

HIGHWAYS ENGLAND COMPANY LIMITED
as *Client*

[•]
as Guarantor

PARENT COMPANY GUARANTEE

relating to the Technical Surveys and Testing – Drainage contract

DATED [●]

Parties	
1)	HIGHWAYS ENGLAND COMPANY LIMITED (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (the “ Client ”),
2)	[●] (company no [●]) whose registered office is at [●] (the “ Guarantor ”)
Background	
A)	By the Contract, the <i>Client</i> has employed the <i>Contractor</i> to Provide the Service.
B)	The Guarantor is the [ultimate] parent company of the <i>Contractor</i> .
C)	The Guarantor has agreed to guarantee the due performance by the <i>Contractor</i> of his obligations under the Contract in the manner set out in this deed.
Operative Provisions	
1. Definitions and Interpretation	
1.1	<p>Unless the contrary intention appears, the following definitions apply:</p> <p>“Contract” means the contract dated [●] between the <i>Client</i> (1) and the <i>Contractor</i> (2) under which the <i>Contractor</i> has agreed to Provide the Service.</p> <p>“Contractor” means [●] (company no [●]) whose registered office is at [●].</p> <p>“Insolvency Event” means the <i>Contractor</i> being unable to pay its debts (as defined by Sections 123(1) and 268(1) of the Insolvency Act 1986) or any corporate action, legal proceedings or other procedure or step is taken in relation to:</p> <ul style="list-style-type: none"> • suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the <i>Contractor</i> other than a solvent liquidation or reorganisation of the <i>Contractor</i>; • a composition, assignment or arrangement with any creditor of the <i>Contractor</i>; • the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the <i>Contractor</i> or any of its assets; or

	<ul style="list-style-type: none"> • enforcement of any security over any assets of the <i>Contractor</i> • or any analogous procedure or step is taken in any jurisdiction. <p>“Service” means the services to be carried out by the <i>Contractor</i> under Task Orders issued by the <i>Client</i> pursuant to the Contract.</p>
1.2	The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
1.3	Words importing the singular meaning include the plural meaning and vice versa.
1.4	Words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably.
1.5	References in this deed to a clause are to a clause of this deed.
1.6	References in this deed to any statute or statutory instrument include and refer to any statutory amendment or re-enactment for the time being in force.
2. Guarantee	
2.1	<p>In consideration of the <i>Client</i> agreeing to enter into the Contract with the <i>Contractor</i>, the Guarantor irrevocably and unconditionally guarantees and undertakes to the <i>Client</i> that:</p> <ul style="list-style-type: none"> • the <i>Contractor</i> will perform and observe all his obligations under the Contract at the times and in the manner provided in the Contract; and • in the event of any breach of such obligations by the <i>Contractor</i>, the Guarantor shall procure that the <i>Contractor</i> makes good the breach or otherwise cause it to be made good and shall indemnify the <i>Client</i> against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the <i>Client</i> arising from or in connection with it.
2.2	<p>The Guarantor shall also indemnify the <i>Client</i> against:</p> <ul style="list-style-type: none"> • any costs, losses and expenses (including legal expenses) which may be suffered or incurred by the <i>Client</i> in seeking to enforce and enforcing (i) this Guarantee and/or (ii) any judgment or order obtained in respect of this Guarantee; and • any loss or liability suffered or incurred by the <i>Client</i> if any of the obligations of the <i>Contractor</i> under the Contract is or becomes illegal, invalid or unenforceable for whatsoever reason as if such obligations were not illegal, invalid or unenforceable.
2.3	Any limitation or defence which would have been available to the <i>Contractor</i> in an action under the Contract shall likewise be available to the Guarantor

	<p>in a corresponding action under this deed, provided that nothing in this clause shall:</p> <ul style="list-style-type: none"> • prejudice or affect any liability of the Guarantor under clause 2.2; nor • allow the Guarantor to avoid liability if either of the events specified in clause 5 occurs.
3. Guarantor's Liability	
3.1	<p>The obligations of the Guarantor under this deed are in addition to and independent of any other security which the <i>Client</i> may at any time hold in respect of the <i>Contractor's</i> obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.</p>
3.2	<p>The obligations of the Guarantor under this deed are in addition to and not in substitution for any rights or remedies that the <i>Client</i> may have against the <i>Contractor</i> under the Contract or at law.</p>
3.3	<p>The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:</p> <ul style="list-style-type: none"> • an Insolvency Event; • any change in the constitution, status, function, control or ownership of the <i>Contractor</i> or any legal limitation, disability or incapacity relating to the <i>Contractor</i> or any other person; • the Contract or any of the provisions of the Contract being or becoming illegal, invalid, void, voidable or unenforceable; • any time given, waiver, forbearance, compromise or other indulgence shown by the <i>Client</i> to the <i>Contractor</i>; • the assertion or failure to assert or delay in asserting any rights or remedies of the <i>Client</i> or the pursuit of any right or remedy of the <i>Client</i>; • the giving by the <i>Contractor</i> of any security or the release, modification or exchange of any such security or the liability of any person; or • any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor <p>in each case with or without notice to, or the consent of, the Guarantor and the Guarantor unconditionally and irrevocably waives any requirement for notice of, or consent to, such matters.</p>

3.5	Any decision of an adjudicator, expert, arbitral tribunal or court in respect of or in connection with the Contract and any settlement or arrangement made between the <i>Client</i> and the <i>Contractor</i> shall be binding on the Guarantor.
4. Variations to the Contract	
4.1	The Guarantor authorises the <i>Contractor</i> and the <i>Client</i> to make any addition or variation to the Contract, the due and punctual performance of which shall likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation.
5. Liquidation/Determination	
5.1	<p>The Guarantor covenants with the <i>Client</i> that:</p> <ul style="list-style-type: none"> • if a liquidator is appointed in respect of the <i>Contractor</i> and the liquidator disclaims the Contract; or • if the <i>Contractor's</i> employment under the Contract is determined for any reason <p>the liability of the Guarantor under this deed shall remain in full force and effect.</p>
6. Waiver	
6.1	The Guarantor waives any right to require the <i>Client</i> to pursue any remedy (whether under the Contract or otherwise) which it may have against the <i>Contractor</i> before proceeding against the Guarantor under this deed.
7. Rights of Guarantor against Contractor	
7.1	The Guarantor shall not by any means or on any ground seek to recover from the <i>Contractor</i> (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the <i>Client</i> in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the <i>Client</i> to claim or have the benefit of any security which the <i>Client</i> holds for any money or liability owed by the <i>Contractor</i> to the <i>Client</i> . If the Guarantor shall receive any monies from the <i>Contractor</i> in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the <i>Client</i> for so long as the Guarantor remains liable or contingently liable under this deed.
8. Continuing Guarantee	
8.1	The terms of this deed are a continuing guarantee and shall remain in full force and effect until each part of every obligation of the <i>Contractor</i> under

	the Contract has been performed and observed and until each and every liability of the <i>Contractor</i> under the Contract has been satisfied in full.
9. Third Party Rights	
9.1	Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
10. Notices	
10.1	Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000).
11. Governing Law	
11.1	The application and interpretation of this deed shall in all respects be governed by English law and any dispute or difference arising under it shall be subject to the exclusive jurisdiction of the courts of England and Wales save that any decision, judgment or award of such courts may be enforced in the courts of any jurisdiction.

Execution Page

This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.

Executed as a deed by [GUARANTOR] acting by [<i>name of director</i>] in the presence of:	Director:
Name of witness:	
Signature of witness:	
Address:	
Occupation:	

Executed as a deed by [GUARANTOR] acting by:	Director:
Director:	
Director/Secretary:	

National Technical Surveys and Testing - Drainage (Region [INSERT])	
To	[INSERT CONTRACTORS NAME]
From	[INSERT CLIENTS NAME]
Contract Area	[INSERT AREA]
Task Order Number	[INSERT A SEQUENTIAL TASK ORDER NUMBER]
Task Order Name	[INSERT TASK ORDER NAME i.e. SCHEME/LOCATION]
Agreement Number	[INSERT]
Project Identification Number	[INSERT PIN]
Client Contact details for this Task Order	
Name	
Address	
Telephone	
Email	
Part A - For completion by the <i>Client</i>	
<p>In accordance with [clause 14] of the term service short contract for National Technical Surveys and Testing - Drainage, I propose to instruct you to carry out a Task. The Task shall be undertaken in accordance with the Service Information and the additional requirement detailed herein:</p>	
Description	The description of the Task to be carried out by the <i>Contractor</i> is given in the Technical Details, together with any referenced attached drawings and documents. An estimate of the quantities is given in the Price List (the actual quantities will be subject to agreement and remeasurement).
Starting Date	
Completion Date	
Delay Damages per week	
Please submit your price and programme to [INSERT NAME] by [INSERT DATE]	

Annex 17 - Example Task Order

Signed (for the <i>Client</i>):	Name:	Date:
Part B - For completion by the <i>Contractor</i>		
<i>Contractor</i>	Insert name	
Total of the Prices for the Task Order	£	-
The <i>Contractor's</i> plan for this Task is	Insert whether a plan for this order is being provided or has already been provided and where this is	
The <i>Contractor's</i> additional comments for this plan/instruction	This is a free text box for the <i>Contractor</i> to confirm any further detail/information to be made available to the <i>Client</i>	
Signed (for the <i>Contractor</i>):	Name:	Date:
Part C1 - For completion by the <i>Client</i>		
I accept the above price and plan and instruct you to carry out the Task Order. Please see attached Purchase Order		
Signed (for the <i>Client</i>):	Name:	Date:
Or		
Part C2 - For completion by the <i>Client</i>		
I do not accept the above price and/or plan and you are not required to carry out the Task Order		

Annex 17 - Example Task Order

Signed (for the <i>Client</i>):	Name:	Date:
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Highways England Company Limited

NEC4 Term Service Short Contract

(June 2017 with amendments January 2019 and October 2020)

Contract Data

in relation to a *service* for

Technical Surveys and Testing – Drainage South West Region

CONTENTS AMENDMENT SHEET

Issue No.	Revision No.	Amendments	Initials	Date
0	0	Tender issue	SM	Mar 2021

Contract Data

The *Client's* Contract Data

The *Client* is

Name

Highways England Company Limited

Address for
communications

Bridge House,
1 Walnut Tree Close
Guildford
Surrey GU1 4LZ
Registered number 09346363

Address for
electronic
communications

info@highwaysengland.co.uk

The *service* is

Technical Surveys and Testing - Drainage

The *starting date* is

15th June 2021

The *service period* is

7 years

The *period for reply* is

2 weeks

The *assessment day* is the

20th (or next
working day)

of each month

Are the rates and Prices in the contract adjusted for inflation

Yes

If Yes the *index* is

*EARN01: Average
Weekly Earnings
(AWE) Regular Pay
Index figures
seasonally adjusted,
excluding bonuses and
arrears, Whole*

provided by

The Office of National
Statistics

*Economy, Tab 5,
Column K54L*

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply.

The *Adjudicator* is

Name

The person chosen by the Parties from the list of adjudicators published by the Institution of Civil Engineers

Address for
communications

TBC

Address for
electronic
communications

TBC

The interest rate on late payments is

N/A

% per complete week of delay

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

Ten million pounds (£10,000,000)

Only enter details here if the *Client* is to provide insurance.

The *Client* provides this insurance

N/A

The *Contractor* provides the insurances from the Insurance Table and in accordance with the requirements in **Annex 03** of the Scope.

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

Limit of indemnity ten million pounds (£10,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period,
But ten million pounds (£10,000,000) any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy)

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

Not less than ten million pounds (£10,000,000) any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of the contract or such greater period as is required by law

The *Adjudicator* nominating body is

The Institute of Civil Engineers

The *tribunal* is

arbitration

The arbitration procedure is

The Institution of Civil Engineers Arbitration Procedure (April 2012)

Z14 - Project Bank Account

Option Y(UK)1, Trust Deed and Joining Deed of the NEC4 Term Service Contract (June 2017 with amendments January 2019) applies to the contract.

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

Conditions of Contract

The *conditions of contract* are the NEC4 Term Service Short Contract June 2017, as amended January 2019 and October 2020, the

additional *conditions of contract* clauses Z1 to Z62 and

Option Y(UK)1, Trust Deed and Joining Deed of the NEC4 Term Service Contract (June 2017 with amendments January 2019) applies to the contract.

The *Contractor's* Contract Data

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

The *Contractor* is

Name

Address for
communications

Address for electronic
communications

The Quality Submission is in

South West

The *region* is

The *fee percentage* is in the Price List – *region*

The *people rates* are in the Price List - *region*

The *published list of Equipment* is

the last edition of the list published by the Civil Engineering Contractors Association

The *percentage for adjustment for Equipment* is in the Price List - *region*

Contract Data entry relating to Data Protection Legislation

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

Contract Data entries relating to Z Clauses

Z14 - Project Bank Account

The *project bank* is

--

named suppliers are

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Z9 - Change of Control and financial distress

The *credit ratings* at the Contract Date and rating agencies issuing them are

party	rating agency	credit rating
Contractor		
Consortium Member		
Guarantor		

Z Clauses Contents	
Number	Title
Z1	Changes to Core clauses
Z2	Interpretation
Z3	Recovery of sums due from the <i>Contractor</i> .
Z4	Assignment and transfer
Z5	Not Used
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	Termination and removal of part of the <i>service</i>
Z18	Corruption or loss of data
Z19	Conflict of Interest
Z20 – Z55	Not Used
Z56 – Z58	Construction Industry Scheme
Z59	Indemnified claims
Z60	Tax Arrangements of appointees
Z61	Not Used
Z62	Third Party Rights

Z1 Changes to core & Secondary Option clauses

11 Identified and defined terms

11.2 Add the following defined terms:

(16) Associated Company is any of

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

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

(18) Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor* or a Consortium Member.

(19) Consortium Member is an organisation which is a member of the group of economic operators comprising the *Contractor*, whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company.

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

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

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

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

(23) Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the *Client* in respect of the *Contractor*, a Consortium Member or any Guarantor.

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

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

(26) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).

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

(28) Financial Standing Test is the financial test for the *Contractor*, a Consortium Member or a proposed guarantor used in the tender stage of the competition for this contract.

(29) 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.

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

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

(32) Incoming Contractor is any contractor appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Contractor*.

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

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

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

(36) 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.

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

(38) Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed.

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

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

(41) Personal Data – has the meaning defined in the Scope.

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

(43) A Subcontractor is a person or organisation that has a contract with the *Contractor* to provide a service which is necessary to Provide the Service, except for the

- hire of Equipment or
- supply of people paid for by the *Contractor* according to the time they work.

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

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

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

(47) 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).]

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

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

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

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

(51) Tax Non-Compliance is where a tax return submitted by the *Contractor* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012

- Is found on or after 1 April 2013 to be incorrect as a result of a Relevant Tax Authority successfully challenging the *Contractor* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- The failure of an avoidance scheme in which the *Contractor* or a Consortium Member was involved which was (or should have been)

notified to a Relevant Tax Authority under the DOTAS or a similar regime or

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

(52) Tender Commitment Register is the register of commitments in the Quality Submission.

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

Amend the following terms

51 Payment

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

60 Compensation events

In clause 60.1(1) delete the full stop and insert

or a change to the Information Systems or the introduction of a new Information System or, a change to the method of or requirements for performance measurement.

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

“unless the instruction relates to a notification from the *Contractor* that a conflict of interest may exist or arise”.

Insert additional compensation event

60.1 (10) The *Client* notifies the *Contractor* that payments under the contract will no longer be made using the Project Bank Account.

Z2 Interpretation

Z2.1 In the contract, except where the context shows otherwise:

- references to a document include any revision made to it in accordance with the contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity; and

- the words “includes” or “including” are construed without limitation.

Z3 Recovery of sums due from the *Contractor*

- Z3.1 Where, under the contract a sum of money is recoverable from or payable by the *Contractor*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Contractor* under the contract or any other contract with the *Client*.

Z4 Assignment and transfer

- Z4.1 The *Contractor* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.
- Z4.2 If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client's* agreement to do so. The *Contractor* explains the reasons for the proposed transfer and provides the *Client* with all such information as the *Client* may require in order to make its decision. If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require.
- Z4.3 If requested by the *Client*, the *Contractor* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to
- an organisation established to take over the *Client's* functions or part of them,
 - another public body exercising similar functions,
 - a Department or Office of Her Majesty's Government or
 - a local authority

Z5 Not used

Z6 Adjudication

- Z6.1 The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract:
- Any information concerning the contract obtained by either the *Adjudicator* or any person advising or aiding him is confidential, and is not used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement. The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Acts 1911 to 1989.
- Z6.2 If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has

been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*.

Z7 Termination - Public Contract Regulations 2015

Z7.1 The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date.

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

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

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

- Reason 2 if the modification or infringement was due to a default by the *Contractor*,
- Reason 5 if the modification or infringement was due to a default by the *Client* and
- Reason 8 if the modification or infringement was due to any other reason

Z8 Subcontracting

Z8.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract.

Z8.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.

Z8.3 The *Client* 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 *Client*. In the event of a termination under this clause, the termination procedures and the amounts due on termination are as for Reason 2.

Z8.5 Before

- appointing a proposed subcontractor or
- allowing a subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Client* for acceptance

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

Z8.6 The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Client* 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
- the *Client* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

Z8.7 If requested by the *Client*, the *Contractor* provides further information to support, update or clarify a submission under clause Z8.5

Z8.8 If, following the acceptance of a submission under clause Z8.6, it is found that

- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

the *Client* may instruct the *Contractor* to

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

Z9 Change of Control and financial distress

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

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

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

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

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

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

Z9.5 If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Contractor* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the

Contractor's obligation to Provide the Service with immediate effect. In the event of a termination under Z9.5, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

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

- a person or organisation that does not comply with the selection questionnaire completed by the *Contractor* at tender stage is an Associated Company, or
- the *Client* decides (having reviewed any information provided by the *Contractor* and made appropriate inquiries) that the *Contractor* is no longer in a position to Provide the Service,

the *Client* may terminate the *Contractor's* obligation to Provide the Service with immediate effect. In the event of a termination under Z9.6, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1.

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

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

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

Z9.9 A reason for not accepting an alternative guarantor proposed by the *Contractor* is that it does not

- meet the Financial Standing Test,
- provide the legal opinion required in clause Z9.13 or

have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.4 has occurred.

Z9.10 If so required by the *Client*, the *Contractor* within four weeks after the *Client* notifies the requirement gives to the *Client* a Parent Company Guarantee from

the Controller or an alternative guarantor accepted by the *Client*.

Z9.11 The *Client* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not meet the Financial Standing Test if the *Contractor* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within 18 months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period.

Z9.12 If

- the *Contractor* fails to notify the *Client* that an event listed in clause Z9.4 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.13
- the *Contractor* does not give to the *Client* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so or
- the *Contractor* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* will meet the Financial Standing Test within 18 months of the *Client's* acceptance

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

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 the contract.
- Z10.7 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 & 90.2 of the conditions of contract are amended by inserting after "the other Party" the words "or in the case of the *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 the contract.

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, with the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope. Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Contractor* or its assignees or any third party. The *Contractor* provides to the *Client* the documents which license these IPRs to the *Client*.
- The *Contractor's* or third party licensor's exclusive remedies for any breach by the *Client*, or any sub-licensee, of any licence granted under this clause are damages and equitable relief.
- Z13.3 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause.

Z14 Project Bank Account

- Z14.1 If so stated in the Contract Data, Option Y(UK)1 of the NEC4 Term Service Contract (June 2017 with amendments January 2019)) applies to the contract, save that references to the Service Manager in Option Y(UK)1 are treated as references to the Client, and as amended below.
- Z14.2 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.

Z14.3 Clause Y1. 9 Delete the final sentence and insert "The *Client* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Contractor* submits it to the project bank. A reason for not accepting the Authorisation is that it does not match the application for payment or it does not comply with the requirements of the contract".

Z14.4 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 their 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 the contract if

- the warranty given by the *Contractor* under clause Z15.1 is untrue,
- the *Contractor* fails to notify the *Client* of a Tax Non-Compliance or

the *Client* decides that any mitigating factors notified by the *Contractor* are unacceptable.

Z16 Value Added Tax (VAT) Recovery

Z16.1 An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment.

Z17 Termination and removal of part of the service

- Z17.1 The *Client* may instruct the *Contractor* that
- 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 works similar to the removed *service* (or part of it).
- Z17.2 An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for Reason 1, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*.
- Z17.3 If the *Contractor's* obligation to Provide the Service is terminated for any reason, the *Contractor* if instructed by the *Client*
- 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.

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 *Client* and
- the *Client* may instruct the *Contractor* to restore the data in accordance with the *Client's* requirements 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 S329.1 in the Scope is not a compensation event.
- Z19.2** A failure to comply with paragraph S329.1 in the Scope is treated as a substantial failure by the Contractor to comply with the contract.

Z20-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 Not Used

Z58 Not Used

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 the contract.

- 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 Not Used

Z62 Third Party Rights

- Z62.1 A subcontractor and subsubcontractor have the right to enforce the terms of clause Z8 Subcontracting and Fair payment (Scope section S 346).
- Z62.2 A Named Supplier has the right to enforce clause Z14 (Project Bank Account)
- Z62.3 Otherwise a person or organisation who is not a Party has no right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999.



Highways England Company Limited

NEC4 Term Service Short Contract

(June 2017 with amendments January 2019 and October 2020)

The *Contractor's* Contract Data

in relation to a *service* for

Technical Surveys and Testing – Drainage South West Region