, R18 or R21, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*.

Z17.4 If the *Contractor's* obligation to Provide the Service is terminated for any reason, the *Contractor* if instructed by the *Service Manager*



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

Z17.5 The *Service Manager* may give the *Contractor* an instruction to Provide the Service (or parts of the *service*) 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 *service* 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 Service.

Before giving an instruction under this clause, the *Service Manager* consults with the *Contractor* and confirms that giving the instruction will not prejudice the *Contractors* 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, stolen or sufficiently degraded as a result of the *Contractor* default so as to be unusable, the *Contractor* immediately reports this to the *Service Manager* and

- the *Service Manager* may instruct the *Contractor* to restore the data in accordance with the *Service 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 Conflict of Interest**

Z19.1 Any steps taken in accordance with paragraph 3.2.1 in the Scope is not a compensation event.

Z19.2 A failure to comply with paragraph 3.2 in the Scope is treated as a substantial failure by the *Contractor* to comply with his obligations.

## **Z20-Z38 Not used**

## **Z39 The Service Period**

Z39.1 The *Contractor* begins to provide that part of the *service* identified in the Scope on the *starting date* and begins fully to Provide the Service on the *access date* or the *DBFO access date* . The *Contractor* continues to Provide the Service until the expiry of the Service Period or the earlier termination of the contract. After the expiry of the Service Period, the *Contractor*

- completes any items of work commenced by it prior to the expiry of the Service Period and

- continues to provide that part of the *service* stated in the Scope as to be performed by the *Contractor* after the expiry of the Service Period.

Z39.2 During the last 6 months of the Service Period, the *Service Manager* may instruct the *Contractor* not to provide any part of the *service* which the *Service Manager* considers will not be completed prior to the expiry of the Service Period

Z39.3 The *Contractor* remains liable (subject to any applicable legislation relating to limitation of actions) for claims, proceedings, compensation and costs due to breaches of the contract which become apparent before or after the end of the Service Period.

**Z40-Z41 Not used.**

**Z42 Plant and Materials, Equipment and Stocks**

- Z42.1 Whatever title the *Contractor* has to Plant and Materials passes to the *Client* if they are
- brought within the Affected Property or
  - marked or otherwise allocated as for the contract.
- Z42.2 At the end of the Service Period, the *Service Manager* may instruct or allow the *Contractor* to remove from the Affected Property any unused Plant and Materials, in which event the title to those Plant and Materials passes back to the *Contractor* when they are removed. If the *Service Manager* does not instruct or allow the *Contractor* to remove Plant and Materials, the *Contractor* leaves them within the Affected Property for the use of the *Client*.
- Z42.3 The *Contractor* has title to all materials from excavation and demolition unless clause Z42.4 applies or otherwise stated in the Scope.
- Z42.4 The *Contractor* has no title to an object of value or of historical or other interest found on, in or under the Affected Property. The *Contractor* notifies the *Service Manager* when such an object is found and the *Service Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions.
- Z42.5 The *Contractor* may at any time request the *Service Manager* to authorise the replacement of an item of Client's Stocks.
- Z42.6 The title to all Client's Stocks remains with the *Employer* at all times. The *Contractor* returns all Client's Stocks in its possession to the *Client* at the end of the Service Period.
- Z42.7 Unless the *Contractor* and the *Service Manager* agree otherwise
- the *Contractor* purchases from the *Client* any fuel stored in the Premises at the prevailing open market rate on the *access date* or the *DBFO access date*, and
  - the *Client* purchases from the *Contractor* any fuel left in the Premises at the prevailing open market rate on the last day of the Service Period and
  - returns to the *Client* all unused Client's Stocks.
- Z42.8 The *Contractor* has the right to use the Client's Stocks only to Provide the Service. The *Contractor* uses the Client's Stocks as specified in and in accordance with the Scope.

**Z43 Audit, Contract Management Points and Nonconformities**

- Z43.1 Following the issue of a contract warning notice and until such time as the *Service Manager* elects otherwise (such decision being in the *Service Manager's* absolute discretion taking into account a satisfactory reduction in the number of Contract Management Points) the *Service Manager* does not instruct the *Contractor* to perform certain duties (the selection of which is in the *Service Manager's* absolute discretion) and the *Client* may appoint Others to perform these duties.

**Z44-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 Contract 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 *Service Manager* and the *Contractor* agree to the extension before the Health and Safety Plans are due. The *Service 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 Service Provided 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 Changes to Prices**

- Z51.1 The Parties may at any time agree a reduction to the Prices.
- Z51.2 The reduced Prices apply to any work carried out after the reduction is agreed.
- Z51.3 If the *Contractor* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Contractor's* obligation to Provide the Service by notifying the *Contractor*.

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

- Z52.1 The *Contractor* provides to the *Client* within 10 days of the *Client's* request such information in connection with TUPE as the *Client* may require. The *Contractor* promptly notifies the *Client* of any later change to information provided by it.
- Z52.2 The *Contractor* acknowledges that the *Client* may disclose information provided by the *Contractor* to
- any replacement provider of service similar to the service and
  - any person tendering to become a replacement provider.
- 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).
- Z52.3 During the 8 month period immediately prior to the end of the Service Period, the *Contractor* submits for the acceptance of the *Client* any proposals to



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

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

Z52.4 The *Contractor* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the *service*.

Z52.5 The *Contractor* complies with, and ensures that any Subcontractor complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty's Government.

### **Z53 Pensions**

Z53.1 The *Contractor* indemnifies the *Client* and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which

- relate to pension rights in respect of periods of employment on or after the Contract Date or

arise out of the failure of the *Contractor*, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of the section headed "Pensions" in the Scope.

### **Z54-Z55 Not used**

### **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.

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 Service 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 *Service Manager* to the *Contractor*).

Z57.2 The *Service 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 *service*. 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 Submission**

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

- it will not enable the *Contractor* to meet a Performance Requirement,
- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Contractor* to achieve the level of performance specified in the Tender Commitments,
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Tender Commitments or
- it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015.

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

## **Z59 Indemnified claims**

- Z59.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).
- Z59.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.
- Z59.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z59.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.
- Z59.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor*'s defence of the Indemnified Claim.
- Z59.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client*'s notice the *Contractor*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
  - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Where the reason for the *Client*'s notice is not due to the fault of the *Contractor* in conducting the Indemnified Claim, the *Contractor* is released from its indemnity to the *Client* in respect of it.

## **Z60 Tax Arrangements of appointees**

- Z60.1 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this 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 this 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 this 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 for the purpose of the collection and management of revenue for which they are responsible.

## **Z61 Enhancements**

Z61.1 The *Contractor* may at any time after the *starting date* submit to the *Service Manager* a proposal for an Enhancement.

Z61.2 Before developing a proposed Enhancement, the *Contractor* prepares and submits to the *Service Manager* an outline business case setting out brief details of

- the proposed change to the design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property,
- the expected long-term benefit to the *Client* if the proposed Enhancement is implemented,
- any significant risks to the successful development and implementation of the proposed Enhancement,
- any resulting change to the Prices or the *Client's* other costs and
- any incentive payment which the *Contractor* proposes should be paid to it if the proposed Enhancement is successfully implemented.

Z61.3 The Parties jointly review the *Contractor's* outline business case. The *Service Manager* assesses whether the Enhancement is likely to achieve the expected benefits and (based on that assessment) indicates to the *Contractor* whether the *Client* is likely to accept the proposed Enhancement.

Z61.4 The *Contractor* continually monitors the development of a proposed Enhancement to assess whether it is likely to achieve the expected benefits and takes all necessary steps to mitigate any costs and risks associated with its development.



- Z61.5 The *Contractor* may propose to the *Service Manager* that trials, testing or a pilot project be carried out to assist with the development of a proposed Enhancement. If the *Service Manager* agrees, it may instruct the *Contractor* to develop a detailed specification for and/or to carry out the trials, testing or pilot project.
- Z61.6 The *Contractor* may prepare and submit to the *Service Manager* a detailed business case for the proposed Enhancement. A detailed business case includes
- full details of the revised design, materials used, methods of construction or maintenance or operational performance requirements relating to the Affected Property,
  - full details of the expected long-term benefit to the *Client* if the Enhancement is implemented and the period over which the benefit is to be assessed,
  - how any risks associated with the implementation of the Enhancement are to be allocated,
  - a cost benefit analysis,
  - any resulting change to the Prices,
  - any expected change to the *Client's* other costs and the timescale over which the change will occur and
  - the proposed Incentive Amount and a proposal as to how it is to be paid to the *Contractor* if the Enhancement is successfully implemented.
- Z61.7 The *Client* decides whether (and if so on what terms) to implement the proposed Enhancement. The *Service Manager* instructs the implementation of an agreed Enhancement as a change to the Scope.
- Z61.8 If the *Contractor* decides not to pursue a proposed Enhancement, the *Client* may take forward the proposal and arrange for a detailed business case to be prepared by Others. If so, the *Client* may use or adapt any material submitted by the *Contractor* as part of its proposal and outline business case.
- Z61.9 Other than where instructed by the *Service Manager* to carry out trials, testing or a pilot project under clause Z61.5, the *Contractor* is not entitled to payment for the design or development of an Enhancement (including the preparation of business cases), nor for the use or adaptation by the *Client* of the *Contractor's* proposal and outline business case under clause Z61.8.
- Z61.10 A change to the Scope instructed by the *Service Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* is not a compensation event.
- Z61.11 If an Enhancement instructed by the *Service Manager* under clause Z61.7 following the submission of a detailed business case by the *Contractor* delivers the benefits described in the *Contractor's* detailed business case, the *Client* pays to the *Contractor* the Incentive Amount. If such an Enhancement delivers part of the benefits so described, the *Client* pays to the *Contractor* a proportionate part (as assessed by the *Service Manager*) of the Incentive Amount.
- Z61.12 The Incentive Amount (or the proportionate part assessed by the *Service Manager*) is included in the final amount due under the contract, except that the Parties may

agree to include it in an earlier amount due if the *Client* has actually received the full benefit of the Enhancement by an earlier date.

Z61.13 In consideration of the *Client's* agreement to pay the Incentive Amount (or a proportionate part) to the *Contractor*, the *Contractor* transfers to the *Client* the Intellectual Property Rights in the Enhancement and the provisions of clause Z13 will apply.

Z61.14 Where an Enhancement is proposed jointly by the *Contractor* and one or more Community Partners, clause Z61 applies except that

- the outline and detailed business case are prepared jointly by the *Contractor* and the relevant Community Partners,
- the detailed business case includes a proposal for how the Incentive Amount is to be shared between the *Contractor* and the relevant Community Partners,
- the *Client* may instruct the *Contractor* or any Community Partner (or a combination of them) to develop a detailed specification for and/or to carry out any trial, testing or pilot project under clause Z61.5 and
- if the Enhancement delivers the benefits (or part of the benefits) described in the detailed business case, the Incentive Amount (or the proportionate part of it) is shared among the *Contractor* and the relevant Community Partners in the proportions stated in the detailed business case.

## **Z62 – Z104 Not Used**

### **Z105 Innovation – Title to Equipment**

Z105.1 At Task Completion or (if earlier) when an Innovation is removed from the Affected Property, the *Service 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 to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

### **Z106 Not Used**

### **Z107 Network Rail Possessions**

Z107.1 The total of the Prices is reduced by the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

Z107.2 In clause 25.3 of the conditions of contract insert an additional bullet before the first bullet  
by paying fines or charges to Others

### **Z108 Tunnel Price adjustments**

Z108.1 The *Service Manager* instructs the *Contractor* when the Prices for Asset Type 2200: Tunnels are excluded from Section D (Cost Reimbursable Duties) and included in

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Section A (Lump Sum Duties), Section B (Schedule of rates for the Lump Sum Duties) and Section C (Schedule of rates duties) to the Price List. Compensation event (29) will apply. Assessments for changed Prices for compensation event (29) are in the form of exclusions from Cost Reimbursable Duties and additions to Lump Sum Duties or schedule of rates duties in the Price List.